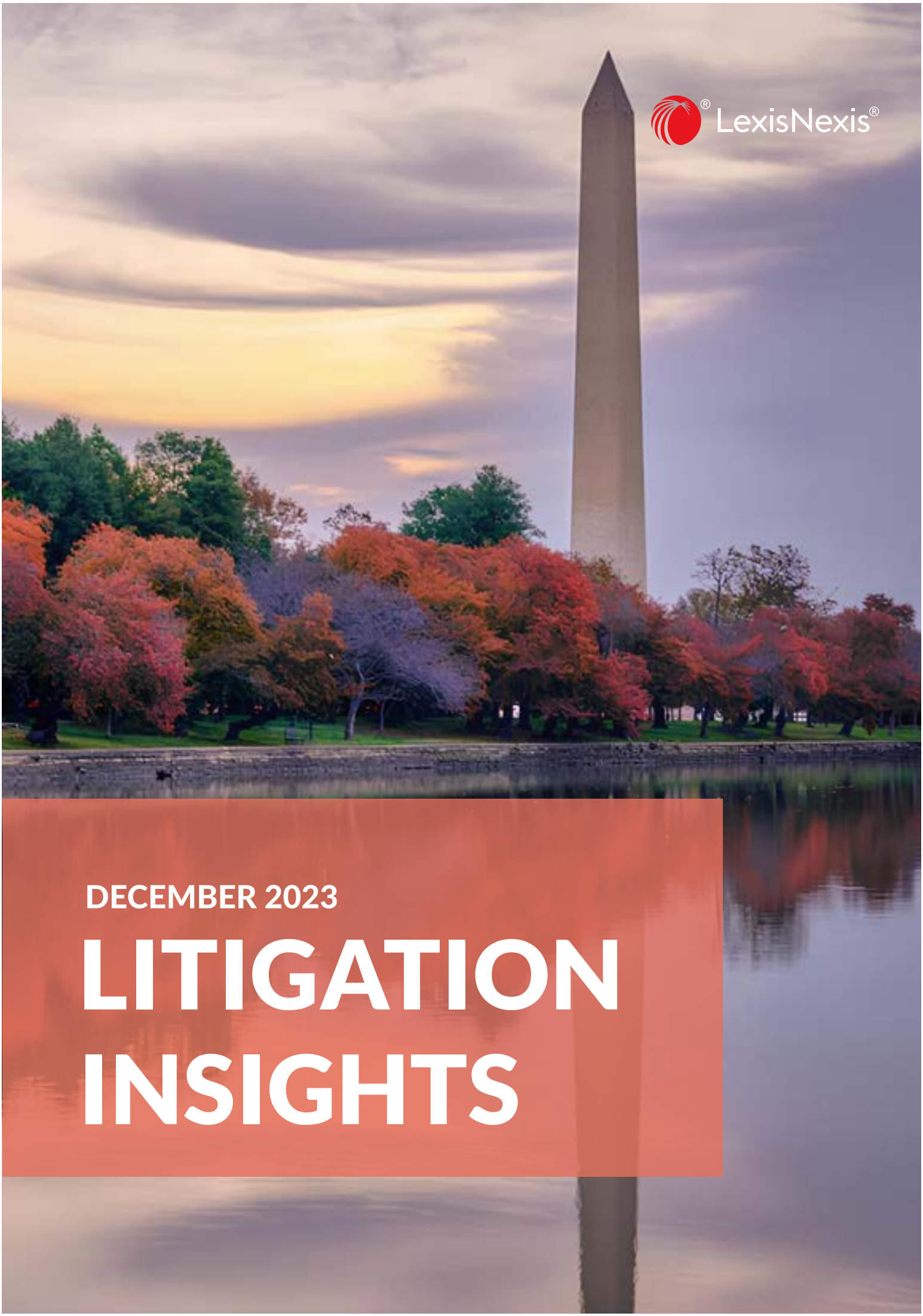
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LITIGATION INSIGHTS

MOORE'S FEDERAL PRACTICE—TOP THREE HIGHLIGHTS

The following three summaries are this month's Editor's Top Picks from the dozens of decisions added to Moore's Federal Practice and Procedure.

APPEALS

Standing to Appeal

Habelt v. iRhythm Techs., Inc.

83 F.4th 1162, 2023 U.S. App. LEXIS 26945 (9th Cir. Aug. 17, 2023)

Jump to full summary

A divided panel of the Ninth Circuit has ruled that the plaintiff who filed an initial class-action complaint did not qualify as a party with standing to appeal a dismissal, since another party had been appointed lead plaintiff and had filed an amended complaint that contained no reference to the initial plaintiff other than in the caption.

DISMISSAL

Voluntary Dismissal by Court Order

Sanchez v. Disc. Rock & Sand, Inc.

