No.____

IN THE
SUPREME COURT OF THE
UNITED STATES

♦

CHARLES G. KINNEY,
Plaintiff and Appellant,

v.

MARIANO-FLORENTINO
CUELLAR; et al
Defendants and Appellees,

♦

On Petition For Writ Of Certiorari To The
Ninth Circuit Court of Appeals (18-16402)

US District Court No. 3:18-cv-01041-EMC,
Northern District of California,
San Francisco

♦

APPENDIX FOR A WRIT OF CERTIORARI

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APPENDIX A

Case: 18-16402 01/23/2019 DktEntry: 5

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CHARLES G. KINNEY
Plaintiff-Appellant,

No. 18-16402
D.C. No. 3:18-cv-01041-EMC
v. Northern Dist. of Cal., SF

MARIANO-FLORENTINO CUELLAR; et al.,
Defendants-Appellees.

FILED
JAN 23 2019
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ORDER

Before: THOMAS, Chief Judge, GOULD and PAEZ, Circuit Judges.

This court has reviewed the notice of appeal filed July 19, 2018, and the amended notice of appeal filed July 27, 2018, in the above-referenced district court docket pursuant to the pre-filing review order entered in docket No. 17-80256. Because the appeal is so insubstantial as to not warrant further review, it shall not be permitted to proceed. See *In re Thomas*, 508 F.3d 1225 (9th

Cir. 2007). Appeal No. 18-16402 is therefore dismissed.

This order, served on the district court for the Northern District of California, shall constitute the mandate of this court.

All pending motions are denied as moot.

No motions for reconsideration, rehearing, clarification, stay of the mandate, or any other submissions regarding this order shall be filed or entertained.

DISMISSED.

DA/Pro Se

APPENDIX B

Case 3:18-cv-01041-EMC Doc. 44 Filed 06/01/18

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIF.

CHARLES G KINNEY
Plaintiff,

D.C. No. 18-cv-01041-EMC
v. Northern Dist. of Cal., SF

MARIANO-FLORENTINO CUELLAR; et al.,
Defendants.

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS
Docket No. 8

I. INTRODUCTION

Pro se Plaintiff Charles Kinney 1 has filed this action against current and former California Supreme Court justices, three state court appellate judges, and a California superior court judge — Defendants Chief Justice Tani G. Cantil-Sakauye, the Honorable Mariano-Florentino Cuéllar, the Honorable Carol A. Corrigan, the Honorable Goodwin H. Liu, the Honorable Leondra R. Kruger, the Honorable Ming W. Chin, the Honorable Kathryn M. Werdegar, Presiding Justice Frances Rothschild of the California Court of Appeal, Second Appellate District, Division One; Associate Justice Victoria Gerrard Chaney, Associate Justice Jeffrey W. Johnson, and the Honorable Barbara M. Scheper (all defendants

collectively referred to as "Defendants"). Mr. Kinney alleges that the Defendants have (i) violated the Supremacy Clause, U.S. Const. art. VI, cl. 2., (ii) committed RICO violations, 18 U.S.C. § 1961, (iii) violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, (iv) failed to provide honest services‖, (v) committed Bankruptcy Fraud, (vi) violated his civil and constitutional rights, and seeks damages as well as declaratory and injunctive relief. See Docket No. 5 ("FAC"). Defendants have filed a motion to dismiss Mr. Kinney's first amended complaint ("FAC"), asserting that his claims are barred by, inter alia, the Rooker-Feldman doctrine and judicial immunity. Having reviewed the parties' submissions, the Court hereby **GRANTS** Defendants' Motion to Dismiss for lack of subject matter jurisdiction.

II. FACTUAL & PROCEDURAL BACKGROUND

In 2005, Mr. Kinney and Kimberley Kempton purchased certain real property in Los Angeles from Michele Clark. See Kinney v. Clark, 12 Cal. App. 5th 724, 727 (2017). "The purchase agreement governing the transaction (the Agreement) included a prevailing party attorney fees clause." Id.

In 2006, Mr. Kinney and Ms. Kempton began to file lawsuits concerning the property in Los Angeles superior court. Id. One of the lawsuits was No. BC354136. See FAC ¶ 9. In this action, Mr. Kinney sued his new neighbor, Ms. Cooper, because she had built a fence on the real property back in 1991 (albeit with Ms. Clark's oral permission). Ms. Cooper countersued

(presumably, to maintain the fence and access to the property), and then Mr. Kinney filed a cross-complaint against Ms. Clark because the lease or easement she gave to Ms. Cooper was not recorded. See FAC ¶ 9.

The Los Angeles superior court judge presiding over the case was Defendant Barbara Scheper. See FAC ¶ 12. After Mr. Kinney lost his case against Ms. Clark, Ms. Clark moved for attorney's fees as the prevailing party under the purchase agreement. In December 2008, Judge Scheper granted the motion. See FAC ¶¶ 11, 15; see also Kinney v. Clark, 12 Cal. App. 5th at 726 (noting that "Kinney has been challenging Clark's entitlement to fees and costs in this action since 2008, when the trial court first awarded Clark attorney fees and costs under a residential purchase agreement to which she and Kinney were parties"); id. at 728 (noting that, "[o]n December 15, 2008, the trial court granted [Clark's] motion [for fees under the Agreement as the prevailing party in the lawsuit] and awarded $9,349 in attorney fees"). Kinney appealed the judgment and on February 3. 2010, the California Court of Appeal affirmed the fee award. Id. at 728.

In or about July 2010, Ms. Clark declared bankruptcy. See FAC ¶ 11. Apparently, "[t]he expense of defending against Kinney's claims was a substantial factor leading to Clark's bankruptcy.'" Kinney v. Clark, 12 Cal. App. 5th at 728.

