

APPENDIX A

Case: 16-56733 04/19/2018 DktEntry: 29

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

CHARLES G. KINNEY
Plaintiff-Appellant,

v.

TYSON TAKEUCHI; MICHELE CLARK,
Defendants-Appellees.

D.C. No. 2:16-cv-06172-PSG-JC
Central Dist. of Cal., LA

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. 28) are denied.

No further filings will be entertained in this closed case.

APPENDIX B

Case: 16-56733 12/28/2017 DktEntry: 27

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

CHARLES G. KINNEY
Plaintiff-Appellant,
v.

TYSON TAKEUCHI; MICHELE CLARK,
Defendants-Appellees.

D.C. No. 2:16-cv-06172-PSG-JC
Central Dist. of Cal., LA

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

MEMORANDUM *

Appeals from the United States District Court for
the Central District of California Philip S.
Gutierrez, 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 order dismissing his action alleging

violations of the Fair Debt Collection Practices Act and the Racketeer Influenced and Corrupt Organizations Act. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a sua sponte dismissal for failure to state a claim. *Barrett v. Belleque*, 544 F.3d 1060, 1061 (9th Cir. 2008). We may affirm on any basis supported by the record. *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1121 (9th Cir. 2008). We affirm.

Dismissal of Kinney's action was proper under the *Rooker-Feldman* doctrine because Kinney's claims constitute a "de facto appeal" of prior state court judgments, or are "inextricably intertwined" with those judgments. See *Noel v. Hall*, 341 F.3d 1148, 1163-65 (9th Cir. 2003) (discussing application of the *Rooker-Feldman* doctrine); see also *Henrichs v. Valley View Dev.*, 474 F.3d 609, 616 (9th Cir. 2007) (holding that *Rooker-Feldman* doctrine barred claim for injunction based on allegedly erroneous and "void" state court judgment because "[g]ranted the injunction would require the district court to determine that the state court's decision was wrong and thus void").

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 reject as without merit Kinney's challenges to the district court's interlocutory orders, including the orders regarding venue, transfer, and relation of cases.

We reject as unsupported by the record Kinney's contention that the district judge was biased.

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).

Appellees' requests for sanctions and for leave to file a motion for a vexatious litigant pre-filing review order against Kinney, set forth in the answering brief, are denied.

Appellees' corrected motion to take judicial notice (Docket Entry No. 18) is granted.

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 these cases are 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.

TYSON TAKEUCHI,
MICHELE CLARK,
Respondents,

On Petition For Writ Of
Certiorari To The
Ninth Circuit Court of Appeals
#16-56733 (April 19, 2018 denial
of petitions for rehearing) **[5 of 8]**

U.S. District Court, Central
District of Calif. (Los Angeles)
#2:16-cv-06172-PSG

SUPPLEMENTAL APPENDIX
FOR A WRIT OF CERTIORARI

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SUPPLEMENTAL APPENDIX SA

Case 3:16-cv-02018-LB Dk 28 Filed 08/04/16

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIF.
San Francisco Division

CHARLES KINNEY
Plaintiff,

v.

TYSON TAKEUCHI, et al.,
Defendants.

Case No. 16-cv-02018-LB

ORDER REGARDING RELATED CASES

Re: ECF No. 23

CHARLES KINNEY,
Plaintiff,

v.

JUDGE PHILLIP GUTIERREZ, et al.,
Defendants.

Case No. 16-cv-02278-LB

ORDER REGARDING RELATED CASES

Mr. Kinney objects to the court's prior order relating case number 16-cv-02018-LB to cases that the court previously decided. (See ECF No. 20.) The court deemed this case related to case number 16-cv-01260-LB, and it also is related to case number 14-cv-02187-LB. The court transferred both cases to the Central District of California. Mr. Kinney points out that there is an earlier-numbered case: case number 13-cv-01396-MMC. That case primarily involved Mr. Kinney's

efforts to enjoin the State Bar from conducting proceedings against him. By contrast, his latest lawsuits focus on state-court lawsuits he lost. Considering the local rules, and how recently the undersigned addressed similar issues, the court does not reconsider its related case order. The court appreciates Mr. Kinney's point but the interests of judicial economy that underlie the related-case rule militate in favor of the court's decision. The same analysis applies to the court's order relating case number 16-cv-02778-HSG.