82 F.4th 1031, 2023 U.S. App. LEXIS 24318 (A 84 F.4th 1283, 2023 U.S. App. LEXIS 28389 (11th Cir. Oct. 25, 2023) Cir. Sept. 13, 2023)

Jump to full summary

The Eleventh Circuit holds that a Rule 41(a)(2) dismissal by order of the court may dismiss a single defendant in a multi-party case, even though the action would remain pending against another defendant.

VENUE

Transfer

In re TikTok, Inc

85 F.4th 352, 2023 U.S. App. LEXIS 28880 (5th Cir. Oct. 31, 2023

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The Fifth Circuit has held that a writ of mandamus was proper to compel the transfer of a case under 28 U.S.C. § 1404 from the Western District of Texas to the Northern District of California, when the case was brought by a Chinese plaintiff and challenged conduct that took place in China and in California, and depended on proof located outside the Western District of Texas.

Continue on next page

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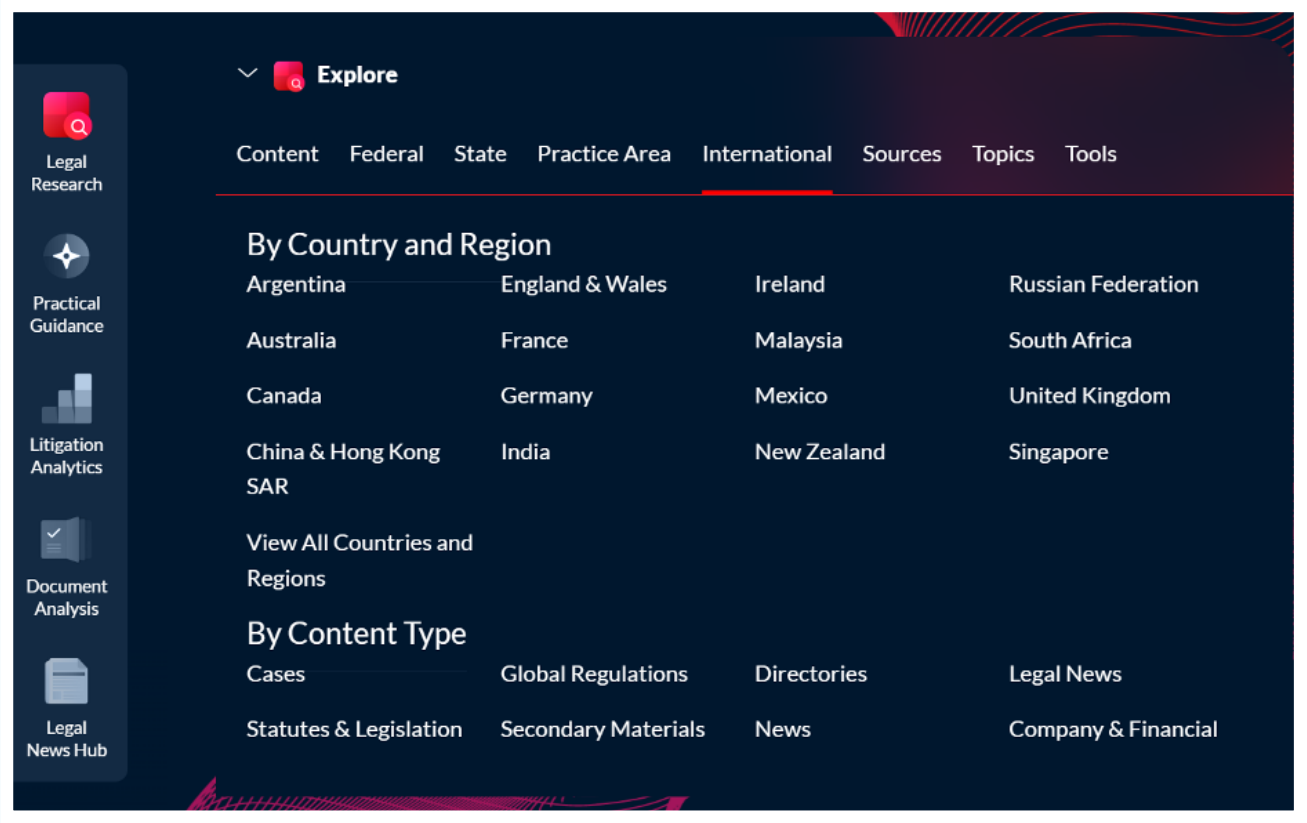