Approximately two years later, in July 2012 (i.e., while the bankruptcy proceeding was still pending), the Los Angeles superior court awarded Ms. Clark additional attorney's fees (hereafter

known as the "July 2012 fee award") for work performed in defending Mr. Kinney's appeal of the December 2008 fee award. See Kinney v. Clark, No. B272408, 2017 Cal. App. Unpub. LEXIS 7563, at *3. (Cal. Ct. App. Nov. 1, 2017).

Subsequently, Ms. Clark was discharged from bankruptcy. In an order issued in October 2012, the bankruptcy court stated that "Kempton and Kinney are not creditors of this estate'" and that all of Ms. Clark's "right to recovery [of] attorneys' fees and costs from Kempton and Kinney arising from litigation concerning the Fernwood Property are deemed to have been abandoned by the Trustee.'" Kinney v. Clark, 12 Cal. 4th at 729. This left Ms. Clark free to pursue collection of fees owed by Mr. Kinney. The bankruptcy court also stated that fees, if recoverable under the purchase agreement and California law, would be adjudicated in state court. See id.

In 2013, Ms. Clark began to try to enforce the December 2008 fee award and, in 2014, she began to try to enforce the July 2012 fee award. See id. at 728-30. In 2015, Ms. Clark was awarded additional fees by the superior court for work performed in trying to enforce the fee award(s). See Kinney v. Clark, No. B272408, 2017 Cal. App. Unpub. LEXIS 7563, at *1, 5 (Cal. Ct. App. Nov. 1, 2017).

In March 2016, the superior court awarded Ms. Clark additional fees for work related to enforcement of the fee awards. See id. at *1, 6 (Cal. Ct. App. Nov. 1, 2017). In June 2016, the superior court imposed monetary sanctions on Mr. Kinney for filing a frivolous motion for

reconsideration of the March 2016 fee award. See id. at *2, 7.

Mr. Kinney appealed the March 2016 and June 2016 rulings, which resulted in two appeals – i.e., No. B272408 and B276290. See FAC ¶ 9. The state appellate court judges presiding over the appeals were Defendants Frances Rothschild, Victoria Chaney, and Jeffrey Johnson. See FAC ¶ 13. In November 2017, the appellate court ruled against Mr. Kinney. See generally Kinney v. Clark, 2017 Cal. App. Unpub. LEXIS 7563.

Subsequently, Mr. Kinney petitioned the California Supreme Court for review (No. S245892 and No. S246379). See FAC ¶ 14. The petitions were denied in January and February 2018. See FAC ¶¶ 15-16; see also Kinney v. Clark, No. S245892, 2018 Cal. LEXIS 259 (Cal. Jan. 17, 2018); Kinney v. Clark, No. S246379, 2018 Cal. LEXIS 1440 (Cal. Feb. 14, 2018).

In the instant action, Mr. Kinney now sues Judge Scheper, the three state appellate court judges identified above, and the California Supreme Court justices (current and former) who denied his petitions for relief. Mr. Kinney's theory seems to be (at least in part) that he should not have had to pay any fee awards granted to Ms. Clark before she filed her bankruptcy petition (in July 2010) because such awards were for debts that Ms. Clark owed her attorneys and the bankruptcy discharge eliminated all of Ms. Clark's prepetition debts, thus undermining the basis for the fee awards against Kinney. See, e.g., FAC ¶ 24. The Court of Appeal rejected that argument. Kinney v. Clark, 2017 Cal. App. Unpub. LEXIS 7563, at *9 (noting that, in a prior decision, "[w]e

also rejected Kinney's argument (again repeated here) that Clark was not entitled to collect on a pre-discharge fee award because her debt to her attorneys was discharged in bankruptcy[;] [w]e explained that this argument was not before us on appeal because we were reviewing a post-bankruptcy award of attorney fees (as we are here) and, in any event, Kinney lacked standing to challenge what Clark owes her attorneys and what she chooses to pay them"). Mr. Kinney also suggests that other fee awards are invalid because the bankruptcy discharge made prepetition contracts – including the 2005 purchase agreement between himself and Ms. Clark – unenforceable. This is a recycled argument, which was addressed by state courts. See Kinney v. Clark, 12 Cal. App. 5th 724, 733 (noting that "Clark's bankruptcy did not eliminate her entitlement to attorney fees and costs under the [prepetition contract]"). See FAC ¶ 24. According to Mr. Kinney, all Defendants knew about Ms. Clark's bankruptcy and therefore their judicial decisions granting or affirming fee awards violated his rights.

III. DISCUSSION

As indicated by the above, all Defendants in this case are judges, and all have been sued based on decisions they made as judges. Defendants have moved to dismiss, asserting that all of Mr. Kinney's claims for relief are barred because of one or more of the following reasons:

(1) The Court lacks subject matter jurisdiction pursuant to the Rooker-Feldman doctrine.

(2) All Defendants have judicial immunity from the claims asserted.

(3) All claims are barred by res judicata and/or collateral estoppel.

(4) All claims are barred by the Anti-Injunction Act (28 U.S.C. § 2283).

(5) Mr. Kinney has failed to state a claim for relief.

A. Rooker-Feldman Doctrine Applies to Kinney's Requests for Injunctive and Declaratory Relief

The Court finds that Mr. Kinney's requests for injunctive and declaratory relief are barred by the Rooker-Feldman doctrine.2 See FAC at 19 (Mr. Kinney seeks a "declaration of rights, duties, obligations and legal relations" of the issues in the FAC and a "temporary and/or permanent declaratory relief, injunctive relief and/or equitable relief"). The "Rooker–Feldman [doctrine] prohibits a federal district court from exercising subject matter jurisdiction over a suit that is a de facto appeal from a state court judgment." Kougasian v. TMSL, Inc., 359 F.3d 1136, 1139 (9th Cir. 2004). The U.S. Supreme Court has stressed the "narrow" scope of the Rooker–Feldman doctrine, emphasizing that it "is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005).