IT IS SO ORDERED.

Dated: August 4, 2016

____s/____

LAUREL BEELER

United States Magistrate Judge

SUPPLEMENTAL APPENDIX SB

Case 3:16-cv-02018-LB Dk 32 Filed 08/15/16

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIF.
San Francisco Division

CHARLES KINNEY
Plaintiff,

v.

TYSON TAKEUCHI, et al.,
Defendants.

Case No. 16-cv-02018-LB

ORDER TRANSFERRING CASE
[ECF No. 20]

INTRODUCTION

The plaintiff Charles Kinney sued Tyson Takeuchi and Michele Clark, residents of Los Angeles County, for alleged violations of the Racketeer Influenced and Corrupt Organizations Act (—RICO) and the Fair Debt Collections Practices Act (—FDCPA).¹ An ongoing dispute between Mr. Kinney and Ms. Clark began in 2005 when she sold him a home in Los Angeles known as the Fernwood property.² In a Los Angeles Superior Court case, Ms. Clark allegedly obtained liens on at least one of Mr. Kinney's properties in Alameda County as a judgment creditor.³ Mr. Kinney alleges that this violates the FDCPA and RICO.⁴ Mr. Takeuchi is Ms. Clark's bankruptcy attorney; Ms. Clark filed for Chapter 7 bankruptcy in 2010.⁵ The defendants recount Mr.

Kinney's many lawsuits surrounding the Fernwood property, including his civil RICO suit in 2014 and his FDCPA suit in 2016 that the undersigned transferred to the Central District of California. See *Kinney v. Chomsky*, No. 3:14-cv-02187-LB, Order – ECF No. 27 (N.D. Cal. July 25, 2014); *Kinney v. Marcus*, No. 3:16-cv-01260-LB, Order – ECF No. 29 (N.D. Cal. May 11, 2016).⁶ Mr. Kinney complains about many of the same transactions and alleges many of the same facts in all lawsuits, albeit sometimes under different legal theories.⁷ The defendants move to transfer the case to the Central District of California under 28 U.S.C. § 1404(a).⁸ The parties consented to magistrate-judge jurisdiction.⁹ The court finds that it can decide the matter without oral argument under Civil Local Rule 7-1(b). The court grants the motion to transfer.

GOVERNING LAW

28 U.S.C. § 1404(a) states: —For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.¹ Although Congress drafted § 1404(a) in accordance with the doctrine of *forum non conveniens*, it was intended to be a revision rather than a codification of the common law. *Piper Aircraft v. Reyno*, 454 U.S. 235, 253 (1981); *Norwood v. Kirkpatrick*, 349 U.S. 29, 32 (1955). Thus, a § 1404(a) transfer is available —upon a lesser showing of inconvenience² than that required for a *forum non conveniens* dismissal. *Norwood*, 349 U.S. at 32.

The burden is upon the moving party to show that transfer is appropriate. *Commodity Futures Trading Comm'n v. Savage*, 611 F.2d 270, 279 (9th Cir. 1979); see also *Los Angeles Mem'l Coliseum Com'n v. Nat'l Football League*, 89 F.R.D. 497, 499 (C.D. Cal. 1981), *aff'd*, 726 F.2d 1381, 1399 (9th Cir. 1984). Nonetheless, the district court has broad discretion—to adjudicate motions for transfer according to an individualized, case-by-case consideration of convenience and fairness.¹ *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000) (quoting *Stewart Org. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988)); see *Westinghouse Elec. Corp. v. Weigel*, 426 F.2d 1356, 1358 (9th Cir. 1970).