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Continue on next page

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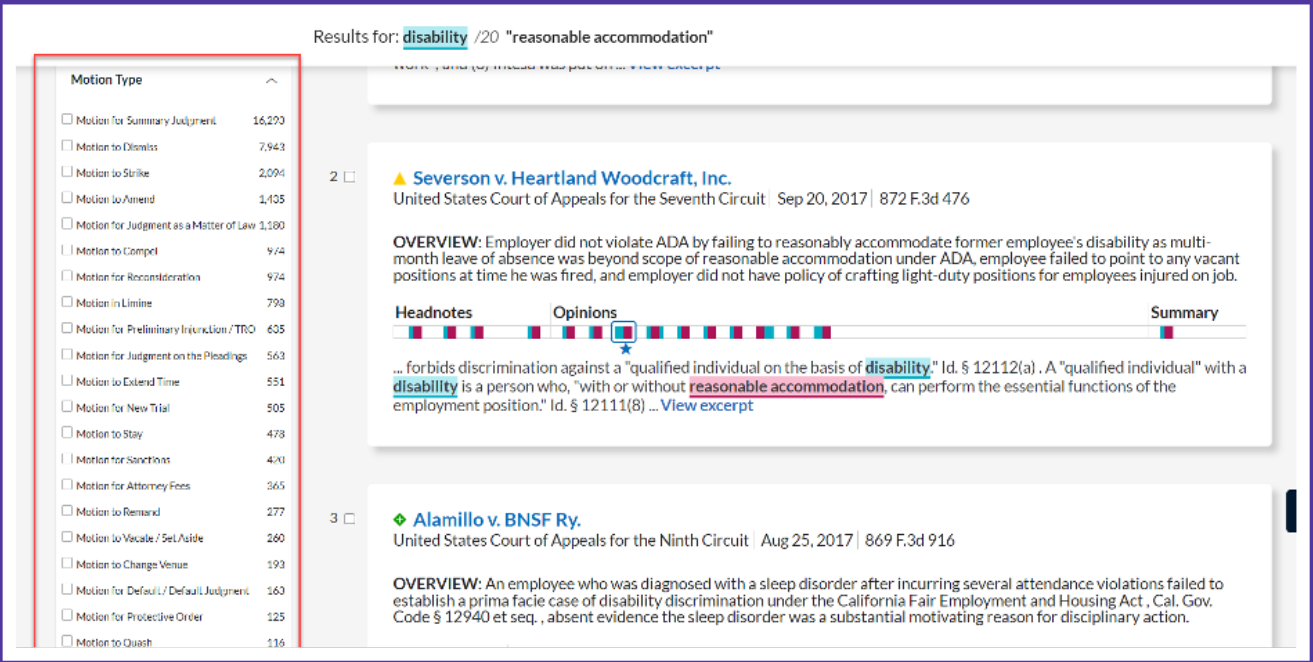

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Current Awareness Insights!

Alert: District Courts May Issue a Preliminary Injunction Even if Service of Process not Complete

Plaintiff sued defendant, a Chinese-based manufacturer, for trademark infringement and related unfair competition. The same day it filed its suit, Plaintiff filed a motion for a preliminary injunction prohibiting Defendant from selling the infringing product. A hearing was held on the motion at which counsel for both sides appeared.

At the hearing, defense counsel argued the preliminary injunction should be denied because while they admittedly received notice of the hearing, their client had not been formally served with process under the Hague Convention. The district court found notice was sufficient without completion of formal service and granted the preliminary injunction.

On appeal, Defendant argued the district court lacked the power to enter a preliminary injunction because, in the absence of either completed service of process under the Hague Convention or a voluntary appearance, the lower court lacked personal jurisdiction over it. The Fifth Circuit disagreed.

The Court noted that Rule 65(a) provides that a court "may issue a preliminary injunction only on notice to the adverse party" and does not require service of process to proceed. Here, the Defendant appeared and had an opportunity to be heard.

The Court acknowledged that a valid preliminary injunction requires personal jurisdiction. But in this case, defendant did not dispute that once service is effectuated, personal jurisdiction will exist. As such, arguing that the court had to wait until service of process was perfected before ordering even emergency relief contradicted the plain language of Rule 65. It also noted the reality that service under the Hague Convention can take months and adopting defendant's argument would mean that foreign defendants would be effectively immunized from needed emergency relief. See Whirlpool Corp. v. Shenzhen Sanlida Elec. Tech. Co., Ltd., 2023 U.S. App. LEXIS 22551 (5th Cir. August 25, 2023).

Fed Civ Proc Before Trial: The Wagstaffe Group *§ 31-VI[A]*, 31.35—Personal Jurisdiction Required; Fed Civ Proc Before Trial: The Wagstaffe Group *§ 31-XIX[B][3]*, 31.343—Compare—Service of Process; Fed Civ Proc Before Trial: The Wagstaffe Group *§ 31-XXIV[G]*, 31.466—"Adequate Notice" Required.

Continue on next page

APPEALS

Standing to Appeal

Habelt v. iRhythm Techs., Inc.

83 F.4th 1162, 2023 U.S. App. LEXIS 26945 (9th Cir. Aug. 17, 2023)

A divided panel of the Ninth Circuit has ruled that the plaintiff who filed an initial class-action complaint did not qualify as a party with standing to appeal a dismissal, since another party had been appointed lead plaintiff and had filed an amended complaint that contained no reference to the initial plaintiff other than in the caption.