The Ninth Circuit explained what may constitute a "forbidden de facto appeal" by way of two examples. The first is an action in which "the federal plaintiff may complain of harm caused by a state court judgment that directly withholds a benefit from (or imposes a detriment on) the federal plaintiff, based on an allegedly erroneous ruling by that court." Noel v. Hall, 341 F.3d 1148, 1163 (9th Cir. 2003). The second example is an action where the "federal plaintiff may complain of a legal injury caused by a state court judgment, based on an allegedly erroneous legal ruling, in a case in which the federal plaintiff was one of the litigants." Id.

If the action is, in part, a de facto appeal of a state court decision or judgment, then a federal district court "must refuse to hear the forbidden appeal." Noel, 341 F.3d at 1158. "As part of that refusal, [a federal district court] must also refuse to decide any issue raised in the suit that is 'inextricably intertwined' with an issue resolved by the state court in its judicial decision." Id.; see also D.C. Court of Appeals v. Feldman, 460 U.S. 462, 483, n.16 (1983) (stating that "[i]f the constitutional claims presented to a United States District Court are inextricably intertwined with the state court's denial in a judicial proceeding of a particular plaintiff's application for admission to the state bar, then the [d]istrict [c]ourt is in essence being called upon to review the state court decision," which the "[d]istrict [c]ourt may not do."). Claims are inextricably intertwined "where the relief requested in the federal action would effectively reverse the state court decision or void its ruling." Cooper v. Ramos, 704 F.3d 772, 779

(9th Cir. 2012) (citation and internal quotation marks omitted); see also Pennzoil Co. v. Texaco, Inc., 481 U.S. 1, 25 (1987) (Marshall, J., concurring) (explaining that a "federal claim is inextricably intertwined with the state-court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it").

While Mr. Kinney fails to specify what declaratory relief he seeks from this court, it appears that Mr. Kinney's requests for declaratory relief against the Defendants essentially asks this Court to conclude that previous state court rulings (including the March 2016, June 2016 and November 2017 rulings) were erroneous, that the California Supreme Court wrongly denied his petitions for review, and that Kinney suffered harm as a result of those allegedly erroneous decisions. See FAC at ¶¶ 9, 14–19. Mr. Kinney alleges that the Defendants had issued improper rulings, on the grounds that (i) the Defendants "blatantly ignor[ed] bankruptcy law", and "violat[ed] the Supremacy Clause with respect to bankruptcy law", id. at ¶ 17, (ii) the California's vexatious litigant statute only applies to pro se litigants, id. at ¶ 19, (iii) the Defendants "unjustly enrich[ed] discharged bankruptcy debtor Clark" and his attorneys, id., and (iv) that Defendants violated his "state and/or federal constitutional and civil rights." Id. Mr. Kinney thus directly challenges the state court rulings issued by the defendant judges.

Mr. Kinney's requests for declaratory relief essentially asks this Court to (i) overturn state court decisions which have awarded Ms. Clark

more fees for work related to enforcement of the fee award(s), see Kinney v. Clark, No. B272408, 2017 Cal. App. Unpub. LEXIS 7563, at *1, 6 (Cal. Ct. App. Nov. 1, 2017), (ii) declare that state court's imposition of monetary sanctions on Mr. Kinney was invalid, see id. at *2, 7, (iii) declare that the subsequent California Court of Appeal decision, which affirmed the fee award and monetary sanctions, was invalid, see generally Kinney v. Clark, 2017 Cal. App. Unpub. LEXIS 7563, and (iv) declare that Mr. Kinney has a right to petition for review, even though the California Supreme Court denied his petitions for review, see Kinney v. Clark, No. S245892, 2018 Cal. LEXIS 259 (Cal. Jan. 17, 2018); see also Kinney v. Clark, No. S246379, 2018 Cal. LEXIS 1440 (Cal. Feb. 14, 2018).

As alleged in the FAC, Mr. Kinney directly attacks the state court decisions; this amounts to a forbidden de facto appeal of state court decisions barred by Rooker-Feldman. See Bianchi v. Rylaarsdam, 334 F.3d 895, 898 (9th Cir. 2003). Mr. Kinney's claims are "inextricably intertwined" with the state courts' decisions "such that the adjudication of the federal claims would undercut the state ruling or require the district court to interpret the application of state laws or procedural rules" and as such, his "complaint must be dismissed for lack of subject matter jurisdiction." Id.

With respect to his request for injunctive relief, Mr. Kinney fails to specify anywhere in the FAC precisely what injunctive relief he seeks and for which he claims. The closest request for injunctive relief is Mr. Kinney's allegation in his

RICO claim, which appears to ask the Court to enjoin, prohibit and/or reverse the state court orders in order to prevent the continued violation of Mr. Kinney's federal statutory and constitutional rights. See, e.g., FAC ¶ 42 (RICO claim) (alleging that "[u]nless the conduct of the defendants, and each of them, is restrained, prohibited and/or reversed, plaintiff has suffered and will continue to suffer irreparable harm including but not limited to the prevention of plaintiff from exercising his First Amendment rights to redress of grievances, to free speech, and/or to freedom of association in regards to the subject appeal"). This amounts to a request to enjoin (and effectively overturn) the state court orders that Mr. Kinney contends were wrongly decided. Again, such a request is barred by Rooker-Feldman. See Cooper, 704 F.3d at 777–78 ("To determine whether an action functions as a de facto appeal, we 'pay close attention to the relief sought by the federal-court plaintiff.'") (quoting Bianchi v. Rylaarsdam, 334 F.3d 895, 900 (9th Cir. 2003)); see also Kinney v. Cantil-Sakauye, No. 17-1607 JST (DMR) (Docket No. 14) (where Mr. Kinney sought the same form of injunctive relief in a prior action in this district, and failed to specify the precise form of injunctive relief he seeks.).