An action may be transferred to another court if: (1) that court is one where the action might have been brought; (2) the transfer serves the convenience of the parties; and (3) the transfer will promote the interests of justice. *E & J Gallo Winery v. F. & P. S.p.A.*, 899 F. Supp. 465, 466 (E.D. Cal. 1994) (citing 28 U.S.C. § 1404(a)). The Ninth Circuit has identified numerous additional factors a court may consider in determining whether a change of venue should be granted under § 1404(a):

(1) the location where the relevant agreements were negotiated and executed, (2) the state that is most familiar with the governing law, (3) the plaintiff's choice of forum, (4) the respective parties' contacts with the forum, (5) the contacts relating to the plaintiff's cause of action in the chosen forum, (6) the differences in the costs of litigation in the two forums, (7) the availability of compulsory process to compel attendance of

unwilling non-party witnesses, and (8) the ease of access to sources of proof.

Jones, 211 F.3d at 498–99. Courts may also consider —the administrative difficulties flowing from court congestion . . . [and] the local interest in having localized controversies decided at home.¶ Decker Coal Co. v. Commonwealth Edison Co., 805 F.2d 834, 843 (9th Cir. 1986) (quoting Piper Aircraft, 454 U.S. at 241 n. 6).

Generally, the court affords the plaintiff's choice of forum great weight. Lou v. Belzberg, 834 F.2d 730, 739 (9th Cir. 1987). But when judging the weight to be given to plaintiff's choice of forum, consideration must be given to the respective parties' contact with the chosen forum. Id. —If the operative facts have not occurred within the forum and the forum has no interest in the parties or subject matter,¶ the plaintiff's choice —is entitled only minimal consideration.¶ Id.

ANALYSIS

The defendants have met their burden to show that transfer is appropriate.

First, Mr. Kinney could have brought his action in the Central District. The general venue requirements of 28 U.S.C. § 1391(b) are met because all defendants reside in the Central District, a substantial part of the events occurred there, and all three defendants may be found there. Mr. Kinney does not dispute this in his opposition.

Second, the defendants have shown that transfer serves the convenience of the parties and will promote the interests of justice. The defendants live and work in Los Angeles, the

property is there, Mr. Kinney litigated cases about the Fernwood property there, and the witnesses are there, 400 miles away, outside the reach of compulsory process. The docket sheet reflects that Mr. Kinney is a lawyer with law offices in Oakland, but he has a home in Los Angeles and thus resides here and in the Central District. As for promoting the interests of justice, only one factor supports keeping the case here: Mr. Kinney's choice of forum. The remaining factors favor transfer. As the court held previously, to the extent that there are some contacts here (such as the allegations that Ms. Clark improperly filed and recorded liens against Mr. Kinney's property here), everything else took place in the Central District.¹⁰

In sum, the court concludes that the defendants met their burden to show that transfer of the lawsuit to the Central District of California is appropriate under 28 U.S.C. § 1404(a).

CONCLUSION

The court grants the defendants' motion to transfer and transfers the case to the Central District of California. The court grants the request to take judicial notice of public-record documents showing the existence of other litigation (but does not take judicial notice of the facts contained in the documents). This disposes of ECF No. 20.

IT IS SO ORDERED.

Dated: August 15, 2016

____s/_____
LAUREL BEELER

United States Magistrate Judge

Fn. 1 First Amended Compl. (–FACI) — ECF No. 9. Citations are to the Electronic Case File (–ECFI); pinpoint citations are to the ECF-generated page numbers at the top of the documents.

Fn 2 Motion for Change of Venue – ECF No. 20 at 3.

Fn 3 FAC – ECF No. 9 at 5.

Fn 4 Id. at 17-18.

Fn 5 Id. at 7.

Fn 6 Notice of Related Cases — ECF No. 19.

Fn 7 See generally FAC – ECF No. 9.

Fn 8 Motion — ECF No. 20 at 1-2.

