

**APPENDIX A**

Case: 16-56162 04/19/2018 DktEntry: 36

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

**CHARLES G. KINNEY**  
Plaintiff-Appellant,

v.

**MICHELE CLARK; et al,**  
Defendants-Appellees.

D.C. No. 2:16-cv-03279-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. 35) are denied.

No further filings will be entertained in this closed case.

**APPENDIX B**

Case: 16-56162 12/28/2017 DktEntry: 34

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

**CHARLES G. KINNEY**  
Plaintiff-Appellant,  
v.  
**MICHELE CLARK; et al,**  
Defendants-Appellees.

D.C. No. 2:16-cv-03279-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]ranteeing 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 orders regarding venue, transfer, relation of cases, recusal, and the striking of electronically filed documents.

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.

Kinney's request for judicial notice (Docket Entry No. 22) is granted.

Appellees' requests for judicial notice (Docket Entry Nos. 11, 26 & 30) are 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.

MICHELE R. CLARK; et al,  
*Respondents,*

\_\_\_\_ ♦ \_\_\_\_\_  
On Petition For Writ Of  
Certiorari To The  
Ninth Circuit Court of Appeals  
#16-56162 (April 19, 2018 denial  
of petitions for rehearing) **[4 of 8]**

U.S. District Court, Central  
District of Calif. (Los Angeles)  
#2:16-cv-03279-PSG

\_\_\_\_ ♦ \_\_\_\_\_  
**SUPPLEMENTAL APPENDIX  
FOR A WRIT OF CERTIORARI**

\_\_\_\_ ♦ \_\_\_\_\_  
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**SUPPLEMENTAL APPENDIX SA**

Case 2:16-cv-03279-PSG-JC Dk 29 Filed 05/11/16

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

CHARLES KINNEY,  
Plaintiff,

v.

MICHELE R CLARK, et al.,  
Defendants.

Case No.16-cv-01260-LB

**ORDER TRANSFERRING CASE**

Re: ECF No. 8

**INTRODUCTION**

The plaintiff Charles Kinney sued David Marcus, Eric Chomsky, and Michele Clark, all residents of Los Angeles County, for alleged violations of the Fair Debt Collections Practices Act ("FDCPA").<sup>1</sup> Ms. Clark sold Mr. Kinney her home at 3525 Fernwood Avenue in Los Angeles, and Messieurs Marcus and Chomsky are her attorneys.<sup>2</sup> The defendants allegedly put liens on his property in Alameda, California, and Mr. Kinney alleges that this violates the FDCPA.<sup>3</sup> The defendants recount Mr. Kinney's many lawsuits surrounding the Fernwood property, including his civil RICO suit in 2014 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).<sup>4</sup> Two of the defendants in this lawsuit were parties to that lawsuit, and Mr. Kinney complains about many of the same transactions in both lawsuits, albeit under different legal theories. The defendants move to transfer the case to the Central District of California under 28 U.S.C. § 1404(a).<sup>5</sup> The parties consented to the undersigned's jurisdiction.<sup>6</sup> 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." 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 inconvenience" 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 Commission v. Savage*, 611 F.2d 270, 279 (9th Cir. 1979); see also *Los Angeles Memorial Coliseum Comm. v. National 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.'" *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 three 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 Mr. Chomsky and Mr. Marcus improperly filed and recorded liens against Mr. Kinney's property here), everything else took place in the Central District.<sup>7</sup>

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. 8.

### IT IS SO ORDERED.

Dated: May 11, 2016

\_\_\_\_s/  
LAUREL BEELER

United States Magistrate Judge

Fn 1 Complaint — ECF No. 1. Citations are to the Electronic Case File ("ECF"); pinpoint citations are to the ECF-generated page numbers at the top of the documents.

Fn 2 Id. ¶¶ 1-3, 15.

F<sup>n</sup> 3 Id. ¶¶ 31, 36-39.

F<sup>n</sup> 4 Notice of Related Cases — ECF No. 10.

F<sup>n</sup> 5 Motion —ECF No. 8.

F<sup>n</sup> 6 Consents — ECF Nos. 6, 14.

F<sup>n</sup> 7 Order, Case No. 3:14-cv-02187-LB — ECF  
No. 27 at 6-7.

**SUPPLEMENTAL APPENDIX SB**

Case 2:16-cv-03279-PSG-JC Dk 34 Filed 05/18/16

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

Charles Kinney  
PLAINTIFF

v.

Michael R. Marcus, et al  
DEFENDANT(S).

Case Number 2:16-cv-03279 DMG (GJSx)

**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 5/17/16

\_\_\_\_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:

x A. Arise from the same or closely related  
transactions, happenings or events; or

x 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        to Magistrate Judge       .

On all documents subsequently filed in this  
case, please substitute the initials        after the  
case number in place of the initials of the prior  
judge, so that the case number will read       .  
This is very important because the documents are  
routed to the assigned judges by means of these  
initials.