Background. The original plaintiff, Mark Habelt, filed a securities-fraud complaint against a corporation and some individuals. The complaint asserted claims on behalf of Habelt and a putative class of persons who purchased the defendant corporation's common stock during a specific period. Pursuant to the Private Securities Litigation Reform Act, the district court appointed the Public Employees' Retirement System of Missouri (PERSM) as lead plaintiff [see 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I) (class member that has either filed complaint or made motion to be appointed lead plaintiff, that has largest financial interest in relief sought by class, and that otherwise satisfies the requirements of Fed. R. Civ. P. 23 is presumed most adequate to serve as lead plaintiff)]. Habelt did not make a motion for appointment as lead plaintiff and did not oppose PERSM's motion, and he did not participate in the litigation after PERSM's appointment as lead plaintiff.

As lead plaintiff, PERSM filed an amended complaint and then a second amended complaint (SAC), which became the operative complaint. The caption of the SAC listed Habelt as the "Plaintiff." But the body of the SAC, including a subsection titled "Parties," made no reference to Habelt, to his alleged losses, or to his individual claims.

Before any class was certified in the case, the defendants filed a motion to dismiss for failure to state a claim [see Fed. R. Civ. P. 12(b)(6)]. The district court granted the motion, dismissed the SAC with prejudice, and entered judgment in the defendants' favor. PERSM did not appeal the district court's judgment. Habelt, represented by PERSM's counsel and his own additional counsel, filed a timely notice of appeal.

A divided panel of the Ninth Circuit dismissed Habelt's appeal for lack of jurisdiction, concluding that he was not a party to the action and therefore lacked standing to appeal.

Habelt Was Not Party. The panel majority started with the settled principle that only parties to a lawsuit, or those that properly become parties, may appeal an adverse judgment [see Marino v. Ortiz, 484 U.S. 301, 304, 108 S. Ct. 586, 98 L. Ed. 2d 629 (1988) (per curiam); see also Fed. R. App. P. 3(c)(1) ("The notice of appeal must: (A) specify the party or parties taking the appeal . . . .")]. A person cannot appeal a judgment or order in a suit to which it has not become a party, even if it has an interest in the outcome of the litigation, unless it intervenes in the suit or has a statutory right to appeal [see United States v. Kovall, 857 F.3d 1060, 1068 (9th Cir. 2017)].

Habelt argued that he was a party to this lawsuit because he filed the initial complaint and was listed in the caption of the SAC. But the Ninth Circuit panel concluded that those facts did not suffice to confer party status upon him.

The court explained that the caption of an action is only "the handle to identify it," and a person or entity can be named in the caption without necessarily becoming a party to the action [see United States ex rel. Eisenstein v. City of New York, 556 U.S. 928, 935, 129 S. Ct. 2230, 173 L. Ed. 2d 1255 (2009)]. Although inclusion in the caption is some indication of party status, it is not dispositive. More important for this purpose are the allegations in the body of the complaint [see Hoffman v. Halden, 268 F.2d 280, 303 (9th Cir. 1959), overruled in part on other grounds by Cohen v. Norris, 300 F.2d 24 (9th Cir. 1962) (en banc)].

The court of appeals noted that even though Habelt filed the initial complaint in this case, that complaint had been extinguished by the first amended complaint and the SAC, which become the operative complaint [see Ramirez v.

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County of San Bernardino, 806 F.3d 1002, 1008 (9th Cir. 2015)]. The court emphasized that the body of the SAC made clear that PERSM was the sole plaintiff, and it made no mention of Habelt or of his individual claims.

The court further found that Habelt's status as a putative class member did not give him standing to appeal under the circumstances of this case. An unnamed member of a certified class generally may be treated as a party for the purpose of appealing an adverse judgment. However, this treatment does not apply to an unnamed class member before the class is certified [see Smith v. Bayer Corp., 564 U.S. 299, 313, 131 S. Ct. 2368, 180 L. Ed. 2d 341 (2011); Employers-Teamsters Loc. Nos. 175 & 505 Pension Trust Fund v. Anchor Capital Advisors, 498 F.3d 920, 923 (9th Cir. 2007)].

Circumstances Did Not Warrant Nonparty Appeal. The appellate panel went on to conclude that Habelt had failed to demonstrate exceptional circumstances conferring standing to appeal as a nonparty. A nonparty may have standing to appeal if (1) he or she participated in the district-court proceedings, and (2) the equities of the case weigh in favor of hearing the appeal [see Hilao v. Est. of Marcos, 393 F.3d 987, 992 (9th Cir. 2004)]. The court of appeals concluded that neither of these circumstances was established in this case.