Fn 9 Consents — ECF Nos. 7, 22. Mr. Kinney later filed a declination to the undersigned's jurisdiction (see ECF No. 31), but his prior consent was to magistrate-judge jurisdiction generally (as opposed to consent to a particular magistrate judge). In any event, the court may grant this non-dispositive motion to transfer venue. See *Pavao v. Unifund CCR Partners*, 934 F. Supp. 2d 1238, 1241 n.1 (S.D. Cal. 2013) (collecting cases).

Fn 10 Order, Case No. 3:14-cv-02187-LB — ECF No. 27 at 6-7.

SUPPLEMENTAL APPENDIX SC

Case 2:16-cv-06172-PSG-JC Dk 40 Filed 08/30/16

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIF.

CHARLES G. KINNEY
Plaintiff,

v.

TYSON TAKEUCHI, et al.,
Defendants.

Case No. 2:16-cv-06172 ODW (SKx)

**ORDER RE TRANSFER PURSUANT
TO GENERAL ORDER 14-03
(RELATED CASES)**

CONSENT

I hereby consent to the transfer of the above-entitled case to my calendar, pursuant to General Order 14-03.

Date 8/29/16

____s/____

Philip S. Gutierrez

United State District Judge

DECLINATION

I hereby decline to transfer the above-entitled case to my calendar for the reasons set forth:

Date

United States District Judge

REASON FOR TRANSFER AS INDICATED BY
COUNSEL

Case 2:12-cv-10046 PSG (JCx) and the
present case:

- ☒ A. Arise from the same or closely related transactions, happenings or events; or
☒ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☒ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve one or more defendants from the criminal case in common, and would entail substantial duplication of labor if heard by different judges (applicable only on civil forfeiture action).

NOTICE TO COUNSEL FROM CLERK

Pursuant to the above transfer, any discovery matters that are or maybe referred to a Magistrate Judge are hereby transferred from Magistrate Judge Kim to Magistrate Judge Chooljian.

On all documents subsequently filed in this case, please substitute the initials PSG (JCx) after the case number in place of the initials of the prior judge, so that the case number will read 2:16-cv-06172 PSG (JCx). This is very important because the documents are routed to the assigned judges by means of these initials.

SUPPLEMENTAL APPENDIX SD

Case 2:16-cv-06172-PSG-JC Dk 48 Filed 10/04/16

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIF.

CIVIL MINUTES - GENERAL

Case No. CV 16-6168 PSG

CV 16-6172 PSG (JCx)

Date October 4, 2016

Title

Kinney v. Judge Gutierrez, *et al.*

Kinney v. Tyson Takeuchi, *et al.*

Present: The Honorable Philip S. Gutierrez,
United States District Judge
Wendy Hernandez Not Reported
Deputy Clerk Court Reporter
Attorneys Present for Plaintiff(s): Not Present
Attorneys Present for Defendant(s): Not Present

**Proceedings (In Chambers): Order
CERTIFYING Plaintiff's Appeals as
Frivolous**

Before the Court are Plaintiff Charles Kinney's ("Plaintiff") notices of appeal to the Ninth Circuit in *Kinney v. Judge Gutierrez et al.*, CV 16-6168 PSG (Dkt. # 63), and *Kinney v. Takeuchi, et al.*, CV 16-6172 PSG (Dkt. # 44). Although the filing of a notice of appeal typically divests the district court of jurisdiction, this is not so where the lower court certifies the appeal as

frivolous. *Chuman v. Wright*, 960 F.2d 104, 105 (9th Cir. 1992). Plaintiff's appeals, taken before the Court has entered any order in Plaintiff's cases, are patently frivolous.