**SUPPLEMENTAL APPENDIX SC**

Case 2:16-cv-03279-PSG-JC Dk 36 Filed 05/18/16

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
CIVIL MINUTES - GENERAL**

Case No. CV 16-3279 PSG (JCx)

Date May 18, 2016

Title Charles Kinney v. David Marcus, *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 complaint. Dkt. #1. After reviewing the complaint, the Court is not convinced that it satisfies Federal Rule of Civil Procedure 8. Therefore, the Court orders the Plaintiff to show cause why the complaint 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 recent order declaring Kinney to be a vexatious litigant, Kinney has a long history of filing meritless, frivolous, and harassing litigation against Defendants David Marcus, Michele Clark, and Eric Chomsky. See *Charles Kinney v. Carolyn Cooper, et al.*, CV 15-8910 PSG (JCx), Dkt. #70 (C.D. Cal. May 13, 2016). After reviewing the complaint 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 **June 8, 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 SD**

Case 2:16-cv-03279-PSG-JC Dk 44 Filed 05/26/16

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
CIVIL MINUTES – GENERAL

Case No. CV 15-08910-PSG (JCx)  
CV 16-03279-PSG (JCx)  
Date May 26, 2016

Title  
CHARLES KINNEY V. CAROLYN COOPER ET  
AL  
CHARLES KINNEY V. MICHAEL R MARCUS  
ET AL  
CV-90 (06/04) CIVIL MINUTES – GENERAL

Present: The Honorable  
BEVERLY REID O'CONNELL, United States  
District Judge  
Renee A. Fisher  
Not Present  
N/A  
Deputy Clerk  
Court Reporter  
Tape No.  
Attorneys Present for Plaintiffs:  
Attorneys Present for Defendants: Not Present  
Proceedings: (IN CHAMBERS)

ORDER DENYING PLAINTIFF'S  
MOTIONS TO DISQUALIFY [75], [42]

## I. INTRODUCTION

On May 22 and 23, 2016, Plaintiff Charles Kinney (“Plaintiff”) filed motions to disqualify Judge Phillip S. Gutierrez (“Judge Gutierrez”) in two separate but related cases, which were referred to Judge George H. King (“Judge King”) pursuant to the Central District of California’s General Order Number 14-03. See *Kinney v. Cooper*, Case No. 15-08910-PSG (JCx) (C.D. Cal. Nov. 13, 2015) (hereinafter, the “2015 action”) (Dkt. No. 71); *Kinney v. Marcus*, Case No. 16-03279-PSG (JCx) (C.D. Cal. Mar. 14, 2016) (hereinafter, the “2016 action”) (Dkt. No. 38). On May 25, 2016, Plaintiff filed motions in the 2015 and 2016 actions to disqualify Judge King from ruling on the underlying motions to disqualify Judge Gutierrez, (2015 action, Dkt. No. 75; 2016 action, Dkt. No. 42), which were assigned to this Court for decision, (2015 action, Dkt. No. 76; 2016 action, Dkt. No. 43). For the following reasons, the Court DENIES both of Plaintiff’s motions to disqualify Judge King.

## II. BACKGROUND

Plaintiff’s motions stem from two related cases filed or removed by Plaintiff in 2015 and 2016. (See 2016 action, Dkt. Nos. 10, 34.) On December 3, 2015, Plaintiff moved to disqualify Judge Gutierrez in the 2015 action. (2015 action, Dkt. No. 23.) The motion to disqualify was randomly assigned to Judge King pursuant to General Order Number 14-03 § II.F. (Dkt. No. 24.) Judge King denied Plaintiff’s motion on December 9, 2015. (2015 action, Dkt. No. 24, 26.) On February 4, 2016, Judge Gutierrez granted

Defendants' motion to remand the 2015 case and imposed sanctions on Plaintiff in the amount of \$6,000. (2015 action, Dkt. No. 44.)

Plaintiff once again moved to disqualify Judge Gutierrez in the 2015 action on February 8, 2016, (2015 action, Dkt. No. 46). The matter was re-assigned to Judge King pursuant to General Order Number 14-03 §II.F because he had previously evaluated the first motion to recuse Judge Gutierrez. (See 2015 action, Dkt. No. 47). Judge King denied Plaintiff's second motion to recuse on February 10, 2016. (2015 action, Dkt. No. 48.) Plaintiff appealed Judge King's December 9, 2015 and February 10, 2016 orders denying Plaintiff's motions to disqualify Judge Gutierrez to the Ninth Circuit. (See 2015 action, Dkt. No. 52 (Notice of Appeal).) On March 9, 2016, the Ninth Circuit issued an order seeking Kinney to show cause within 21 days, why the judgment of Judge King should not be summarily affirmed. (2015 Action Dkt. No. 55.) Plaintiff did not respond to the Court of Appeals' order.

Plaintiff initiated the 2016 action on March 14, 2016. (2016 action, Dkt. No. 1.) On May 13, 2016, Judge Gutierrez granted Defendants' motion to declare Plaintiff a vexatious litigant in the 2015 action. (2015 action, Dkt. No. 70.) Plaintiff filed a "First Amended Notice of Appeal" on May 1, 2016 in the 2015 Action. (2015 Action, Dkt. No. 68.) On May 22, 2016, Plaintiff filed a motion to disqualify Judge Gutierrez in the 2016 action. (2016 action, Dkt. No. 38.) On May 23, 2016, Plaintiff filed his third motion to disqualify Judge Gutierrez in the 2015 action. (2015 action, Dkt. No. 71.)

The motions to disqualify in the 2015 were originally randomly assigned to Judge King pursuant to General Order Number 14-03 § II.F. Thereafter, the motion to disqualify were assigned to Judge King because he had ruled on the previous motion to disqualify, as detailed in General Order Number 14-03 § II.F. (2015 action, Dkt. No. 73; 2016 action, Dkt. No. 40.) On May 25, 2016, however, Plaintiff filed the instant motions to disqualify Judge King from deciding Plaintiff's motions to disqualify Judge Gutierrez in both cases. (2015 action, Dkt. No. 75; 2016 action, Dkt. No. 42.) Both motions to disqualify were randomly referred to this Court for decision. (2015 action, Dkt. No. 76; 2016 action, Dkt. No. 43.)