Mr. Kinney contends that Rooker-Feldman does not apply because there has not been a trial or hearing on the merits on any of the issues, including Mr. Kinney's vexatious litigant status, the issue of attorneys' fees, the elimination of Clark's obligations under her prepetition contracts and the state court's jurisdiction after Clark's

bankruptcy. See Docket No. 15 at 8–9. Whether or not the state court rulings followed a trial or hearing on the merits is immaterial to the application of Rooker-Feldman. Id. Under Rooker-Feldman, a "losing party in state court is thus barred from seeking what in substance would be appellate review of a state judgment in federal district court, even if the party contends the state judgment violated his or her federal rights." See ScripsAm., Inc. v. Ironridge Global LLC, 56 F. Supp. 3d 1121, 1137 (C.D. Cal. 2014).

B. Judicial Immunity

In addition to requests for injunctive and declaratory relief, Mr. Kinney seeks damages but the Defendants are entitled to judicial immunity for all claims for which Mr. Kinney seeks damages. "Judges are absolutely immune from civil liability for damages for their judicial acts." See, e.g., Mullis v. U.S. Bankr. Court for Dist. of Nev., 828 F.2d 1385, 1388 (9th Cir. 1987); see also Olsen v. Idaho State Bd. of Medicine, 363 F.3d 916, 923 (9th Cir. 2004) (explaining that state court judges are generally entitled to absolute immunity for actions taken within their jurisdiction). A given action is judicial in nature if "it is a function normally performed by a judge, and to the expectations of the parties, i.e., whether they dealt with the judge in his [or her] judicial capacity[.]" Ashelman v. Pope, 793 F.2d 1072, 1075, 1078 (9th Cir. 1986) (quoting Stump v. Sparkman, 435 U.S. 349, 362 (1978)). Judicial acts, even when made in error, maliciously or corruptly, do not deprive judicial officers of immunity. See Meek v. County of Riverside, 183

F.3d 962, 965 (9th Cir.1999). The law strips a judge of immunity only if he or she acts "in the clear absence of all jurisdiction." Sadoski v. Mosley, 435 F.3d 1076, 1079 (9th Cir. 2006) (quoting Stump, 435 U.S. at 356–57) (quotation marks omitted).

The allegations in the FAC make clear that Mr. Kinney is suing the Defendants for acts committed in their capacity as judges. Specifically, Mr. Kinney is suing the Defendants because they issued adverse orders against him, and they denied his petition for review.3 See FAC ¶¶ 9–19. Mr. Kinney claims that judicial immunity does not apply because these Defendants were acting in their "individual capacities" since they were acting "as a prosecutor and not as a neutral arbitrator." See FAC ¶¶ 19–22. Mr. Kinney claims further that judicial immunity does not apply because the judicial defendants are subject to liability under 42 U.S.C. §§ 1983 and 1985. See Docket No. 15 at 7.

However, there are only two situations where a judicial officer will not be entitled to judicial immunity. "First, a judge is not immune from liability for non-judicial actions, i.e., actions not taken in the judge's judicial capacity. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction." Mireles v. Waco, 502 U.S. 9 at 11–12 (1991) (internal citations omitted).

Here, Mr. Kinney does not allege "non-judicial" acts. Instead, the FAC complains about the judgment and orders rendered by Judge Scheper, the opinions and orders issued by Justice Rothschild, Justice Chaney and Justice Johnson

in Kinney's appeals, and the denials of Kinney's petitions for review by the Chief Justice and Justice Cuéllar, Justice Corrigan, Justice Liu, Justice Kruger, Justice Chin and Justice Werdegar. See FAC at ¶¶ 19–22. Further, Mr. Kinney does not allege that the Defendants were acting "in complete absence of all jurisdiction." All acted "within the jurisdiction of his or her court." Ashelman v. Pope, 793 F.2d 1072, 1076 (9th Cir. 1986). The Defendants are entitled to judicial immunity for all claims asserted by Mr. Kinney for which he seeks damages.

C. Anti-Injunction Act (28 U.S.C. § 2283)

Finally, Mr. Kinney's claims for injunctive relief are also barred by the Anti-Injunction Act (AIA) pursuant to 28 U.S.C. § 2283, which provides that:

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

28 U.S.C. § 2283. As Mr. Kinney seeks injunctive relief to abate enforcement of the sanctions fees ordered by state courts against Mr. Kinney, the AIA bars this Court from granting such relief. Mr. Kinney fails to establish any applicable exception to the AIA here.

IV. CONCLUSION

In conclusion, (A) Mr. Kinney's claims are barred by the Rooker-Feldman doctrine, (B) the Defendants are entitled to judicial immunity, and

(C) the AIA bars this Court from granting Mr. Kinney the relief he seeks.

For the foregoing reasons, the Court **GRANTS** Defendants' motion to dismiss for lack of subject matter jurisdiction.

This order disposes of Docket No. 8.

IT IS SO ORDERED.

Dated: June 1, 2018

__s/_____
EDWARD M. CHEN
United States District Judge

Fn. 1 Mr. Kinney is a disbarred lawyer who has been declared a vexatious litigant by multiple courts. See Kinney v. Cantil-Sakauye, No. C-17-1607 JST (DMR) (Docket No. 14) (R&R at 3) (in R&R, subsequently adopted by district court, noting instances in which Mr. Kinney was declared a vexatious litigant – by a Los Angeles superior court, by a state appellate court, and by a federal district court); Kinney v. Clark, 12 Cal. App. 5th 724, 727 (2017) (noting the same "[t]he Los Angeles Superior Court, this court, and the Central District of California all have declared Kinney to be a vexatious litigant").

Fn. 2 The Rooker-Feldman doctrine is based on two cases, Rooker v. Fid. Trust Co., 263 U.S. 413 (1923) and D.C. Court of Appeals v. Feldman, 460 U.S. 462 (1983).

