Case No. 21-15587

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Joy Garner, individually and on behalf of The Control Group; Joy Elisse Garner, individually and as parent of J.S. and F.G.; Evan Glasco, individually and as parent of F.G.; Michael Harris, individually and as parent of S.H.; Nicole Harris, individually and as parent of S.H.; Traci Music, individually and as parent of K.M. and J.S.,

Petitioners-Appellants,

v.

PRESIDENT OF THE UNITED STATES OF AMERICA,
in his official capacity

Respondent-Appellee.

Appeal from the Judgement of the United States District Court
for the Eastern District of California, Case No. 2:20-cv-02470-WBS-JDP
Honorable William B. Shubb, United States District Judge

APPELLANTS' SUPPLEMENTAL BRIEFING PURSUANT TO FEBRUARY 11, 2022 COURT ORDER

Gregory J. Glaser (SBN 226706)
4399 Buckboard Drive, Box 423
Copperopolis, CA 95228
Ph. (925) 642-6651
Fx. (209) 729-4557
greg@gregglaser.com

Ray L. Flores II (SBN 233643)
11622 El Camino Real Suite 100
San Diego, CA 92130
Ph. (858) 367-0397
Fx. (888) 336-4037
rayfloreslaw@gmail.com

Counsel for Petitioners-Appellants

TABLE OF CONTENTS

Page #

TABLE OF AUTHORITIES

Federal Cases

Federal Statutes

Federal Rules of Civil Procedure

Federal Rules of Evidence

Appellants provide this supplemental briefing pursuant to this Court's Order dated February 11, 2022 (Dkt 40) ("the parties are ordered to file simultaneous supplemental briefing regarding the effect of the district court's vacatur order").

SUMMARY OF APPELLANTS' POSITION SUPPORTING VACATUR

This Ninth Circuit Court should remand the case to the District Court consistent with Judge Shubb's Order of vacatur, on the grounds that the appeal is now moot with respect to Appellants' request to reverse the dismissal.

With that, only one house cleaning item would remain – this Ninth Circuit Court's discretion whether to direct the District Court with respect to Appellants' requests for judicial notice (as those technically remain active before this Court). Exercising such discretion is procedurally appropriate and promotes judicial economy. The judicial notice requests were designed to assist the parties and District Court in (1) recognizing the nexus between the Respondent and the Appellants' injuries (i.e., standing to sue), and (2) narrowing the controversy and terminating it if possible (i.e., declaratory relief).

Appellants one-year wait could have been avoided if the District Court judge had simply read Appellants' requests for judicial notices proving the nexus to the President and establishing standing (and specifically referencing his stocks such as Johnson and Johnson vaccines that Respondent purchases in bulk and mandates on Appellants).

This case highlights one basic truth: science requires control groups. Unvaccinated people must be allowed to exist and live normally for scientific reasons and constitutional reasons.

It is appropriate for this Court to speak truth now, lest further harm result.

APPROVING THE VACATUR AND REMANDING IS THE CORRECT PROCEDURE

On January 5, 2022, Plaintiffs filed a Motion to Vacate Order, and Disqualification of Judge Shubb. (Document 48). On February 11, 2022, Judge Shubb recused himself and vacated his dismissal order *nunc pro tunc*. (Document 50, "Accordingly, the undersigned judge hereby RECUSES himself from all proceedings in this case nunc pro tunc**,** and the Judgment and all orders entered by the undersigned judge in this action are hereby VACATED and SET ASIDE.")

Judge Shubb had clear authority to issue this Order because case law confirms explicitly (including the *Griggs* case cited in this Ninth Circuit's Order the same day) that a district court judge retains jurisdiction over any matters *not* at issue on appeal. All documents before this Ninth Circuit confirmed Judge Shubb's recusal was *never* at issue on appeal. Thus, both this Ninth Circuit and the District Court have met the applicable legal standards. And indeed, Respondent never objected to same.

Judge Shubb's Order of recusal *nunc pro tunc* corrects an omission in the record, having the effect as of an earlier date, or takes place after a deadline has

expired. See, e.g., FRCP 60(b); *Gould v. Mut. Life Ins. Co. of N.Y.*, 790 F.2d 769, 772 (Ninth Cir. 1986) (district court may entertain and decide a Rule 60(b) motion after notice of appeal is filed if the movant follows a certain procedure, which is to "ask the district court whether it wishes to entertain the motion, or to grant it, and then move this court, if appropriate, for remand of the case").