### III. LEGAL STANDARD

28 U.S.C. § 144 “provides a procedure for a party to recuse a judge.” *Yagman v. Republic Ins.*, 987 F.2d 622, 626 (9th Cir. 1993). Section 455, on the other hand, “imposes an affirmative duty upon judges to recuse themselves.” *Id.* “Under both statutes, recusal is appropriate where a reasonable person with knowledge of all the facts would conclude that the judge’s impartiality might reasonably be questioned.” *Id.* (internal quotation marks omitted); see also *United States v. Studley*, 783 F.2d 934, 939 (9th Cir. 1986). “Accordingly, recusal will be justified either by actual bias or the appearance of bias.” *Yagman*, 987 F.2d at 626.

Sections 144 and 455(a) are limited by the “extrajudicial source” factor, which requires a court to base recusal on “something other than rulings, opinions formed or statements made by

the judge during the course of a [case].” *United States v. Holland*, 519 F.3d 909, 913–14 (9th Cir. 2008) (addressing § 455(a)); *United States v. Azhocar*, 581 F.2d 735, 739 (9th Cir. 1978) (explaining that “[a]dverse rulings do not constitute the requisite bias or prejudice” to satisfy § 144); see also *Studley*, 783 F.2d at 939 (“The alleged prejudice must result from an extrajudicial source; a judge’s prior adverse ruling is not sufficient cause for recusal.”).

Where a party seeks to disqualify a judge under § 144, the party must file “a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice against him or in favor of any adverse party.” 28 U.S.C. § 144. When determining the legal sufficiency of the affidavit, “the factual allegations in the affidavit must be accepted as true,” although “general or conclusory allegations will not support disqualification.” *United States v. Zagari*, 419 F. Supp. 494, 500–01 (N.D. Cal. 1976); see also *Hayes v. Nat’l Football League*, 463 F. Supp. 1174, 1179 (C.D. Cal. 1979) (“Conclusory allegations . . . do not justify disqualification and are not protected from judicial scrutiny.”). The judge is presumed to be qualified, and the moving party bears a significant burden to defeat this presumption. *Zagari*, 419 F. Supp. at 501. Moreover, “the affidavit is strictly construed for sufficiency against the party seeking disqualification.” *Id.*

#### IV. DISCUSSION

The Court has reviewed and considered Plaintiff’s motions to disqualify Judge King with

respect to the 2015 and 2016 actions. For the reasons discussed below, the Court finds that Plaintiff has failed to set forth any particularized factual allegations to show Judge King's personal bias stemming from an extrajudicial source.

First, Plaintiff takes issue with the fact that "several prior cases involving" Plaintiff were referred to Judge King, and argues that this creates an appearance of bias. (2015 action, Dkt. No. 75 at 5.) Pursuant to General Order Number 14-03, however, "[i]f more than one motion to disqualify the same judge is made in the same case or in related or consolidated cases that are assigned to the same judge, all such motions will be assigned to the judge who determined the initial motion to disqualify." Gen. Order No. 14-03 § II.F at 17 (C.D. Cal. June 2, 2014) (available at <http://www.cacd.uscourts.gov/sites/default/files/general-orders/GO%2014-03.pdf>). Because Plaintiff has filed more than one motion to disqualify Judge Gutierrez in the same case, (see 2015 action, Dkt. Nos. 23, 46, 71), as well as in a related case, (see 2016 action, Dkt. No. 38), the motions were properly assigned to Judge King each time pursuant to General Order Number 14-03. The Court does not find any appearance of Judge King's bias based on this fact.

Turning to §§ 144 and 455, Plaintiff claims that Judge King's "impartiality reasonably can be questioned in this matter given his ruling(s) in prior case(s) with these defendants." (2015 action, Dkt. No. 75 at 3; 2016 action, Dkt. No. 42 at 3.) Specifically, Plaintiff argues that Judge King "has considered and/or will consider extrajudicial sources of information prejudicial to [Plaintiff],"



and claims that Judge King received such “extrajudicial sources of information” from “prior cases.” (2015 action, Dkt. No. 75 at 5; see also *id.* at 8; 2016 action, Dkt. No. 42 at 2, 5, 8.) But as discussed above, an “extrajudicial source” is “something other than rulings, opinions formed or statements made by the judge during the course of a [case].” *Holland*, 519 F.3d at 913–14 (emphasis added). Accordingly, Plaintiff does not come close to meeting his significant burden under either § 144 or § 455. *Fn 1*

Finally, Plaintiff makes conclusory references to the “First, Fifth and/or Fourteenth Amendments of the US Constitution” in both of his motions and argues that due process requires the absence of the appearance of bias. (2015 action, Dkt. No. 75 at 2, 4, 6–7; 2016 action, Dkt. No. 42 at 1, 3, 5–7.) As discussed above, Plaintiff provides neither facts nor law to support his position that Judge King’s involvement in this case—through his prior orders denying Plaintiff’s motions to disqualify Judge Gutierrez—creates an appearance of bias, nor that it would violate the First, Fifth or Fourteenth Amendments. The Court finds no basis to disqualify Judge King from ruling on Plaintiff’s motions to disqualify Judge Gutierrez.

## V. CONCLUSION

For the foregoing reasons, the Court concludes that Plaintiff has failed to meet his burden to allege facts justifying Judge King’s disqualification. The Court therefore **DENIES** Plaintiff’s motions to disqualify Judge King. The Court does not rule on Plaintiff’s motions to

disqualify Judge Gutierrez, as they are to be decided by Judge King.