The court explained that it has allowed nonparties to appeal only when they were significantly involved in the district-court proceedings [see United States ex rel. Alexander Volkhoff, LLC v. Janssen Pharmaceutica N.V., 945 F.3d 1237, 1241–1242 (9th Cir. 2020)]. The court found that Habelt's participation in this case did not meet that "high bar." His involvement in the case below all but ceased with the filing of the initial complaint. He did not apply to be appointed lead plaintiff, challenge PERSM's motion for appointment as lead plaintiff, or otherwise participate in the suit after PERSM's appointment.

The court also found that the equities did not weigh in favor of hearing Habelt's appeal. This case was different from one in which a party has haled a nonparty into the proceeding against his or her will, and then has attempted to thwart the nonparty's right to appeal by arguing that he or she lacks standing [see United States ex rel. Alexander Volkhoff, LLC v. Janssen Pharmaceutica N.V., 945 F.3d 1237, 1242 (9th Cir. 2020)]. Habelt willingly filed the initial complaint. The appellate panel also noted that the defendants agreed at oral argument that Habelt was not bound by the district court's judgment.

In support of its conclusion, the court of appeals pointed out that the Supreme Court has cautioned against reliance on exceptions to the rule that only parties can appeal. Instead, nonparties should follow the better practice of seeking intervention for purposes of appeal [see Marino v. Ortiz, 484 U.S. 301, 304, 108 S. Ct. 586, 98 L. Ed. 2d 629 (1988) (per curiam); see also United States v. City of Oakland, 958 F.2d 300, 302 (9th Cir. 1992) ("[D]enial of intervention as of right is an appealable final order.")]. Habelt had not sought to intervene in this case.

Conclusion and Disposition. Because Habelt lacked standing to appeal, the Ninth Circuit panel dismissed his appeal for lack of jurisdiction.

Dissent. Circuit Judge Bennett dissented. He agreed with the majority that the right to appeal generally extends only to parties, but he opined that Habelt was a party.

In Judge Bennett's view, four factors showed that Habelt was a party: (1) Habelt initiated the lawsuit by filing the first complaint; (2) Habelt remained in the caption of the operative SAC; (3) Habelt's claims were clearly covered by the substantive allegations in the body of the SAC; and (4) Habelt never evinced any intent to remove himself as a party, and the district court never provided notice that it was doing so.

Judge Bennett also opined that even if Habelt was not a party, exceptional circumstances in this case would have justified allowing him to appeal. Contrary to the majority's conclusion, Judge Bennett would have found that Habelt had participated in the district-court proceedings, and that the equities weighed in favor of allowing his appeal. "[W]e are not dealing with a putative class member; we are dealing with the named Plaintiff who initiated the lawsuit and who was never dismissed from the case."

Continue on next page

DISMISSAL

Voluntary Dismissal by Court Order

Sanchez v. Disc. Rock & Sand, Inc.

884 F.4th 1283, 2023 U.S. App. LEXIS 28389 (11th Cir. Oct. 25, 2023)

The Eleventh Circuit holds that a Rule 41(a)(2) dismissal by order of the court may dismiss a single defendant in a multi-party case, even though the action would remain pending against another defendant.

Background. The estates of four young women who were killed in a car accident sued Carlos Manso Blanco, the driver who rear-ended their car, for negligence. They also sued Blanco's employer, Discount Rock & Sand, Inc., for negligently entrusting the company's truck to Blanco and for vicarious liability for Blanco's negligent driving. After the estates and Blanco settled, the district court ordered the estates to file a stipulation of dismissal under Federal Rule of Civil Procedure 41(a), which they did. The stipulation was signed by both Blanco's and the estates' counsel, but not by Discount Rock & Sand, which was not a party to the settlement. Based on the stipulation, the district court ordered the dismissal of the claim against Blanco. The district court also retained jurisdiction to enforce the settlement agreement. The remaining claims against Discount Rock went to trial, and the jury found the company liable and awarded nearly $12 million in damages to the estates.

After moving for judgment as a matter of law, for a new trial, or for remittitur, all of which were denied, Discount Rock appealed on several grounds. The Eleventh Circuit issued a jurisdictional question asking the parties to address whether the Rule 41(a) stipulation voluntarily dismissing Blanco was effective, given that it appeared to be signed only by counsel for the estates and counsel for Blanco, and did not appear to be signed by counsel for Discount Rock. Discount Rock then moved to dismiss the appeal, arguing that the stipulation was ineffective to dismiss the claim against Blanco because Rule 41(a)(1)(A)(ii) requires all parties who appeared in the action to sign the stipulation. Thus, Discount Rock argued, the claim against Blanco was not dismissed and the district court's judgment was not final.

Appellate Court Had Jurisdiction. The Eleventh Circuit explained that it has an obligation to inquire into jurisdiction whenever the possibility that jurisdiction does not exist arises. The court raised the question here because, if the stipulation was ineffective to dismiss Blanco, then the estates' claim against him remained pending. And if the estates' claim against Blanco were still pending, then the district court's order entering judgment against Discount Rock would not have been final because it did not dispose of all claims against all parties. Ordinarily, a final judgment resolves conclusively the substance of all claims, rights, and liabilities of all parties to an action.