Accordingly, the Court certifies Plaintiff's appeals as frivolous and retains jurisdiction over the cases.¹

I. Background

Plaintiff Charles Kinney ("Plaintiff"), appearing pro se, filed two related lawsuits in the Northern District of California. The lawsuits, *Kinney v. Judge Gutierrez et al.*, CV 16-6168 PSG, and *Kinney v. Takeuchi, et al.*, CV 16-6172 PSG, relate to a series of lawsuits that have a long history in the Central District. See, e.g., CV 12-10046 PSG (JCx); CV 13-8147 PSG (JCx); CV 15-1143 PSG (JCx), CV 15-8910 PSG (JCx), CV 15-9022 PSG (JCx). Because of Plaintiff's conduct in the earlier litigation, the Court declared Plaintiff a vexatious litigant in the Central District of California in May 2016. See *Order Granting Motion to Declare Charles Kinney a Vexatious Litigant*, CV 15-8910 PSG (JCx), Dkt. # 70. The Court suspects that Plaintiff filed the most recent lawsuits in the Northern District in an attempt to circumvent the Court's vexatious litigant order or to otherwise avoid the Court's jurisdiction in the underlying matters.

In recognition of Plaintiff's litigation history with the Central District, Magistrate Judge Beeler transferred both cases to the Central District of California on August 15, 2016. See 16-6168, Dkt. # 44; 16-6172, Dkt. # 32. *Kinney v. Judge Gutierrez, et al.* was originally assigned to

Judge Percy Anderson, but was reassigned to me as a related case on August 30, 2016. *Kinney v. Takeuchi et al.* was originally assigned to Judge Otis D. Wright, but was reassigned to me as a related case on August 30, 2016. Plaintiff now appeals Magistrate Judge Beeler's orders transferring the cases to the Central District of California, and the subsequent reassignments of the cases to me.

II. Discussion

As a general rule, only one tribunal handles a case at a time. "[A] federal district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously. 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." *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982). The purpose of this jurisdictional rule is to prevent simultaneous proceedings in multiple forums that create confusion and duplication of effort. *See Apostol v. Gallion*, 870 F.2d 1335, 1337 (7th Cir. 1989).

However, as Judge Easterbrook colorfully recognized in *Apostol*, "Courts are not helpless in the face of manipulation." *Id.* at 1339. While it is well established that the appellate court may dismiss the appeal and award sanctions, "district courts have their own means too." *See id.*

"[A] notice of appeal may be so baseless that it does not invoke appellate jurisdiction." *Id.* (citing *Richardson v. United States*, 468 U.S. 317,

322 (1984)). Adopting the Seventh Circuit's "Apostol rule," the Ninth Circuit has recognized a district court's power to certify an interlocutory appeal as frivolous and continue with proceedings. See *Chuman v. Wright*, 960 F.2d 104, 105 (9th Cir. 1992); *Marks v. Clarke*, 102 F.3d 1012, 1017 n.8 (9th Cir. 1996). If the district court certifies an appeal as frivolous, the party seeking appeal may then apply to the appellate court for a discretionary stay. *Chuman*, 870 F.2d at 105 n.1.

An appeal is frivolous if "the result is obvious, or the arguments of error are wholly without merit." *Wilcox v. Commissioner*, 848 F.2d 1007, 1009 (9th Cir. 1998); see also *Neitzke v. Williams*, 490 U.S. 319, 325 (1989) (stating that an issue is frivolous if it has "no arguable basis in fact or law"). This means that the appeal is "so baseless" that "the disposition is so plainly correct that nothing can be said on the other side." See *Isayeva v. Cty. of Sacramento*, No. CV 13-2015 KJM (KJNx), 2015 WL 6744529, at *2.

Plaintiff Kinney's appeals are wholly lacking in merit. It is well established that a transfer order is not appealable. *Gulf Research & Dev. Co. v. Harrison*, 185 F.2d 457, 458 (9th Cir. 1950) (holding that an order to transfer a case to a Delaware district court is not an appealable order); *Nascimento v. Dummer*, 508 F.3d 905, 908 (9th Cir. 2007) (citing *Varsic v. U.S. District Court*, 607 F.2d 245, 251 (9th Cir. 1979)); accord *Preston Corp. v. Raese*, 335 F.3d 827, 828 (4th Cir. 1964); *Jiffy Lubricator Co. v. Stewart-Warner Corp.*, 177 F.3d 360, 361 (4th Cir. 1949). Plaintiff's appeals address only the decision of Magistrate Judge Beeler to transfer the cases to the Central

District and the subsequent reassignments of the cases to me.