IT IS SO ORDERED.

Initials of Preparer rf

FNn1 Plaintiff also cites to 28 U.S.C. §§ 47, 292, and 294 as bases for Judge King's disqualification. Section 47 provides that "[n]o judge shall hear or determine an appeal from the decision of a case or issue tried by him." 28 U.S.C. § 47. Plaintiff's motion to disqualify Judge Gutierrez is not an "appeal," and thus § 47 is inapplicable. Similarly, Plaintiff's reliance on §§ 292 and 294 to "request[] that another district court judge be appointed from another circuit in this matter [e.g. appointed from out-of-state]" is misplaced. See 28 U.S.C. §§ 292 (describing designations and assignments of district court judges), 294 (describing the assignment of retired Justices or judges to active duty). Sections 292 and 294 provide no basis for disqualification or recusal.

**SUPPLEMENTAL APPENDIX SE**

Case 2:16-cv-03279-PSG-JC Dk 45 Filed 06/02/16

**E-FILED**

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
CIVIL MINUTES - GENERAL**

Case

No. CV 15-8910-PSG (JCx)

**CV 16-3279-PSG (JCx)**

Date June 2, 2016

Title

*Charles Kinney v. Carolyn Cooper, et al.*

*Charles Kinney v. David Marcus, et al.*

**Presiding: The Honorable GEORGE H.  
KING, CHIEF U.S. DISTRICT JUDGE**

Beatrice Herrera N/A N/A

Deputy Clerk Court Reporter / Recorder Tape No.

Attorneys Present for Plaintiffs: (NONE)

Attorneys Present for Defendants: (NONE)

**Proceedings: (In Chambers) Order re:**

Plaintiff's Motions to Recuse [CV 15-8910 Dkt. 71;  
CV 16-3279 Dkt. 38]

Plaintiff filed Motions in the above-captioned actions to recuse Judge Gutierrez.1 Although Plaintiff's Motions raise several issues, the only matter presently before us is Plaintiff's request to recuse Judge Gutierrez in these actions. We have reviewed the papers in support

of these Motions. Plaintiff fails to set forth any showing that “a reasonable person with knowledge of all the facts would conclude that [Judge Gutierrez’s] impartiality might reasonably be questioned.” *See Pesnell v. Arsenault*, 543 F.3d 1038, 1043 (9th Cir. 2008); *United States v. Wilkerson*, 208 F.3d 794, 797 (9th Cir. 2000); *see also* 28 U.S.C. §§ 144, 455. Accordingly, Plaintiff’s Motions to recuse Judge Gutierrez are **DENIED**. We do not rule on any other issues raised in Plaintiff’s Motions, as they are to be decided by the assigned judge.

**IT IS SO ORDERED.**

**cc: Judge Philip S. Gutierrez**

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Fn 1 Though Plaintiff’s Motions are titled “Motion to Disqualify, Recuse and/or Require Self-Recusal” and “Motion to Disqualify and/or Recuse or Self-Recuse Judge Gutierrez” respectively, we construe these Motions as motions to recuse.

**SUPPLEMENTAL APPENDIX SF**

Case 2:16-cv-03279-PSG-JC Dk 49 Filed 06/13/16

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
CIVIL MINUTES – GENERAL**

Case No. **CV 15-08910-PSG (JCx)**

**CV 16-03279-PSG (JCx)**

Date June 13, 2016

Title **CHARLES KINNEY V. CAROLYN  
COOPER ET AL  
CHARLES KINNEY V. MICHAEL R MARCUS  
ET AL**

Present: The Honorable **BEVERLY REID  
O'CONNELL, United States District Judge**

Renee A. Fisher Not Present N/A

Deputy Clerk Court Reporter Tape No.

Attorneys Present for Plaintiffs: Attorneys

Present for Defendants:

Not Present Not Present

**Proceedings: (IN CHAMBERS)**

**ORDER RE: MOTIONS FOR  
RECONSIDERATION  
OF ORDER DENYING PLAINTIFF'S  
MOTIONS TO DISQUALIFY [79], [46]**

**I. INTRODUCTION**

On May 22 and 23, 2016, Plaintiff Charles Kinney ("Plaintiff") filed motions to disqualify Judge Phillip S. Gutierrez ("Judge Gutierrez") in

two separate but related cases, which were referred to Judge George H. King (“Judge King”) pursuant to the Central District of California’s General Order Number 14-03. *See Kinney v. Cooper*, Case No. 15-08910-PSG (JCx) (C.D. Cal. Nov. 13, 2015) (hereinafter, the “2015 action”) (Dkt. No. 71); *Kinney v. Marcus*, Case No. 16-03279-PSG (JCx) (C.D. Cal. Mar. 14, 2016) (hereinafter, the “2016 action”) (Dkt. No. 38). On May 25, 2016, Plaintiff filed motions in the 2015 and 2016 actions to disqualify Judge King from ruling on the underlying motions to disqualify Judge Gutierrez, (2015 action, Dkt. No. 75; 2016 action, Dkt. No. 42), which were assigned to this Court for decision, (2015 action, Dkt. No. 76; 2016 action, Dkt. No. 43). The Court denied Plaintiff’s motions to disqualify on May 26, 2016. (*See* 2015 action, Dkt. No. 77; 2016 action, Dkt. No. 44.)<sup>1</sup> Pending before the Court are Plaintiff’s Motions to Vacate this Court’s May 26, 2016 Order denying Plaintiff’s motions to disqualify Judge King, which Plaintiff filed on June 6, 2016. (2015 action, Dkt. No. 79; 2016 action, Dkt. No. 46.) After considering the papers filed in support of the instant Motions, the Court deems this matter appropriate for resolution without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15. For the following reasons, the Court **DENIES** Plaintiff’s Motions.