Fn. 3 The FAC complains about the judgment and order rendered by Judge Scheper, the appellate opinions by Justice Rothschild, Justice Chaney and Justice Johnson in Kinney's appeals, and the denials of Kinney's petitions for review by the Chief Justice and Justice Cuéllar, Justice Corrigan, Justice Liu, Justice Kruger, Justice Chin and Justice Werdegar.

APPENDIX C

Case 3:18-cv-01041-EMC Doc. 53 Filed 06/29/18

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIF.

CHARLES G KINNEY
Plaintiff,

v.

D.C. No. 18-cv-01041-EMC
Northern Dist. of Cal., SF

MARIANO-FLORENTINO CUELLAR; et al.,
Defendants.

ORDER DENYING PLAINTIFF'S MOTION TO VACATE, RECONSIDER, ALTER OR AMEND; AND ORDER TO SHOW CAUSE
Docket No. 48

I. INTRODUCTION

Pro se Plaintiff Charles Kinney has filed this action against current and former California Supreme Court justices, three state court appellate judges, and a California superior court judge — Defendants Chief Justice Tani G. Cantil-Sakauye, the Honorable Mariano-Florentino Cuéllar, the Honorable Carol A. Corrigan, the Honorable Goodwin H. Liu, the Honorable Leondra R. Kruger, the Honorable Ming W. Chin, the Honorable Kathryn M. Werdegar, Presiding Justice Frances Rothschild of the California Court of Appeal, Second Appellate District, Division One; Associate Justice Victoria Gerrard Chaney, Associate Justice Jeffrey W. Johnson, and the

Honorable Barbara M. Scheper (all defendants collectively referred to as "Defendants"). Mr. Kinney alleges that the Defendants have (i) violated the Supremacy Clause, U.S. Const. art. VI, cl. 2., (ii) committed RICO violations, 18 U.S.C. § 1961, (iii) violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, (iv) failed to provide "honest services", (v) committed Bankruptcy Fraud, (vi) violated his civil and constitutional rights, and seeks damages as well as declaratory and injunctive relief. See Docket No. 5 ("FAC"). On June 1, 2018, the Court issued an Order Granting Defendants' Motion to Dismiss for lack of subject matter jurisdiction ("Order"). See Docket No. 44. Now Mr. Kinney moves the Court to reconsider and/or for an order amending the Court's June 1, 2018 Order pursuant to Federal Rules of Procedure 59 (motion to alter or amend judgment) and/or 60 (motion for relief from judgment). See Docket No. 48 at 10. Having reviewed Mr. Kinney's submissions, the Court hereby DENIES his motion to vacate, reconsider, alter, or amend.

II. MOTION TO VACATE, RECONSIDER, ALTER OR AMEND

"[A] district court has the inherent power to reconsider and modify its interlocutory orders prior to the entry of judgment." Smith v. Massachusetts, 543 US 462, 475 (2005). However, reconsideration is an "extraordinary remedy, to be used sparingly." Kona Enterprises, Inc. v. Estate of Bishop, 229 F. 3d 877, 890 (9th Cir. 2000). Absent highly unusual circumstances, a motion for reconsideration will not be granted "unless the

district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." Id. A motion to alter or amend the judgment under Federal Rules of Civil Procedure 59(e) generally must be based on new evidence or judicial error. See Fed. R. Civ. P. Rule 59; see also Carroll v. Nakatani, 342 F. 3d 934, 945 (9th Cir. 2003) (noting that a Rule 59(e) motion may not be used to present for the first time arguments or evidence that could reasonably have been presented earlier in the litigation.) If the moving party can show "mistake, inadvertence, surprise or excusable neglect," the court may set aside a judgment. See Fed. R. Civ. P. Rule 60(b).

Mr. Kinney appears to argue that federal jurisdiction exists because the Defendants have allegedly committed civil rights violations, and this Court's dismissal order was an abuse of discretion. See Docket No. 48 at 9. This argument, and various arguments in Mr. Kinney's motion for reconsideration, are largely repetitive of what has been previously presented in his complaint and opposition to the Defendants' motion to dismiss. Id.; see also Docket Nos. 5 ("FAC") and 15. The Court considered all those arguments in reaching its determination that the Defendants' motion to dismiss should be granted.

Further, Mr. Kinney has presented no "newly discovered evidence" or demonstrated that the Court has "committed clear error, or if there is an intervening change in the controlling law" to support his motion.1 Kona Enterprises, Inc. v. Estate of Bishop, 229 F. 3d 890. Instead, Mr. Kinney alleges that (i) there are "misstatements of

facts" in the Court's Order, which are simply disagreements with the Court's reasoning and findings, and (ii) there are inconsistencies and false statements in the transcript of the hearing on Defendants' Motion to Dismiss, which are immaterial to the Court's Order. See Docket No. 48 at 20. Based on the foregoing, Mr. Kinney's motion to vacate, reconsider, alter, or amend the Court's June 1, 2018 Order is **DENIED**.

III. ORDER TO SHOW CAUSE

Finally, the Court takes this opportunity to address whether Mr. Kinney should be declared a vexatious litigant and subject to the pre-filing review requirement. When a litigant has filed numerous harassing or frivolous lawsuits, courts have the power to declare him a vexatious litigant and enter an order requiring that any future complaint be subject to an initial review before they are filed. See Molski v. Evergreen Dynasty Corp., 500 F.3d 1047, 1057 (9th Cir. 2007). District courts have the power to enter pre-filing orders against vexatious litigants under the All Writs Act. See 28 U.S.C. § 1651(a); see Molski, 500 F.3d at 1057. While "such pre-filing orders are an extreme remedy that should rarely be used" because of the danger of "tread[ing] on a litigant's due process right of access to the courts," id., they are sometimes appropriate because "[f]lagrant abuse of the judicial process . . . enables one person to preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants." De Long v. Hennessey, 912 F.2d 1144, 1148 (9th Cir. 1990).