Appellants therefore move this Court for leave to withdraw their appeal as to Appellants' first request (to reverse the dismissal), on the grounds that Judge Shubb has already issued his valid dismissal order correctly rending the appeal moot. See Appellants' Opening Brief, Dkt 6, p. 17, which stated, "Therefore, Healthiest Americans seek an order to: 1. Set aside the dismissal because the district court had no discretion to ignore the most important allegations in the verified petition confirming jurisdiction and dire emergency."

Technically, the only remaining issue before this Ninth Circuit is Appellants' Requests for Judicial Notice, because those were duly noticed for appeal[1] and can be heard at *any* stage of a proceeding.[2] See Appellants' Opening

---

[1] The overall requests for judicial notice are located in the First Amended Verified Petition (2-ER-179-252) and in detail at 3-ER-392 through 4-ER-655.

[2] Federal Rules of Evidence § 201(d) states, "The court may take judicial notice at any stage of the proceeding." Indeed, Federal Rules of Evidence § 201(c)(2) provides that the Court: "must take judicial notice if a party requests it and the court is supplied with the necessary information." All of Petitioners' Requests for Judicial Notice (PRJNs) are the same in one regard: they rely *exclusively* on published scientific consensus documents comprised of top medical

Brief, Dkt 6, p. 17 ("2. Grant Healthiest Americans' request for judicial notice (incorporated by reference into the First Amended Verified Petition))."

It may be wise and prudent for this Court to issue some opinion on the judicial notices to avoid a further waste of time and resources that could have been avoided originally by judicial notice. Accordingly, Appellants request either of the following from the Ninth Circuit:

(a) rule on Appellants' judicial notice requests duly noticed for appeal before this Court, or

(b) remand the judicial notice requests to the District Court with instructions to actually consider them because they are explicitly incorporated by reference into the First Amended Verified Petition.[3]

Both options are especially warranted given the irregular procedural posture in the District Court as highlighted in Appellants' Opening Brief (Dkt 6, pp. 22-23):

> On January 29, 2021, POTUS filed a request for continuance of the above referenced motions [request for judicial notice and preliminary injunction], claiming POTUS needed more time to file a motion to dismiss. Healthiest Americans opposed the motion by

---

journals and dictionaries, the official authoritative records of American public health agencies, and the public records (*e.g.*, census data, national health data) relied upon by those public health agencies in setting public health policy.

[3] The First Amended Verified Petition ("FAVP") incorporates by reference the Requests for Judicial Notice ("PRJN"), including for example FAVP ¶ 64 "incorporated Requests for Judicial Notice." See FAVP at 2-ER-217. The FAVP refers 16 times to the PRJNs.

> highlighting the transparent reality that POTUS' counsel was wishfully hoping the district court would take the easy road to 'lump all three motions together' and then simply dismiss the action outright rather than actually review and thoughtfully rule upon the plainly incriminating requests for judicial notice.
>
> At the hearing on such motion, the court set an accelerated briefing schedule over Healthiest Americans' express objections. See Status Conference Hearing Transcript (Feb. 1, 2021), 2-ER-70, lines 4-7; 2-ER-24, line 14 through 2-ER-25, line 5.

If this Ninth Circuit exercises its discretion (option **(a)** above) to opine upon or grant the judicial notices, then in the interests of expedience, Petitioners will hereby limit their appeal on the judicial notices to the following operative requests, as they may terminate the controversy between the parties:

> Four judicially noticeable facts define this case, which are the subject of Petitioners' Requests for Judicial Notice relying *exclusively* on published scientific consensus documents comprised of top medical journals and dictionaries, the official authoritative records of American public health agencies, and the public records (e.g., census data, national health data) relied upon by those public health agencies in setting public health policy:
>
> **A. National Health Pandemic:** The United States of America is suffering a pandemic of chronic diseases, disabilities, and disorders that are the result of injured and dysfunctional immune systems. Petitioners hereby refer to their Request for Judicial Notice Appendix One ("PRJN1").
>
> **B. Immunity Altered:** Vaccines are designed to cause, and do cause, permanent alterations to the immune system. Petitioners hereby refer to their Request for Judicial Notice Appendices One and Two.
>
> **C. Numerically Undefined:** The United States government has never publicly evaluated vaccines numerically for long-term or

cumulative health risks, in comparison to a large group of fully unvaccinated individuals. Petitioners hereby refer to their Request for Judicial Notice Appendix Two ("PRJN2").