The estates urged the court to follow the Fifth Circuit case of Nat'l City Golf Fin. v. Scott and conclude that only the dismissed defendant need sign the Rule 41 stipulation [see Nat'l City Golf Fin. v. Scott, 899 F.3d 412 (5th Cir. 2018)]. If not, the estates argued, the court should treat Blanco as having been voluntarily dismissed by court order under Rule 41(a)(2). Finally, the estates argued that the court should apply the holding in Plains Growers, Inc. ex rel. Florists' Mut. Ins. Co. v. Ickes-Braun Glasshouses, Inc.—that a Rule 41(a)(1)(A)(i) notice can dismiss one defendant while leaving "the action against another defendant" pending —to the Rule 41(a)(1)(A)(ii) stipulation in this case [see Plains Growers, Inc. ex rel. Florists' Mut. Ins. Co. v. Ickes-Braun Glasshouses, Inc., 474 F.2d 250, 253 (5th Cir. 1973)].

Discount Rock argued that a Rule 41(a)(1)(A)(ii) stipulation must be signed by all parties who have appeared in the action, not just the parties that settled. Discount Rock also argued that the district court's order should not be treated as a Rule 41(a)(2) dismissal for three reasons: (1) because the estates never moved for an order of dismissal (as to which Discount Rock would have had an "opportunity to be heard"), (2) because the order was devoid of any analysis that Blanco was being dropped "on just terms," and (3) because Discount Rock was in fact prejudiced by Blanco's dismissal. Finally, Discount Rock asserted that Plains Growers "expressly limited its ruling" to the Rule 41(a)(1)(A)(i) notice context. Extending Plains Growers' holding to permit dismissal of a single defendant—rather than a plaintiff's "entire action"—via Rule 41's other avenues, Discount Rock asserted, would

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conflict with the rule's plain language, render Federal Rule of Civil Procedure 21 superfluous, and contradict the 1946 Advisory Committee Note to Rule 41 reflecting an intention to prevent unlimited dismissal.

The Eleventh Circuit noted that Rule 41(a) sets out three ways to voluntarily dismiss "an action": (1) a Rule 41(a)(1)(A)(i) notice filed "before the opposing party serves either an answer or a motion for summary judgment," (2) a Rule 41(a)(1)(A)(ii) stipulation "signed by all parties who have appeared," or (3) a Rule 41(a)(2) court order dismissing the action "at the plaintiff's request" and "on terms that the court considers proper" [Fed. R. Civ. P. 41(a)]. Although the estates' stipulation was ineffective under Rule 41(a)(1)(A)(ii) because Discount Rock did not sign it, the Eleventh Circuit found that the district court's order satisfied Rule 41(a)(2)'s requirements and so was effective to dismiss Blanco.

The court explained that the stipulation, which alerted the district court that the estates sought to dismiss Blanco, sufficed as the plaintiffs' request for a court-ordered voluntary dismissal. Rule 41(a)(2), by its plain language, does not require a motion. In fact, a court may act sua sponte to dismiss an action under Rule 41(a)(2). In addition, several times in the past, the court has approved dismissal orders that treated Rule 41(a)(1)(A) notices and stipulations as requests for a Rule 41(a)(2) court order.

The court further concluded that the district court's order complied with the requirement of Rule 41(a)(2) in adjudging that the estates' cause was dismissed as to Blanco because it set forth the terms of the dismissal. The district court ordered dismissal without prejudice because the parties neither requested otherwise nor informed the court whether the estates previously dismissed any federal- or state-court action based on or including the same claim. And the district court retained jurisdiction to enforce the settlement agreement between the estates and Blanco. Both of these were "terms that the [district] court consider[ed] proper," which is all Rule 41(a)(2) requires.

The appellate court rejected the argument that the district court's order was "devoid of any analysis" that the terms of Blanco's dismissal were proper. On its face, the order showed that the district court analyzed whether the dismissal's terms were proper. The order expressly stated the district court considered the stipulation and the pertinent portions of the record. Then, only after "being . . . fully advised in the premises," the district court ordered Blanco's dismissal and specified the terms.