In De Long, the Ninth Circuit set out the requirements for entering pre-filing orders against vexatious litigants. See id. at 1147-48. First, the litigant must be given notice and an opportunity to be heard before the order is entered. See id. at 1147. Second, the Court must compile an adequate record for review, including a list of all cases and motions leading to the conclusion that the individual is a vexatious litigant. See id. Third, the Court must make substantive findings that the litigant's filings are frivolous or harassing. See id. at 1148. Finally, the pre-filing order may not be overly broad, and must be "narrowly tailored to closely fit the specific vice encountered." See id.

Since 2014, Mr. Kinney has filed eleven separate lawsuits in this district based on the same nucleus of facts, including this case. 2 The following is a list of cases which Mr. Kinney filed in this district, and arose out of a dispute over the purchase of the Fernwood property from Ms. Clark in 2005 or fence built by Ms. Cooper in 1990s, or judicial rulings by state court judges on those facts:

1. Kinney v. Chomsky, No. 14-cv-2187-LB, 2014 WL 3725932 (N.D. Cal. 2014)
2. Kinney v. Marcus, No. 14-cv-1260-LB (N.D. Cal. 2016)
3. Kinney v. Takeuchi, No. 16-cv-2018-LB (N.D. Cal. 2016)
4. Kinney v. Gutierrez, No. 16-cv-2278 LB (N.D. Cal. 2016)
5. Kinney v. Lavin, No. 14-cv-3817-PJH(MMC), 2014 WL 4182478 (N.D. Cal. 2014)

6. Kinney v. Boren, No. 16-cv-06505-VC (N.D. Cal. 2016)

7. Kinney v. Cantil-Sakauye, No. 17-cv-01607-JST (N.D. Cal. 2017)

8. Kinney v. Rothschild, No. 17-cv-3493-LB (N.D. Cal. 2017)

9. Kinney v. Rothschild, No. 17-cv-7366-VC (N.D. Cal. 2018)

10. Kinney v. Cantil-Sakauye, No. 18-cv-1158-VC (N.D. Cal. 2018)

In Kinney v. Chomsky, No. 14-cv-2187-LB, 2014 WL 3725932, *1-2 (N.D. Cal. July 25, 2014), Mr. Kinney sued Ms. Clark's attorneys Eric Chomsky, David Marcus and Peter Langsfeld for (i) violating his First, Fifth and Fourteenth Amendment rights under 42 U.S.C. § 1983, (ii) conspiring to violate his First, Fifth and Fourteenth Amendment rights under 42 U.S.C. § 1985, and (iii) for violating civil provisions of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968. This case was related to (i) Kinney v. Marcus, No. 14-cv-1260-LB (N.D. Cal. 2014) (where Mr. Kinney sued Ms. Clark and her attorneys), (ii) Kinney v. Takeuchi, No. 16-cv-2018-LB (N.D. Cal. 2016) (where Mr. Kinney sued Ms. Clark and her bankruptcy attorney), and (iii) Kinney v. Gutierrez, No. 16-cv-2278-LB (N.D. Cal. 2016) (where Mr. Kinney sued Ms. Clark, her attorneys and suing Ms. Clark, her attorneys, and the Honorable Philip S. Gutierrez, who presides at the Central District Court of California and remanded several of the civil actions between Mr. Kinney and Ms. Clark to state court), and were subsequently transferred to the Central District of California. See Kinney v. Chomsky, No. 14-cv-

2187-LB, 2014 WL 3725932 (N.D. Cal. July 25, 2014). Upon transfer to the Central District, the cases were dismissed without leave to amend. See Kinney v. Chomsky, No. 14-cv-05895-PSG(MRW), Docket No. 62 at 4-9 (C.D. Cal. Oct. 9, 2014).

In a separate lawsuit, Mr. Kinney asserted a single cause of action under the Racketeer Influenced Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961–1968, against two California state judges—the Honorable Luis A. Lavin of the Superior Court of California, County of Los Angeles; and the Honorable Roger W. Boren of the California Court of Appeal, Second Appellate District. See Kinney v. Lavin, No. 14-cv-3817-PJH(MMC), 2014 WL 4182478, *2 (N.D. Cal. Aug. 22, 2014). The lawsuit "pertain[ed] to [Mr. Kinney's] dissatisfaction with decisions rendered and orders issued by the California Superior Court or the California Court of Appeal, a number of those decisions finding [Mr. Kinney] and one of his clients to be vexatious litigants." Id. Mr. Kinney sought an ex parte temporary restricting order enjoining all proceedings in an action that was pending before the California Court of Appeal, Second District, Case No. B248713 (underlying Los Angeles Superior Court Case No. BC374938), including an oral argument scheduled for August 28, 2014 before the California Court of Appeal. See id. His ex parte application for injunctive relief was denied and his requests for damages were denied on grounds of judicial immunity. See id. Further, the case was subsequently dismissed without leave to amend. See Kinney v. Lavin, No. 14-cv-3817-PJH(MMC), Docket No. 26 (N.D. Cal. Oct. 31, 2014). The Ninth

Circuit affirmed the district court's judgment and Mr. Kinney's subsequent petition for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit was denied. See Kinney v. Lavin, 136 S. Ct. 214 (2015).