## II. LEGAL STANDARD

A district court may “reconsider” final judgments or appealable interlocutory orders pursuant to Federal Rules of Civil Procedure 59(e) (governing motions to alter or amend judgments)

and 60(b) (governing motions for relief from judgment). *Sch. Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993); *see also Balla v. Idaho State Bd. of Corr.*, 869 F.2d 461, 466–67 (9th Cir. 1989). A district court can also reconsider non-final judgments pursuant to Federal Rule of Civil Procedure 54(b) and the court’s “inherent power rooted firmly in the common law” to “rescind an interlocutory order over which it has jurisdiction.” *City of Los Angeles v. Santa Monica Baykeeper*, 254 F.3d 882, 887 (9th Cir. 2001). “Rule 54(b) does not address the standard which a court should apply when assessing a motion to modify an interlocutory order; however, courts look to the standards under Rule 59(e) and Rule 60(b) for guidance.” *Jadwin v. County of Kern*, No. 07–CV–0026–OWW–DLB, 2010 WL 1267264, at \*9 (E.D. Cal. Mar. 31, 2010).

Under Rule 59(e), reconsideration is appropriate if (1) the court “is presented with newly discovered evidence,” (2) the court “committed clear error or the initial decision was manifestly unjust,” or (3) “there is an intervening change in controlling law.” *Sch. Dist. No. 1J*, 5 F.3d at 1263. Other highly unusual circumstances may also warrant reconsideration under the rule. *Id.* Rule 60(b) sets forth the following grounds for relief from a final judgment: (1) “mistake, inadvertence, surprise, or excusable neglect”; (2) “newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial”; (3) fraud; (4) a void judgment; (5) a satisfied, released, or discharged judgment; or (6) “any other reason that justifies relief.” Fed. R. Civ. P. 60(b); *see also Am.*

*Ironworks & Erectors, Inc. v. N. Am. Constr. Corp.*, 248 F.3d 892, 899 (9th Cir. 2001).

Generally, such motions are “disfavored . . . and are not the place for parties to make new arguments not raised in their original briefs.” *Motorola, Inc. v. J.B. Rodgers Mech. Contractors*, 215 F.R.D. 581, 582 (D. Ariz. 2003) (citing *Nw. Acceptance Corp. v. Lynnwood Equip., Inc.*, 841 F.2d 918, 925–26 (9th Cir. 1988)). Moving parties must do more than merely relitigate issues and arguments on which the Court already has ruled. *See Maraziti v. Thorpe*, 52 F.3d 252, 255 (9th Cir. 1995). A motion for reconsideration “should not be granted, absent highly unusual circumstances.” *389 Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999). The Central District’s Local Rules further limit the grounds for reconsideration.

Under Local Rule 7-18, a party may seek reconsideration only upon a showing one of the following: (1) “a material difference in fact or law” from that initially presented to the Court, which the party could not have known by exercising reasonable diligence; (2) “the emergence of new material facts or a change of law” after the Court’s order; or, (3) “a manifest showing of a failure to consider material facts presented to the Court.” C.D. Cal. L.R. 7-18. Local rules have the force and effect of law so long as they are not inconsistent with a statute or the Federal Rules. *See Atchison, Topeka & Santa Fe Ry. Co. v. Hercules Inc.*, 146 F.3d 1071, 1074 (9th Cir. 1998). A court should not depart from the local rules unless the effect on the parties’ rights would be “so slight and unimportant that the sensible treatment is to



overlook it.” *Prof'l Programs Grp. v. Dep't of Commerce*, 29 F.3d 1349, 1353 (9th Cir. 1994).

#### IV. DISCUSSION

Plaintiff filed the instant Motions on June 6, 2016, eleven days after the Court entered its Order denying Plaintiff's motions to disqualify Judge King, seeking reconsideration of the denial of his requests. There is no clear authority as to whether the Court should analyze Plaintiff's Motions under Rule 54, Rule 59(e), or Rule 60(b). *See Boyd v. Contra Costa Cmty. Coll. Dist.*, 384 F. App'x 681, 681 (9th Cir. 2010) (unpublished) (citing Fed. R. Civ. P. 60 and finding that the “district court did not abuse its discretion in refusing to reconsider its disqualification ruling because [the party seeking reconsideration] merely repeated his previous arguments and also did not allege any grounds warranting reconsideration”). Plaintiff's Motions reference Federal Rule of Civil Procedure “59 and/or 60,” without citing to any legal authority indicating the applicability of those rules to the Court's denial of his motions for recusal. (See 2015 action, Dkt. No. 79 at 2; 2016 action, Dkt. No. 46 at 2.) Plaintiff claims that the Court's Order was “improper and/or contrary to law.” (2015 action, Dkt. No. 79 at 4; 2016 action, Dkt. No. 46 at 4.) As noted above, a “motion for reconsideration should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law.” 389 *Orange St.*, 179 F.3d at 665. For the reasons discussed below,

Plaintiff's Motions provide no basis under any rule—Rule 54, Rule 59(e), Rule 60(b), or Local Rule 7-18—for the Court to reconsider its prior Order.

#### **A. The Court Did Not Commit Clear Error**

Plaintiff does not present the Court with new evidence, or suggest that there is an intervening change in controlling law. *See 389 Orange St.*, 179 F.3d at 665. The Court will accordingly analyze Plaintiff's Motions to determine if he has established that the Court committed any clear error.