D. Ongoing Injuries & Endangered Population: Approximately 99% or more of the American population has received one or more vaccinations. Less than 1% of Americans remain entirely unexposed. Petitioners hereby refer to PRJN2.

2-ER-191.

LEGAL AUTHORITES UPHOLDING VACATUR

A. The District Judge had Authority to Exercise His Jurisdiction to Recuse And Vacate His Dismissal Order Because His Recusal Has Never Been At Issue In This Ninth Circuit Appeal.

This Ninth Circuit Court correctly cited *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982) ("The filing of a notice of appeal is an event of jurisdictional significance -- it confers jurisdiction on the court of appeals and divests the district court of its control *over those aspects of the case involved in the appeal*.") [emphasis added].

Here, Judge Shubb's recusal has never been at issue in this appeal. In Dkt 30, Petitioners recently advised the Ninth Circuit (and Respondent did not object) that Petitioners' section 455 recusal motion is *not* currently at issue in the Ninth Circuit appeal. Therefore, an indicative ruling (as suggested by Respondent) would actually be improper.[4]

---

[4] Fed. R. Civ. P. 62.1 states:

It cannot be shown "that the [Eastern District] court lacks authority" per Fed. R. Civ. P. 62.1. To summarize, an indicative ruling by Judge Shubb is unnecessary because: (1) it would require the Eastern District Court to deny its own authority to rule on an issue *not* currently on appeal, (2) it would have ignored that Judge Shubb was immediately required to recuse, and (3) it would heap unnecessary work on appellate courts (lest an issue have no remedy pending appeal, and attorneys err on the side of caution to include unnecessary issues on appeal).

The moving papers before Judge Shubb set forth clearly the law that the district court maintains jurisdiction as to matters not involved in the appeal:

> **(a) Relief Pending Appeal.** If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may:
>
> **(1)** defer considering the motion;
>
> **(2)** deny the motion; or
>
> **(3)** state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue.

"Federal Rule of Civil Procedure 62.1 authorizes district courts to issue an indicative ruling *on a pending motion that implicates issues under consideration on appeal* …. The instant Motion raises the same issue that is currently upon appeal…" *Cuhaci v. Echemendia*, No. 20-cv-23950, 2021 U.S. Dist. LEXIS 180658, at *5 (S.D. Fla. Sep. 21, 2021). [emphasis added] See also, *MillerCoors LLC v. Anheuser-Busch Cos., LLC*, 940 F.3d 922, 923 (7th Cir. 2019) ("only one court at a time has jurisdiction over '*those aspects of the case involved in the appeal*.' *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58, 103 S. Ct. 400, 74 L. Ed. 2d 225 (1982).").

"The district court maintains jurisdiction as to matters not involved in the appeal, such as the merits of an action when appeal from a preliminary injunction is taken, or in aid of the appeal, as by making clerical corrections." *Farmhand, Inc. v. Anel Eng'g Indus., Inc*., 693 F.2d 1140, 1145 (5th Cir. 1982). Consequently, it was still appropriate for Judge Clark to recuse himself, insofar as he retained certain residual jurisdiction over this case. Also, his recusal could be viewed as being in aid of this appeal, as it brings to our attention serious questions concerning the propriety of the dismissal that is now on appeal.

Having confirmed our jurisdiction, we now address the effect of Judge Clark's ownership of Schlumberger Limited stock on this appeal. Plaintiffs ask us to grant them leave to file a motion with the district court pursuant to Federal Rule of Civil Procedure 60(b), which has been used previously as a means for vacating judgments issued by judges who should have recused themselves. *See Liljeberg v. Health Servs. Acquisition Corp*., 486 U.S. 847, 863, 108 S. Ct. 2194, 100 L. Ed. 2d 855 (1988)….