In 2016, Mr. Kinney brought another lawsuit against Presiding Justice Roger W. Boren of the California Court of Appeal and David Lane, an employee of the State of California Commission on Judicial Performance. See Kinney v. Boren, No. 16-cv-06505-VC, Docket No. 12 at 1 (N.D. Cal. Oct. 11, 2016). His ex parte application for a temporary restraining order, which sought in effect to reverse a California Court of Appeal decision requiring that he post a security as a vexatious litigant, was denied and the case was dismissed with prejudice sua sponte. See id. Mr. Kinney was "cautioned against filing frivolous or bad-faith actions" and warned that "even as a private pro se litigant, he may still be sanctioned under Rule 11 and 28 U.S.C. § 1927." See id. at 1-2. Mr. Kinney appealed the district court's judgment and the Ninth Circuit held that "[t]he district court properly dismissed [Mr.] Kinney's action as barred by the Rooker-Feldman doctrine because [Mr.] Kinney's claims amount to a forbidden "de facto appeal" of a prior state court judgment or are "inextricably intertwined" with that judgment." Kinney v. Boren, 708 Fed. Appx 410, 411 (9th Cir. 2017). The Ninth Circuit also held that the district court did not abuse its discretion by (i) denying Mr. Kinney's motion for a temporary restraining order, and (ii) dismissing the complaint without leave to amend because amendment would be futile. See id.

Despite being cautioned in 2016, Mr. Kinney filed three separate lawsuits based on the same nucleus of facts in 2017. First, on March 24, 2017, Mr. Kinney sued Chief Justice Tani G. Cantil-Sakauye, the Honorable Mariano-Florentino Cuéllar, the Honorable Carol A. Corrigan, the Honorable Goodwin H. Liu, the Honorable Leondra R. Kruger, the Honorable Kathryn M. Werdegar, the Honorable Ming W. Chin (collectively "California Supreme Court Defendants"), former Presiding Justice Roger W. Boren of the California Court of Appeal, Second Appellate District, Division 2, Associate Justice Judith Ashmann-Gerst, Associate Justice Victoria M. Chavez, and Associate Justice Brian M. Hoffstadt asserting violations of: (1) RICO; (2) Fair Debt Collection Practices Act ("FDCPA"); (3) Honest services; (4) Bankruptcy fraud; (5) Declaratory Judgment Act; (6) Civil rights; and (7) Constitutional rights, and seeks damages, injunctive and declaratory relief. See Kinney v. Cantil-Sakauye, No. 17-cv-01607-JST, Docket No. 14 (N.D. Cal. Aug. 21, 2017). The district court dismissed sua sponte Mr. Kinney's action for damages on the basis of judicial immunity, and dismissed his requests for injunctive and declaratory relief for lack of subject matter jurisdiction under the Rooker-Feldman doctrine. See Kinney v. Cantil-Sakauye, No. 17-cv-01607-JST, 2017 WL 6502802, Docket No. 18 (N.D. Cal. Sep. 6, 2017). Second, on June 16, 2017, Mr. Kinney filed another lawsuit against Presiding Justice Frances Rothschild of the California Court of Appeal, Second Appellate District, Division One, Associate Justice Victoria Gerrard Chaney,

Associate Justice Jeffrey W. Johnson, Ms. Clark, and her attorneys David Marcus and Eric Chomsky. See Kinney v. Rothschild, No. 17-cv-3493-LB, Docket No. 1 (N.D. Cal. Jun. 16, 2017). The district court found that this case was related to Kinney v. Gutierrez, No. 16-cv-2278-LB, and was subsequently transferred to the Central District of California. See id., Docket No. 18 (N.D. Cal. Jul. 3, 2017). Third, on December 29, 2017, Mr. Kinney filed another lawsuit against Presiding Justice Frances Rothschild of the California Court of Appeal, Second Appellate District, Division One, Associate Justice Victoria Gerrard Chaney, Associate Justice Jeffrey W. Johnson; the district court found that his complaint was a "de facto appeal of a November 30, 2017 state court sanctions order, and any additional issues raised are inextricably intertwined with the state court's decision." See Kinney v. Rothschild, No. 17-cv-7366-VC, Docket No. 6 (N.D. Cal. Feb. 26, 2018). The district court dismissed the case sua sponte and found that it did not have subject matter jurisdiction under Rooker-Feldman doctrine. See id.

In 2018, Mr. Kinney filed yet another lawsuit against Chief Justice Tani G. Cantil-Sakauye of the California Supreme Court and Associate Justice Victoria G. Chaney of the California Court of Appeal and the district court found that his complaint was a "de facto appeal of state court decisions, and any additional issues raised are inextricably intertwined with these state court decisions." Kinney v. Cantil-Sakauye, No. 18-cv-1158-VC, Docket No. 6 (N.D. Cal. Mar. 9, 2018). The district court found that it is

"without subject matter jurisdiction" and dismissed the case sua sponte without leave to amend. See id. As mentioned above, each of the cases has been dismissed for lack of subject matter jurisdiction or transferred to the Central District of California.3

In sum, all ten cases have been dismissed as meritless, and sanctions imposed have been upheld. All cases appear to be frivolous.

Pursuant to the first DeLong requirement, Mr. Kinney is hereby ordered to show cause as to why he should not be declared a vexatious litigant and have a pre-filing order entered against him — more specifically, a pre-filing review for anything related to the purchase of the Fernwood property from Ms. Clark in 2005 or fence built by Ms. Cooper in 1990s, or judicial rulings by state court judges on those facts.

IV. CONCLUSION

For the foregoing reasons, the Court finds that Kinney's motion to vacate, reconsider, alter, or amend the judgment is **DENIED. Mr. Kinney is ORDERED TO SHOW CAUSE as to why he should not be declared a vexatious litigant. His response must be filed within two weeks of the date of this order. If no timely response is filed, the Court shall declare him a vexatious litigant.**

This order disposes of Docket No. 48.

IT IS SO ORDERED.

Dated: June 29, 2018

__s/_____
EDWARD M. CHEN

United States District Judge

Fn 1 The Court notes that Mr. Kinney submitted a state court transcript dated Feb. 21, 2017, case no. B265267, see Docket No. 48-3, in support of his current motion but a motion to reconsider may not be used to present for the first time arguments or evidence that could reasonably have been presented earlier in the litigation. See Carroll v. Nakatani, 342 F. 3d 934, 945 (9th Cir. 2003).