##### **1. The Court did not Err in Defining “Extrajudicial Factors”**

Plaintiff argues that the Court erred in finding that prior rulings are not “extrajudicial sources,” and thus cannot serve as the basis for the recusal or disqualification of a judge under 28 U.S.C. § 144 or § 455. (*See* 2015 action, Dkt. No. 77 at 3–5; 2016 action, Dkt. No. 44 at 3– 5.) Plaintiff repeats the argument he asserted in his motions to disqualify Judge King, (*see* 2015 action, Dkt. No. 75 at 8–9; 2016 action, Dkt. No. 42 at 8–9), arguing that “any information outside of the present case is an ‘extrajudicial source,’” (2015 action, Dkt. No. 79 at 1; 2016 action, Dkt. No. 46 at 1).

Contrary to what is stated in Plaintiff's Motions, *United States v. Grinnell Corp.*, 384 U.S. 563, 583 (1966) does not define an “extrajudicial source” as a judge's knowledge of prior cases, including related cases that the judge presided over. Thus, Plaintiff's Motions fail to allege that

the Court made a clear error when it defined extrajudicial source as “something *other than* rulings, opinions formed or statements made by the Judge during the course of a [case].” (See 2015 action, Dkt. No. 77 at 4 (quoting *United States v. Holland*, 519 F.3d 909, 913–14 (9th Cir. 2008)).)

## **2. The Court did not Err in Finding 28 U.S.C. § 47 Inapplicable**

Plaintiff asserts that the Court erred in its interpretation of 28 U.S.C. § 47. As noted in the Court’s previous Order, (see 2015 action, Dkt. No. 77 at 5 n.1; 2016 action, Dkt. No. 44 at 5 n.1), § 47 provides that “[n]o judge shall hear or determine an appeal from the decision of a case or issue tried by him,” and is thus inapplicable to Plaintiff’s attempt to disqualify Judge King because Judge King is not hearing the case on appeal. See 28 U.S.C. § 47. Plaintiff does not articulate how the Court erred, aside from claiming that the Court ignored a non-controlling opinion from the Fourth Circuit. (2015 action, Dkt. No. 75 at 2; 2016 action, Dkt. No. 42 at 2.) Moreover, Plaintiff misstates what that opinion held. Plaintiff’s Motions cite to *Swann v. Charlotte-Mecklenburg Board of Education*, 431 F.2d 135 (4th Cir. 1970) in support of Plaintiff’s claim that 28 U.S.C § 47 is not strictly limited to appeals. However, the Fourth Circuit opinion contains no such proposition. *Id.* In fact, *Swann* specifically concerned a federal appellate judge’s decision to recuse himself from hearing an appeal when he previously presided over an earlier stage of the case as a district court judge. *Id.* at 135–36. Plaintiff’s Motions accordingly fail to demonstrate

that the Court erred in its interpretation of 28 U.S.C. § 47.

### **3. Plaintiff's Appeal Does not Prevent the Court from Denying the Motions to Disqualify**

Plaintiff also argues that the Court erred in declining to disqualify Judge King because of Plaintiff's pending appeal. According to Plaintiff, this Court's denial of Plaintiff's disqualification motions permitted the issue of Judge Gutierrez's disqualification to be sent back to Judge King, thus providing Judge King with the opportunity to "change or alter the 'status quo' during [Plaintiff's] appeal" of Judge King's initial refusal to disqualify Judge Gutierrez. (See 2015 action, Dkt. No. 79; 2016 action, Dkt. No. 46.) Plaintiff's premise is generally correct; the filing of the notices of appeal divested the court of jurisdiction over issues that could affect the appeals. See *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982) (per curiam) ("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."). Plaintiff's application of the law to these facts, however, is incorrect. Plaintiff fails to demonstrate how this Court's ruling as to his motions to disqualify Judge King affects the issue of Judge Gutierrez's disqualification, the only relevant issue pending on appeal. This Court's denial of Plaintiff's motions to disqualify Judge King does not affect Judge King's order denying Plaintiff's motions to disqualify Judge Gutierrez.

Plaintiff therefore does not and cannot show that this Court committed a clear error—let alone any error—in denying Plaintiff’s motions to disqualify Judge King pending Plaintiff’s various appeals. Because Plaintiff provides no proper basis for his Motions for Reconsideration, the Court must **DENY** his Motions in their entirety.

#### **B. Local Rule 7-18**

Plaintiff does not address Local Rule 7-18, which is applicable to the relief he requests in his Motions. (See 2015 action, Dkt. No. 79; 2016 action, Dkt. No. 46.) As discussed above, local rules have the force and effect of law so long as they are not inconsistent with a statute or the Federal Rules. See *Atchison*, 146 F.3d at 1074. Plaintiff does not provide a “material difference in fact or law” from that initially presented to the court, see C.D. Cal. L.R. 7-18(a), or claim the emergence of new material facts after the Court granted the Order denying the motions to disqualify, see C.D. Cal. L.R. 7-18(b).

Nor does Plaintiff establish a manifest failure of the Court to consider material facts presented to it before issuing its Order. See C.D. Cal. L.R. 7-18(c). Plaintiff’s Motions only allege that the Court committed legal errors, which, as discussed above, are not in fact errors. (See *generally* 2015 action, Dkt. No. 79; 2016 action, Dkt. No. 46.) Thus, Plaintiff’s Motions do not satisfy the requirements of Local Rule 7-18; the Court **DENIES** Plaintiff’s Motions on this additional basis.

