

APPENDIX A

Case: 16-17255 04/19/2018 DktEntry: 9

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

CHARLES G. KINNEY
Plaintiff-Appellant,

v.

ROGER W. BOREN; DAVID LANE,
Defendants-Appellees.

D.C. No. 3:16-cv-06505-VC No. Dist. of Cal., SF

**FILED
APR 19 2018
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS**

ORDER

Before: WALLACE, SILVERMAN, and BYBEE,
Circuit Judges.

The panel has voted to deny the petition for
panel rehearing.

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.

Kinney's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 8) are denied.

No further filings will be entertained in this closed case.

APPENDIX B

Case: 16-17255 12/28/2017 DktEntry: 7

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

CHARLES G. KINNEY
Plaintiff-Appellant,
v.
ROGER W. BOREN; DAVID LANE,
Defendants-Appellees.

D.C. No. 3:16-cv-06505-VC No. Dist. of Cal., SF

**FILED
DEC 28 2017
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS**

MEMORANDUM *

Appeal from the United States District Court for
the Northern District of California Vince
Chhabria, District Judge, Presiding

Submitted December 18, 2017**

Before: WALLACE, SILVERMAN, and BYBEE,
Circuit Judges.

Charles G. Kinney appeals pro se from the
district court's judgment dismissing sua sponte
his action arising from a state appellate court
order requiring Kinney to post a security bond.

We have jurisdiction under 28 U.S.C. § 1291. We review *de novo* a dismissal under the *Rooker-Feldman* doctrine. *Noel v. Hall*, 341 F.3d 1148, 1154 (9th Cir. 2003). We affirm.

The district court properly dismissed Kinney's action as barred by the *Rooker-Feldman* doctrine because Kinney's claims amount to a forbidden "defacto appeal" of a prior state court judgment or are "inextricably intertwined" with that judgment. *See id.* at 1163-65 (discussing proper application of the *Rooker-Feldman* doctrine).

The district court did not abuse its discretion by denying Kinney's motion for a temporary restraining order. *See id.*; *Earth Island Inst. v. U.S. Forest Serv.*, 351 F.3d 1291, 1298 (9th Cir. 2003) (setting forth standard of review).

The district court did not abuse its discretion by dismissing the complaint without leave to amend because amendment would be futile. *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011) (setting forth standard of review and explaining that dismissal without leave to amend is proper when amendment would be futile).

We do not consider arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.

* 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). Kinney's request for oral argument, set forth in the opening brief, is denied.

No. ____

IN THE
SUPREME COURT OF THE
UNITED STATES

CHARLES G. KINNEY,
Petitioner,
v.

ROGER W. BOREN; DAVID LANE,
Respondents,

On Petition For Writ Of
Certiorari To The
Ninth Circuit Court of Appeals
#16-17255 (April 19, 2018 denial
of petition for rehearing) **[2 of 8]**

U.S. District Court, Northern
District of Calif. (San Francisco)
#3:16-cv-06505-VC

SUPPLEMENTAL APPENDIX
FOR A WRIT OF CERTIORARI

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Appendix SB: Nov. 10, 2016 judgment by USDC Judge Chhabria for defendants (Dk #13) 4

SUPPLEMENTAL APPENDIX SA

Case 3:16-cv-06505-VC Dk 12 Filed 11/10/2016

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIF.

CHARLES KINNEY
Plaintiff,

v.

ROGER W. BOREN, et al.,
Defendants.

Case No. 16-cv-06505-VC

**ORDER DENYING APPLICATION FOR A
TEMPORARY RESTRAINING ORDER AND
DISMISSING COMPLAINT SUA SPONTE**

Re: Dkt. Nos. 1, 3, 7

Kinney's ex parte application for a temporary restraining order seeks in effect to reverse a California Court of Appeal decision requiring that Kinney post a security as a vexatious litigant.¹ See *Kempton v. Clarke*, No. B266125 (Cal. Ct. App. Oct 12, 2016); Cal. Civ. Pro. Code § 391.1. Kinney has also filed a complaint, which rests on the same allegedly "erroneous decision by a state court." *Noel v. Hall*, 341 F.3d 1148, 1164 (9th Cir. 2003). Neither action is proper in a federal district court, which doesn't sit in appeal of state-court decisions. *Id.*; see also *Cooper v. Ramos*, 704 F.3d 772, 779 (9th

Cir. 2012). Accordingly, Kinney's request for a restraining order is denied, and Kinney's complaint is dismissed with prejudice sua sponte. See *Franklin v. State of Or.*, State Welfare Div., 662 F.2d 1337, 1342 (9th Cir. 1981).

Kinney is cautioned against filing frivolous or bad-faith actions. Based on his history in the Northern District, Kinney should be well aware of the reasons claims of this kind can't proceed – lack of jurisdiction, sovereign immunity, and preclusion chief among them. See Order (Dkt. 33), *Kinney v. State Bar of Cal.*, No. 16-cv-02277-MMC (N.D. Cal. Aug. 29, 2016); Order (Dkt. 9), *Kinney v. Lavin*, No. C 14-3817 PJH (N.D. Cal. Aug 22, 2014). Kinney has already been disbarred for his abusive litigation practices. See *In the Matter of Charles Gadsden Kinney*, Case Nos. 09-O-18100 (09-O-18760), at 14-15 (State Bar Ct. of Cal. Dec. 12, 2014). But even as a private pro se litigant, he may still be sanctioned under Rule 11 and 28 U.S.C. § 1927. *Wages v. I.R.S.*, 915 F.2d 1230, 1235-36 (9th Cir. 1990).

IT IS SO ORDERED.

Dated: November 10, 2016

s/
VINCE CHHABRIA
United States District Judge

Fn 1 Kinney has been declared a vexatious litigant in California Superior Court and at the California Court of Appeal. *Kempton v. Clark*, No. B248713, 2014 WL 4772269, at *1 (Cal. Ct. App.

Sept. 25, 2014), reh'g denied (Oct. 14, 2014), review denied (Dec. 17, 2014); *In re Kinney*, 201 Cal. App. 4th 951, 960 (2011). He has also been declared a vexatious litigant in the U.S. District Court for the Central District of California. Order (Dkt. 70), *Kinney v. Cooper*, No. 15-cv-8910 (C.D. Cal. May 13, 2016).

SUPPLEMENTAL APPENDIX SB

Case 3:16-cv-06505-VC Dk 13 Filed 11/10/2016

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIF.

CHARLES KINNEY
Plaintiff,

v.

ROGER W. BOREN, et al.,
Defendants.

Case No. 16-cv-06505-VC

JUDGMENT

Having dismissed this case with prejudice, the Court now enters judgment in favor of the defendants and against the plaintiff. The Clerk of Court is directed to close the case.

IT IS SO ORDERED.

Dated: November 10, 2016

 s/
VINCE CHHABRIA
United States District Judge