The court also rejected the argument that the district court's Rule 41(a)(2) order was ineffective because it did not dismiss an "action" since it did not dismiss the entire case. In Plains Growers, which involved a Rule 41(a)(1)(A)(i) notice of dismissal, the Eleventh Circuit held that a plaintiff can dismiss one defendant under Rule 41(a) "even though the action against another defendant would remain pending." In this case, the district court's order dismissed the action as to Blanco, even though the action against Discount Rock remained pending. Plains Growers should not be limited to dismissals under Rule 41(a)(1)(A)(i), and it makes no sense that "action" should mean the entire case for Rule 41(a)(2) dismissal orders. Rules 41(a)(1)(A)(i), (a)(1)(A)(ii), and (a)(2) all use the term "action." Although Plains Growers was decided in the context of a Rule 41(a)(1)(A)(i) notice of dismissal, the holding hinged on interpreting the word "action" as used throughout Rule 41(a)—not on any language in the dismissal-by-notice subrule, specifically. There is nothing in the Rule to indicate an intent to make the word "action" mean "all" in subdivision 41(a)(1) and mean less than "all" in subdivision 41(a)(2). Courts generally presume that words or phrases bear the same meaning throughout a text. It would be odd if, in two consecutive subdivisions of Rule 41(a) the same words were read to mean one thing in the first but another in the second.

The district court's order dismissing Blanco but leaving the estates' claims against Discount Rock pending satisfied Rule 41(a)(2)'s requirements and so was effective to dismiss Blanco. And with Blanco dismissed, the judgment entered against Discount Rock resolved all claims against all remaining parties—making it final.

Conclusion. The Eleventh Circuit concluded that it had jurisdiction. Although the stipulation did not comply with Rule 41(a)(1)(A)(ii), the district court's order dismissing the claim against Blanco satisfied Rule 41(a)(2), which allows a district court to dismiss an action by court order at a plaintiff's request.

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VENUE

Transfer

In re TikTok, Inc.

85 F.4th 352, 2023 U.S. App. LEXIS 28880 (5th Cir. Oct. 31, 2023)

The Fifth Circuit has held that a writ of mandamus was proper to compel the transfer of a case under 28 U.S.C. § 1404 from the Western District of Texas to the Northern District of California, when the case was brought by a Chinese plaintiff and challenged conduct that took place in China and in California, and depended on proof located outside the Western District of Texas.

Background. This lawsuit was filed in the Western District of Texas, Waco Division. The plaintiff was a Chinese company and the owner of several Chinese copyrights covering the source code for a specific type of video- and audio-editing software. The plaintiff alleged that the defendants, TikTok and related entities, used this source code to develop and implement the videoediting functionality used by TikTok. It alleged copyright infringement and trade-secret misappropriation, false advertising under the Lanham Act, and state-law claims for unfair competition, unjust enrichment, and aiding and abetting a breach of fiduciary duty. The plaintiff also filed lawsuits in China alleging substantially the same claims, which were ongoing.

The development of the video-editing functionality took place in China and was implemented into TikTok in part by a team of engineers located in California, working in the Mountain View office in the Northern District of California. One member of the engineering team worked remotely from Irving, Texas, in the Northern District of Texas and 113 miles from the relevant Western District of Texas courthouse in Waco. The defendants had a large presence in the Western District of Texas, in the form of a 300-person office in Austin, but this was a business office that did not perform any engineering work.

The defendants moved to transfer the case under 28 U.S.C. § 1404 to the Northern District of California. The district court eventually denied transfer, and the defendants petitioned the court of appeals for a writ of mandamus directing the district court to transfer.

Mandamus Standards. The court of appeals noted that plaintiffs are permitted to engage in a certain amount of forum shopping. Defendants can protect themselves against forum shopping by moving to transfer under 28 U.S.C. § 1404(a). That statute allows a district court to transfer any civil action to any other district or division where it might have been brought, when the convenience of parties and witnesses and the interest of justice so require. Mandamus is an appropriate way to test a district court's § 1404(a) ruling. Mandamus requires three elements: (1) there are no other adequate means to attain relief; (2) the right to issuance of writ is clear and indisputable; and (3) the court, in the exercise of its discretion, is satisfied that the writ is appropriate under the circumstances. The first requirement is considered to be met in the motion-to-transfer context, so that the second is usually the essence of the disputed issue. A defendant has a clear and indisputable right to the writ when the transferee district is clearly a more convenient venue such that the district court's ruling to the contrary is a clear abuse of discretion.

Denial of Transfer Was Clear Abuse of Discretion. TA district court should grant a motion to transfer under § 1404(a) when the movant demonstrates that the transferee venue is clearly more convenient, taking into consideration (1) the relative ease of access to sources of proof; (2) the availability of compulsory process to secure the attendance of witnesses; (3) the cost of attendance for willing witnesses; (4) all other practical problems that make trial of a case easy, expeditious, and inexpensive; (5) the administrative difficulties flowing from court congestion; (6) the local interest in having localized interests decided at home; (7) the familiarity of the forum with the law that will govern the case; and (8) the avoidance of unnecessary problems of conflict of laws or in the application of foreign law. The court must analyze each factor, but no factor is of dispositive weight.