Accordingly, the Court finds Plaintiff's appeals baseless and insufficient to deprive this Court of jurisdiction. See *Kennedy v. City of Ridgefield*, 439 F.3d 1055, 1060 (9th Cir. 2006).

III. Conclusion

For the foregoing reasons, the Court certifies Plaintiff's appeals as frivolous. The Court retains jurisdiction over *Kinney v. Judge Gutierrez et al.*, CV 16-6168 PSG, and *Kinney v. Takeuchi, et al.*, CV 16-6172 PSG.

Fn 1 This Order is filed simultaneously with another order in *Kinney v. Judge Gutierrez, et al.*, CV 16-6168 PSG, that severs all of Plaintiff's claims against me. This Order in no way passes judgment on the merits of Kinney's claims in the underlying proceedings.

SUPPLEMENTAL APPENDIX SE

Case 2:16-cv-06172-PSG-JC Dk 51 Filed 10/05/16

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIF.

CIVIL MINUTES - GENERAL

Case No. CV 16-6172 PSG (JCx)

Date October 5, 2016

Title Kinney v. Tyson Takeuchi, *et al.*

Present: The Honorable Philip S. Gutierrez,
United States District Judge

Wendy Hernandez Not Reported

Deputy Clerk Court Reporter

Attorneys Present for Plaintiff(s): Not Present

Attorneys Present for Defendant(s): Not Present

**Proceedings (In Chambers): Order to Show
Cause re: Dismissal**

Before the Court is Plaintiff Charles Kinney's first amended complaint ("FAC"). Dkt. # 9. After reviewing the complaint, the Court is not convinced that it satisfies Federal Rule of Civil Procedure 8. Therefore, the Court orders Plaintiff to show cause why the FAC should not be dismissed.

Rule 8(a)(2) requires pleadings to contain a "short and plain statement of the claim showing that the pleader is entitled to relief." A complaint is properly dismissed under Federal Rule of Civil

Procedure 12(b)(6) for failing to comply with Rule 8 if it does not “contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A trial court may act on its own initiative to note the inadequacy of a complaint and dismiss it for failure to state a claim, but the court must give notice of its sua sponte intention to invoke Rule 12(b)(6) and afford plaintiffs ‘an opportunity to at least submit a written memorandum in opposition to such motion.’” *Wong v. Bell*, 642 F.2d 359, 361–62 (9th Cir. 1981) (quoting *Crawford v. Bell*, 599 F.2d 890, 893 (9th Cir. 1979)) (citations omitted); see also *Wright v. United States*, No. 3:14-CV-03008-CRB, 2015 WL 3902798, at *3 (N.D. Cal. June 24, 2015) (applying *Wong*).

As discussed in this Court’s order declaring Kinney to be a vexatious litigant, Kinney has a long history of filing meritless, frivolous, and harassing litigation against Defendant Michele Clark. See *Charles Kinney v. Carolyn Cooper, et al.*, CV 15-8910 PSG (JCx), Dkt. #70 (C.D. Cal. May 13, 2016). This Complaint is no different than the others, except, in addition to naming Clark as a defendant, the Complaint also lists Clark’s bankruptcy attorney, Tyson Takeuchi. FAC ¶ 11. After reviewing the FAC filed in this case, the Court believes that it is consistent with Kinney’s previous filings—it is conclusory, redundant, confusing, and implausible. See *Membreno v. Fu Wei*, No. 215CV06322ODWRAOX, 2015 WL 5567763, at *1

(C.D. Cal. Sept. 22, 2015) (“A court may sua sponte dismiss a complaint for failure to comply with Rule 8 when ‘the complaint is so verbose, confused and redundant that its true substance, if any, is well disguised.’” (quoting *Gillibeau v. City of Richmond*, 417 F.2d 426, 431 (9th Cir. 1969))); accord *Haddock v. Countrywide Bank, NA*, No. CV146452PSGFFMX, 2015 WL 9257316, at *25 (C.D. Cal. Oct. 27, 2015). The Court therefore orders Kinney to show cause in writing by **October 17, 2016** why the Court should not dismiss this action for failure to state a claim upon which relief can be granted. Failure to respond as ordered may result in this case being dismissed with prejudice.