Fn 2 As the facts of this case has been laid out in this Court's June 1, 2018 Order, the following is a short summary of the operative facts: in 2005, Mr. Kinney and Ms. Kimberley Kempton purchased certain real property in Los Angeles from Michele Clark. See Kinney v. Clark, 12 Cal. App. 5th 724, 727 (2017). Ms. Cooper lives at the adjacent real property to Mr. Kinney and Ms. Kempton and numerous civil actions arose out of disputes with regards to their individual rights with respect to their properties and public rights of way. See In re Kinney, 201 Cal. App. 4th 951 (Cal. Ct. App. 2011); see also Order at 2.

Fn 3 Apart from the Northern District of California, Mr. Kinney has also brought numerous frivolous and harassing filings against Defendants and Counter-Defendants in the Central District of California. See Kinney v. Cooper, No. 15-cv-8910-PSG(JCx), 2016 U.S. Dist. LEXIS 193971 (C.D. Cal. 2016) (where the Central District Court of California declared Mr. Kinney as a vexatious litigant.).

APPENDIX D

Case 3:18-cv-01041-EMC Doc. 56 Filed 07/17/18

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIF.

CHARLES G KINNEY
Plaintiff,

v.

D.C. No. 18-cv-01041-EMC
Northern Dist. of Cal., SF

MARIANO-FLORENTINO CUELLAR; et al.,
Defendants.

ORDER DECLARING PLAINTIFF A VEXATIOUS LITIGANT
Docket No. 53

Previously, the Court issued an order instructing Plaintiff Charles Kinney to show cause as to why he should not be declared a vexatious litigant and why he should not have an order entered against him requiring a pre-filing review of his future complaints in this District. Mr. Kinney has filed a response to the order to show cause.

Having reviewed Mr. Kinney's response, the Court finds that a declaration of Mr. Kinney as a vexatious litigant is warranted. In its order to show cause, the Court identified for Mr. Kinney all cases supporting the conclusion that he is a vexatious litigant. The Court also explained why the cases previously brought by Mr. Kinney were frivolous and/or harassing. Mr. Kinney has been

given notice and an opportunity to be heard as to why he should not be declared a vexatious litigant, but nothing in his response establishes that such a declaration would be in error, unreasonable, or unfair.

Contrary to what Mr. Kinney argues, there is no indication that his prior cases were not frivolous and/or harassing. For example, Mr. Kinney's claims against state judicial officers were barred by judicial immunity and Mr. Kinney's conclusory assertion that the judicial officers were acting as prosecutors is not supported by any facts. Also, the Rooker-Feldman doctrine blocks what is a de facto appeal of a state court decision even if the argument is that the state court decision violates federal law. See Khanna v. State Bar of Cal., 505 F. Supp. 2d 633, 640 (N.D. Cal. 2007) ("Where federal constitutional violations are asserted, federal question jurisdiction usually vests under 28 U.S.C. § 1331. Rooker-Feldman creates an exception which arises out of a negative inference from 28 U.S.C. § 1257, the statute that grants jurisdiction to review a state court judgment to the United States Supreme Court only, and not, e.g., a federal district court."); ScripsAmerica, Inc. v. Ironridge Glob. LLC, 56 F. Supp. 3d 1121, 1137 (C.D. Cal. 2014) ("[Under the Rooker-Feldman doctrine, a] losing party in state court is . . . barred from seeking what in substance would be appellate review of a state judgment in federal district court, even if the party contends the state judgment violated his or her federal rights.").

Moreover, Mr. Kinney's contention that he cannot be declared a vexatious litigant in light of

new Supreme Court authority – namely, Janus v. AFSCME, Council 31, 138 S. Ct. 2448 (2018), available at 2018 U.S. LEXIS 4028, and National Institute of Family & Life Advocates v. Becerra, 138 S. Ct. 2361 (2018), available at 2018 U.S. LEXIS 4025 – is unavailing. Neither case is on point. Both cases concern compelled speech against the speaker's wishes. Declaring Mr. Kinney a vexatious litigant and imposing a pre-filing review requirement would not compel any speech from him.

Nor does it unconstitutionally suppress speech where the prerequisites for imposing vexatious litigant sanctions established by the Ninth Circuit are satisfied. Although access to the courts is protected by the First Amendment, see Bill Johnson's Rests., Inc. v. NLRB, 461 U.S. 731, 741 (1983) (stating that "the right of access to the courts is an aspect of the First Amendment right to petition the Government for redress of grievances"), Mr. Kinney has failed to cite to any authority supporting the proposition that a vexatious litigant declaration and/or pre-filing review requirement, where predicated on a sound basis and properly tailored, violates an individual's right of access to the courts. Indeed, courts have rejected the claim. See, e.g., Wolfe v. George, 385 F. Supp. 2d 1004 (N.D. Cal. 2005) (holding that California's vexatious litigant statute does not violate the First Amendment).

Accordingly, the Court hereby declares Mr. Kinney a vexatious litigant and imposes a pre-filing review requirement on him. Mr. Kinney must obtain leave of court before filing any further suits related to the purchase of the

Fernwood property from Ms. Clark in 2005, the fence built by Ms. Cooper in the 1990s, or judicial rulings by state court judges on those facts. The Clerk of the Court shall not accept for filing any further complaints filed by Mr. Kinney implicating these subject matters until that complaint has first been reviewed by a judge of this District and approved for filing. The pre-filing review shall be made by the general duty judge who will determine whether Mr. Kinney has stated a potentially cognizable claim in a short, intelligible, and plain statement.

IT IS SO ORDERED.

Dated: July 17, 2018

__s/_____
EDWARD M. CHEN
United States District Judge