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## WLF Urges Ninth Circuit To Follow Supreme Court Precedent On Appellate Jurisdiction

(*Trendsettah v. Swisher*)

**“Judge Rawlinson’s attempt at resurrecting her previously reversed *Baker* opinion deserves the full Ninth Circuit’s attention.”**

—John Masslon, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Court of Appeals for the Ninth Circuit to rehear an appeal in a case over which it lacks both subject-matter and appellate jurisdiction.

The case arises from Trendsettah’s suit against Swisher. Trendsettah obtained an eight-figure verdict by hiding its CEO’s criminal conspiracy. When the conspiracy was uncovered, the U.S. District Court for the Central District of California granted Swisher’s Rule 60 motion. After the Ninth Circuit declined to allow an interlocutory appeal of that order, Trendsettah voluntarily dismissed its claims and then appealed, challenging the District Court’s order granting the Rule 60 motion.

In its *amicus* brief supporting Swisher, WLF argues that the U.S. Supreme Court’s decision in *Microsoft v. Baker* makes clear that plaintiffs are unable to obtain immediate judicial review of an interlocutory order by voluntarily dismissing the case. The same judge who wrote the Ninth Circuit opinion that was reversed in *Baker* also wrote the panel decision here. As WLF explains, the full court should not allow this judge to resurrect her previously reversed opinion by reading *Baker* so narrowly.

WLF’s brief also explains why the federal courts now lack subject-matter jurisdiction over the case. Once a dispute is voluntarily dismissed with prejudice, there is no longer a case or controversy. The panel, however, failed to explain how federal courts could issue a non-advisory opinion in the case. Finally, WLF’s brief discusses how the panel’s decision conflicts with two prior precedential opinions from the Ninth Circuit. So for three reasons, the Ninth Circuit should rehear the case *en banc*.

*Celebrating its 45th year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.*

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