#### **V. CONCLUSION**

For the foregoing reasons, the Court **DENIES** Plaintiff's Motions to Vacate the Court's May 26, 2016 order denying Plaintiff's motions to disqualify Judge King. The hearing set for July 11, 2016, is hereby **VACATED**.

**IT IS SO ORDERED. :**

Initials of Preparer \_rf\_

Fn 1 The Court's prior Order denying Plaintiff's motions to disqualify Judge King provides additional details regarding the procedural background of the instant Motions. (*See* 2015 action, Dkt. No. 77 at 1-2; 2016 action, Dkt. No. 44 at 1- 2.)

**SUPPLEMENTAL APPENDIX SG**

Case 3:16-cv-01260-LB Dk 34 Filed 06/21/16

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
San Francisco Division

CHARLES KINNEY,  
Plaintiff,

v.

MICHELE R. CLARK, et al.,  
Defendants.

Case No. 16-cv-1260-LB  
[Re: ECF No. 30]

**INTRODUCTION**

The plaintiff Charles Kinney moves the court to reconsider its decision to transfer the case to the Central District on the grounds that 1) the court should have disqualified itself and 2) in any event should not have transferred the case.<sup>1</sup> The court finds that it can decide this matter without oral argument under Civil Local Rule 7-1(b). The court denies the motion for reconsideration.

**GOVERNING LAW**

A motion to reconsider a final appealable order is appropriately brought under either Federal Rule of Civil Procedure 59(e) or 60(b). See *Fuller v. M.G. Jewelry*, 950 F.2d 1437, 1442 (9th Cir. 1991). Reconsideration is an —extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources.¶ *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000); see also *Allstate Ins. Co.*

v. Herron, 634 F.3d 1101, 1111 (9th Cir. 2011). Motions for reconsideration should not be frequently made or freely granted. *Twentieth Century–Fox Film Corp. v. Dunnahoo*, 637 F.2d 1338, 1341 (9th Cir. 1980).

Rule 59(e) allows a party to seek an order altering or amending a judgment. Rule 59(e) does not state when a court should reconsider a prior decision, but the Ninth Circuit has stated that —Rule 59(e) amendments are appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law.<sup>1</sup> *Dixon v. Wallowa Cnty.*, 336 F.3d 1013, 1022 (9th Cir. 2003) (quoting *School Dist. No. 1J, Multnomah Cnty. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993)). And under Rule 60(b), the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud . . . , misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief. Fed. R. Civ. P. 60(b).

Generally speaking, though, a motion for reconsideration —may not be used to relitigate old matters, or to raise arguments or present evidence



that could have been raised prior to the entry of judgment. *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n.5 (2008) (referring to Rule 59(e)); see also *Casey v. Albertson's Inc.*, 362 F.3d 1254, 1259–61 (9th Cir. 2004) (referring to Rule 60(b)); *Kona Enters.*, 229 F.3d at 890 (interpreting Rule 59(e)). The sole exception is when the court has committed —clear or —manifest error. Mere disagreement with a court's order, however, does not provide a basis for reconsideration. See *McDowell v. Calderon*, 197 F.3d 1253, 1256 (9th Cir. 1999).

## ANALYSIS

### 1. Recusal

Mr. Kinney's first argument is that the court erred by referring to its prior order transferring a different case in 2014; he argues that this is information from an impermissible extrajudicial source.<sup>2</sup> It is not. The court considers other opinions and other orders all the time, sometimes for precedent, sometimes for procedural context, and sometimes for persuasive authority. This is not unusual; it is ordinary.

### 2. The transfer was appropriate

This lawsuit challenges the defendants' debt-collection practices against Mr. Kinney in state court; Mr. Kinney asserts that they violate the Fair Debt Collection Practices Act.<sup>3</sup> Citing 15 U.S.C. § 1692i, Mr. Kinney argued in his opposition to the motion to transfer and again here that venue for his complaint is exclusively in the Northern District.<sup>4</sup> That venue statute requires debt collectors to bring lawsuits to enforce debts against consumers 1) in the case of a lawsuit to enforce an interest in real property, in

the judicial district where the real property is located; or 2) for other lawsuits, in the district where the consumer signed the contract sued upon or where the consumer resides at the time the lawsuit is filed. See 15 U.S.C. § 1692i. The court considered Mr. Kinney's arguments and transferred the case. Mr. Kinney's disagreement with the court's decision does not form the basis for a motion to reconsider it.

#### CONCLUSION

The court denies the motion for reconsideration. This disposes of ECF No. 30.

IT IS SO ORDERED.

Dated: June 21, 2016

s/  
LAUREL BEELER

United States Magistrate Judge

Fn 1 Motion — ECF No. 30. Record citations are to material in the Electronic Case File (—ECF); pinpoint citations are to the ECF-generated page numbers at the top of the documents

Fn 2 Motion — ECF No. 30 at 6 (referencing Order – ECF No. 29 at 4).

Fn 3 Complaint — ECF No. 1, ¶¶ 36-77.

Fn 4 Opposition — ECF No. 16 at 2; Motion — ECF No. 30 at 6-7. Case 3:16-cv-01260-LB Document 34 Filed 06/21/16 Page 3 of 3

**SUPPLEMENTAL APPENDIX SH**

Case 2:16-cv-03279-PSG-JC Dk 51 Filed 06/30/16

***E-FILED***

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
CIVIL MINUTES - GENERAL**

Case No. CV 15-8910-PSG (JCx)  
CV 16-3279-PSG (JCx)

Date June 30, 2016

Title

*Charles Kinney v. Carolyn Cooper, et al.*

*Charles Kinney v. David Marcus, et al.*

**Presiding: The Honorable GEORGE H.  
KING, CHIEF U.S. DISTRICT JUDGE**

Beatrice Herrera N/A N/A

Deputy Clerk Court Reporter / Recorder Tape No.