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Relative ease of access to sources of proof. This first factor focuses on the location of documents and physical evidence. This factor weighs in favor of transfer when the current district lacks any evidence relating to the case. When the evidence is mostly electronic, and therefore equally accessible in either forum, this factor bears less strongly on the transfer analysis. Here, however, although the key evidence was electronic, it could not be accessed equally in either forum. Because the source code was protected by a security clearance, it could be accessed only by employees located either in China or in California. It could be accessed in the Western District of Texas only if those employees travelled there, essentially bringing the source code with them. Also, although there were 300 employees of the defendants in the Western District of Texas, including a high-ranking executive, there was no showing that any of these employees had access to the source code or other relevant evidence. Therefore, this factor weighed in favor of transfer, because no relevant evidence was in the transferor district.

Availability of compulsory process. The second factor focuses on the availability of compulsory process to secure the attendance of witnesses. The district court had found that this factor was neutral, and the court of appeals agreed, given that the movants had not identified any unwilling nonparty witnesses.

Cost of attendance for willing witnesses. The Fifth Circuit uses a "100-mile threshold" for determining this third factor. When the distance between an existing venue for trial and a proposed venue is more than 100 miles, the factor of inconvenience to the witnesses increases in direct relationship to the additional distance to be traveled. Here, the bulk of the witnesses were in China and the rest in California. They would clearly have to travel farther to the Western District of Texas than to the Northern District of California. One potential witness was in Texas, but this did not overcome the immense inconvenience that the majority of relevant witnesses would face if the case were tried in Texas.

All other practical problems. The fourth factor considers all other practical problems that make trial easy, expeditious, and inexpensive. The district court had determined that this factor weighed against transfer because it had already committed significant judicial resources to the matter and developed a body of knowledge relating to the case. However, the court of appeals concluded that the district court had erred in considering knowledge acquired and resources expended after the filing of the § 1404(a) motion for transfer. Disposition of this kind of motion should be given a high priority. A district court that takes an excessively long time to rule cannot then turn around and use the progress the case has made while the § 1404(a) motion was pending as a reason to deny transfer. Here, the ruling on the motion came 14 months after it was filed, and no explanation was offered for this delay. This factor was at most neutral.

Administrative difficulties flowing from court congestion. This fifth factor focuses on docket efficiency. This factor normally weighs against transfer when the case appears to be timely proceeding to trial. Here, however, as with the fourth factor, the district court abused its discretion by considering progress made after the filing of the § 1404(a) motion. This factor was at most neutral.

Local interest in having localized interests decided at home. For this sixth factor, the court looks to the significant connections between a particular venue and the events that gave rise to a suit. This factor weighs heavily in favor of transfer when there is no relevant factual connection to the transferor district. Here, the district court did not err in finding that this factor was neutral. The Western District of Texas had no relevant factual connection to the dispute, but neither did the Northern District of California. The event that gave rise to the suit, the misappropriation of the source code, allegedly took place in China by Chinese engineers, and the implementation of that misappropriated code into TikTok was the only relevant event that occurred in the Northern District of California.

Familiarity of the forum with the law that will govern the case. This seventh factor does not weigh in favor of transfer when both districts are equally capable of applying the relevant law. Federal judges routinely apply the law of states other than the one in which they sit, and they hesitate to find that that this factor weighs in favor of transfer unless there are exceptionally arcane features of the other state's law. The district court had held that

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this factor weighed against transfer because some of the plaintiff's claims were based on Texas law. The court of appeals, however, concluded that the district court committed a clear abuse of discretion by so holding without first making a good-faith attempt to ascertain which jurisdiction's law will apply, even when the outcome of that choice-of-law analysis is not entirely clear. Moreover, even if Texas law unequivocally governed the state-law claims, there was no showing of any "arcane features" of Texas law that would make its application difficult for a California court. Thus, this factor was at most neutral.

Avoidance of unnecessary problems of conflict of laws. No one contested the district court's conclusion that this eighth factor was neutral.

Mandamus Granted. In sum, factors one and three weighed in favor of transfer, and all other factors were neutral. No factor weighed in favor of refusing transfer. The Western District of Texas contained no relevant evidence, was thousands of miles away from the vast majority of relevant witnesses, and was wholly unconnected to the underlying dispute. The Northern District of California was a clearly more convenient venue to adjudicate the case. The only thing connecting the case with the Western District of Texas was the plaintiff's decision to file there.

The court of appeals concluded that the three mandamus requirements were met: the lack of an adequate appellate remedy was satisfied in the motion-to-transfer context; the right to the writ was clear and indisputable, as shown by the discussion of the eight factors; and the writ was an appropriate exercise of discretion under the circumstances. The Fifth Circuit noted that mandamus was particularly appropriate to provide guidance to the district courts (as well as to the Federal Circuit, which is bound by regional circuit law in deciding procedural matters in patent cases) and to improve consistency of outcomes as to when transfer is or is not warranted.

Accordingly, the writ of mandamus requiring transfer to the Northern District of California, was granted.