However, plaintiffs' failure to file a Rule 60(b) motion with the district court does not slip a blindfold over our eyes, letting us ignore that the judgment we are reviewing was entered by a judge subject to recusal. The statute governing the recusal of Judge Clark in this case is 28 U.S.C. § 455, and the Supreme Court has explained that since § 455 "neither prescribes nor prohibits any particular remedy" for recusal violations, "Congress has wisely delegated to the judiciary the task of fashioning the remedies that will best serve the purpose of the legislation." *Liljeberg*, 486 U.S. at 862. Courts have previously exercised this authority on appeal, even when remedies for recusal violations were not first sought in the district court. For example, in *Davis v. Xerox*, the Ninth Circuit considered whether rulings made by a district judge subject to recusal had to be vacated, despite the fact the issue was raised for the first time on appeal. 811 F.2d 1293, 1296 (Ninth Cir. 1987) ("Only on appeal did [the plaintiff] obtain copies of the first judge's reports and bring them to the attention of a court. [His] objection is still timely."). Similarly, in *Potashnick v. Port City Construction Co*., we remanded a case for determination of whether a judge should have recused himself, after attorneys discovered grounds for the judge's recusal following the conclusion of a trial. 609 F.2d 1101, 1106, 1115 (5th Cir. 1980).

Dominguez v. Gulf Coast Marine & Assocs., 607 F.3d 1066, 1073-1074 (5th Cir. 2010).

B. The Standard for Recusal Was Easily Satisfied.

First, Petitioners' moving papers are clear that recusal/disqualification standard is easily satisfied, because Judge Shubb owns stocks affected by the outcome of the proceeding:

> The judicial disqualification procedure is set forth in *Travelers Ins. Co. v. Liljeberg Enters.*, 38 F.3d 1404, 1408 (5th Cir. 1994), stating "Rule 60(b)(6), in conjunction with § 455, does provide 'a procedure whereby, in appropriate cases, a party may be relieved of a final judgment.' *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863, 100 L. Ed. 2d 855, 108 S. Ct. 2194 (1988)."
>
> The applicable statute (28 U.S.C. § 455) and case law show that any financial interest in the company at issue (of which the judge holds stock) need *not* be an actual defendant in the litigation. Even if the government is the defendant in the litigation, the judge must still recuse himself "if the outcome of the proceeding could substantially affect the value of the securities."
>
> Here, the disqualification standard is easily met—the Verified Petition is based entirely on scientific evidence that vaccines (manufactured by companies included in Judge Shubb's stock portfolio) are utterly destroying the health of the majority of Americans.

(District Court Document 48.)

Second, Petitioners' FAVP (2-ER-179-252) repeatedly references the wrongdoing of vaccine manufacturers and expressly incorporates by reference the Requests for Judicial Notice, which contain explicit references to the companies owned by Judge Shubb and their vaccine products. *See, e.g.*,

- Document 4-4, page 46, "Other *players* for the pandemic exercise… Johnson & Johnson…")

- Document 11, page 138 ("Numerous manufacturers give donations to the CDC Foundation. Janssen also contributed $1.5m in 2012-13…and Abbott Laboratories ($550,000).")

- Document 11, page 184 ("State records show that pharmaceutical companies and trade groups donated more than $2 million to current lawmakers in 2013-2014… Johnson & Johnson, Inc. $86,300, $583,926… Abbott Laboratories $173,600, $42,500… Bristol-Myers Squibb Company, $32,300, $144,101.")

- Document 12, page 280 ("Since 2000, Big Pharma has gradually seen the prices of its vaccines… Johnson & Johnson")

- Document 14, page 8 ("Newer and more expensive vaccines are coming into the market faster than ever before. Growing concentration in OECD countries but also newcomers (Pfizer, J&J…). Vaccine development: increasing investment.")

CONCLUSION

Appellants respectfully move this Court to honor the District Court's recusal and vacatur. This Ninth Circuit should also take judicial notice on the requests before it, and speak truth, that can avoid further lost time and resources; then dismiss this appeal as moot, and remand the case to the District Court with instructions to consider Appellants' remaining requests for judicial notice incorporated by reference in the First Amended Verified Petition but not yet addressed in this Court's discretion.

Dated: February 18, 2022

Respectfully submitted

Gregory J. Glaser (SBN 226706)
4399 Buckboard Drive, Box 423
Copperopolis, CA 95228
Ph. (925) 642-6651
Fx. (209) 729-4557
greg@gregglaser.com

Counsel for Appellants

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 18. Certificate for Paper Copy of Electronic Brief

Instructions for this form: http://www.ca9.uscourts.gov/forms/form18instructions.pdf

9th Cir. Case Number(s) 21-15587

My name is Gregory J. Glaser

I certify that this brief is identical to the version submitted electronically on *(date)*:

February 18, 2022.

Signature s/ Gregory J. Glaser **Date** February 23, 2022

(either manual signature or "s/[typed name]*" is acceptable)*