

APPENDIX

TABLE OF CONTENTS

1. Memorandum of 29 October 2018 by the Court of Appeals for the Ninth Circuit subject to review by the Supreme Court p. App. 2
2. Order of 6 July 2017 by the District Court for the Central District of California denying Petitioners' motion to reopen the *Title VII* case p. App. 4
3. Order of 22 March 2019 by the Court of Appeals for the Ninth Circuit denying Petitioners' petition for rehearing en banc of the ruling in the above Memorandum of 29 October 2018p. App. 6

FILED
Oct 29 2018
Molly C. Dwyer,
Clerk U.S. Court of Appeals

Not for Publication
United States Court of Appeals for the Ninth Circuit

Craig Ross; Natalie Operstein, Plaintiffs-Appellants, v. The Board of Trustees of California State University, Defendant-Appellee.	No. 17-56564 D.C. No. 2:16-cv- 03778-ODW-JC MEMORANDUM *
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Appeal from the United States District Court
for the Central District of California
Otis D. Wright, II, District Judge, Presiding

Submitted October 22, 2018

Before: SILVERMAN, GRABER, and GOULD,
Circuit Judges.

Craig Ross and Natalie Operstein appeal pro se from the district court's order denying their motion to reopen. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion. *Adams v. Cal. Dep't of Health Servs.*, 487 F.3d 684, 688 (9th Cir. 2007), *overruled on other grounds by Taylor v. Sturgell*, 553 U.S. 880, 904 (2008). We affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

App. 3

The district court did not abuse its discretion in denying appellants' motion to reopen because the instant action is duplicative of an earlier-filed action, *Ross, et al. v. White, et. al.*, No. 2:17-cv-04149-ODW-JC. *See Adams*, 487 F.3d at 689 (in determining whether a later-filed action is duplicative, this court examines "whether the causes of action and relief sought, as well as the parties or privies to the action, are the same").

The district court did not abuse its discretion in denying appellants' motion for reconsideration because appellants failed to establish any basis for such relief. *See Sch. Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262-63 (9th Cir. 1993) (standard of review and grounds for reconsideration under Fed. R. Civ. P. 59(e) and 60(b)); *see also* C.D. Cal. R. 7-18 (grounds for reconsideration under local rules); *Hinton v. Pac. Enters.*, 5 F.3d 391, 395 (9th Cir. 1993) (standard of review for compliance with local rules).

The district court did not abuse its discretion in denying appellants' motions to disqualify Judge Wright and Judge Ogluin. *See United States v. Johnson*, 610 F.3d 1138, 1147-48 (9th Cir. 2010) (standard of review and standard for recusal).

The district court did not err in denying appellants' request to issue a summons. *See* Fed. R. Civ. P. 4(b) (requiring that a complaint be filed before a plaintiff may request a summons).

Appellants' requests to disqualify Judge Wright, set forth in their reply briefs, are denied.

Appellants' motion for judicial notice (Docket Entry No. 17) is granted. AFFIRMED.

Case 2:16-cv-03778-ODW-JC Document 42
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Craig Ross; Natalie Operstein,
Plaintiffs,

v.

The Board of Trustees of
California State University,
Defendant.

Case No. 2:16-cv-
03778-ODW-JC

ORDER DENYING
PLAINTIFFS'
MOTION TO
REOPEN CASE
[21]

Plaintiffs filed this action as an application for a temporary restraining order on May 31, 2016, and on June 14, 2016, the Court denied the application. (ECF Nos. 1, 13.) The Order was made without prejudice as to Plaintiffs' ability to exhaust their administrative remedies. (Order 5.)

Over eleven months later, Plaintiffs filed a motion to reopen the case and file a Complaint therein.¹ However, on the same day, they filed a new case in the Central District of California, styled as Craig Ross et al. v. Timothy P. White et al., case number 2:17-cv-4149.

¹ After considering the papers filed in connection with the Motion, the Court deems the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. R. 7-15.

App. 5

Because Plaintiffs' newly-filed case appears to be based around the same operative allegations as this case, and because the Defendants in both cases are substantially the same or identical,² the Court will not allow Plaintiffs to reopen this case. Plaintiffs cannot have pending before this Court two simultaneous cases with the same allegations and defendants. As such, Plaintiffs' Motion to Reopen Case is DENIED AS MOOT, given that the relief they seek (filing a complaint) has already been obtained in case number 2:17-cv-4149.

IT IS SO ORDERED.

² In the instant case, Plaintiffs name as a singular defendant the Board of Trustees of California State University, and in the 2017-filed case, Plaintiffs name as defendants each of the individual members of the Board of Trustees.

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Molly C. Dwyer, Clerk
U.S. Court of Appeals

Craig Ross; Natalie Operstein, Plaintiffs-Appellants, v. Board of Trustees of the California State University, Defendant-Appellee.	No. 17-56564 D.C. No. 2:16-cv- 03778-ODW-JC ORDER
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Before: SILVERMAN, GRABER, and GOULD,
Circuit Judges.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Appellants' petition for rehearing en banc (Docket Entry No. 27) is denied.

No further filings will be entertained in this closed case.