IT IS SO ORDERED.

SUPPLEMENTAL APPENDIX SF

Case 2:16-cv-06172-PSG-JC Dk 54 Filed 10/18/16

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES – GENERAL JS-6

Case No. CV 16-6172 PSG (JCx)

Date October 18, 2016

Title Kinney v. Tyson Takeuchi, *et al.*

Present: The Honorable Philip S. Gutierrez,
United States District Judge
Wendy Hernandez Not Reported
Deputy Clerk Court Reporter
Attorneys Present for Plaintiff(s): Not Present
Attorneys Present for Defendant(s): Not Present

**Proceedings (In Chambers): Order
DISMISSING Plaintiff's Complaint**

On October 5, 2016, the Court issued an order to show cause ("OSC") to Plaintiff regarding *sua sponte* dismissal of his Complaint for failure to state a claim. Dkt. # 51. The Court was not convinced that the Complaint satisfied Federal Rule of Civil Procedure 8, and it ordered Plaintiff to respond in writing by October 17, 2016. *Id.* On October 17, Plaintiff submitted a response. Dkt. # 53.

Rule 8(a)(2) requires pleadings to contain a "short and plain statement of the claim showing that the pleader is entitled to relief." A complaint is properly dismissed under Federal Rule of Civil

Procedure 12(b)(6) for failing to comply with Rule 8 if it does not “contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A trial court may act on its own initiative to note the inadequacy of a complaint and dismiss it for failure to state a claim, but the court must give notice of its sua sponte intention to invoke Rule 12(b)(6) and afford plaintiffs ‘an opportunity to at least submit a written memorandum in opposition to such motion.’” *Wong v. Bell*, 642 F.2d 359, 361–62 (9th Cir. 1981) (quoting *Crawford v. Bell*, 599 F.2d 890, 893 (9th Cir. 1979)) (citations omitted); see also *Wright v. United States*, No. 3:14-CV-03008-CRB, 2015 WL 3902798, at *3 (N.D. Cal. June 24, 2015) (applying *Wong*).

Nothing in Plaintiff’s response persuades the Court that Plaintiff has stated a claim for relief that is facially plausible. Rather, Plaintiff offers only conclusory statements reticent of those in the Complaint that the Court found inadequate. See, e.g., *Opposition re: Order to Show Cause re: Dismissal*, Dkt. # 53, at 8 (“[P]laintiff’s ‘verified’ factual allegations in the FAC give rise to claims against Clark and Takeuchi for violations of RICO and FDCPA, and a claim under the Declaratory Judgment Act. . . . [T]he federal courts have exclusive and original jurisdiction over bankruptcy cases, including claims based on fraud by a debtor and her bankruptcy attorney when amending schedules under oath with knowingly false information.”). Such unsubstantiated claims undermine the

plausibility of Plaintiff's allegations and render the complaint "so verbose, confused, and redundant that its true substance, if any, is well disguised." *Gillibeau v. City of Richmond*, 417 F.2d 426, 431 (9th Cir. 1969). In such a case, it is appropriate to *sua sponte* dismiss the complaint for failure to comply with Federal Rule of Civil Procedure 8. See *Membreno v. Fu Wei*, No. 2:15-cv-06322-ODW (RAOx), 2015 WL 5567763, at *1 (C.D. Cal. Sept. 22, 2015).

Given the conclusory, redundant, confusing, and implausible nature of the complaint, and Plaintiff's failure to adequately respond to the Court's Order to Show Cause, the Court *SUA SPONTE DISMISSES* the complaint for failure to state a claim *WITHOUT LEAVE TO AMEND*.

IT IS SO ORDERED.