Attorneys Present for Plaintiffs: (NONE)

Attorneys Present for Defendants: (NONE)

**Proceedings: (In Chambers) Order re:**

Plaintiff's Request for Reconsideration of the June  
2, 2016 Order [CV 15-8910 Dkt. 81; CV 16-3279  
Dkt. 48]

Plaintiff filed Motions in the above-captioned actions for us to vacate, amend, or reconsider our June 2, 2016 order denying his Motions to recuse Judge Gutierrez. We have considered these Motions and find and conclude that no valid reason exists for reconsideration of

our June 2, 2016 order. Plaintiffs' Motions for Reconsideration are **DENIED**.

**IT IS SO ORDERED.**

**cc: Judge Philip S. Gutierrez**

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**SUPPLEMENTAL APPENDIX SI**

Case 2:16-cv-03279-PSG-JC Dk 52 Filed 07/11/16

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
CIVIL MINUTES - GENERAL**

Case No. CV 16-3279 PSG (JCx)

Date July 11, 2016

Title Charles Kinney v. David Marcus, *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  
DENYING Motion**

Before the Court is Plaintiff Charles Kinney's "motion to vacate, motion to amend, and/or motion and request for reconsideration; motion to disqualify; and/or recuse or self-recuse Judge Gutierrez; and motion to disclose attachment to filing." Dkt. #38. The Court finds the matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78(b); L.R. 7-15. After considering the moving papers, the Court DENIES Plaintiff's motion.

First, Plaintiff requests that the Court reconsider the transfer of this case from the Northern District of California to the Central

District of California, the assignment of the case to Judge Dolly M. Gee, and the transfer of the case to Judge Gutierrez. *Mot.* 1-3.1 Under the Central District of California Local Rules and this Court's Standing Order, a party must meet and confer with opposing counsel at least seven days prior to the filing of a motion. See L-R 7-3; *Standing Order* ¶ 5(b). Plaintiff states: "Compliance with Central District L.R. 7-3 does not apply since this was originally a Northern District case and, as noted herein, can ONLY be a Northern District case." *Mot.* 2. Although there are exceptions to the meet-and-confer requirement, see L.R. 7-3, 16-12, none supports Plaintiff's position, and Plaintiff cites to no authority for the proposition that the Central District of California Local Rules do not apply in this case. The Court therefore DENIES Plaintiff's motion for reconsideration for failure to satisfy the meet-and-confer requirement. See *Singer v. Live Nation Worldwide, Inc.*, No. SACV 11-0427 DOC, 2012 WL 123146, at \*1-2 (C.D. Cal. Jan. 13, 2012) (denying a motion for summary judgment for failing to comply with Local Rule 7-3).

Second, Plaintiff argues that Judge Gutierrez should be recused from this case. *Mot.* 1, 3-10. Due to the importance of the fair and impartial administration of justice, the Court will consider these arguments notwithstanding Plaintiff's failure to satisfy the meet-and-confer requirement. "Under 28 U.S.C. § 144, if the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, he shall proceed no further. Under 28 U.S.C. § 455(a), any judge shall

disqualify himself in any proceeding in which his impartiality might reasonably be questioned. Under both recusal statutes, the substantive standard is [w]hether a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned." *Pesnell v. Arsenault*, 543 F.3d 1038, 1043 (9th Cir. 2008) (alterations, citations, and internal quotation marks omitted), *abrogated on other grounds by Simmons v. Himmelreich*, 136 S. Ct. 1843 (2016). Section § 455(b) provides additional circumstances under which disqualification is warranted. See 28 U.S.C. § 455(b). The Court does not believe that self-recusal is required. Plaintiff provides no authority for the proposition that the Court's involvement in other cases in which Plaintiff is a party requires disqualification in this case, even if those cases are currently on appeal. The Court rejects Plaintiff's argument that prior adverse rulings suggest that the Court should be disqualified. See *Blixseth v. Yellowstone Mountain Club, LLC*, 742 F.3d 1215, 1220 (9th Cir. 2014) ("[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality [recusal] motion." (quoting *Liteky v. United States*, 510 U.S. 540, 555 (1994))). The Court also rejects Plaintiff's argument that Plaintiff's inclusion of Judge Gutierrez in another lawsuit means that Judge Gutierrez is prohibited from participating in this case. See *Charles Kinney v. Carolyn Cooper, et al.*, CV 15-8910 PSG (JCx), Dkt. #70 at 8 (C.D. Cal. May 13, 2016) (explaining why the lawsuit against Judge Gutierrez does not merit disqualification). The Court's review of Plaintiff's motion reveals no

other reason why disqualification is warranted. Finally, the Court is unconvinced by Plaintiff's argument that due process necessitates disqualification.

Pursuant to Central District of California General Order 14-03 and Local Rule 72-5, the Court referred the recusal motion to Judge George H. King. Dkt. #40. Judge King also determined that disqualification was not warranted. Dkts. #45, 51.

Third and finally, Plaintiff requests "an order disclosing the contents of Attachment 1 \*Restricted\* [Dk# 30-1 on 5/16/16] as part of the transfer of the docket of the Northern District case [Dk #30 on 5/16/16] since nothing in this case is 'restricted' or protected from disclosure." *Mot.* 1; *see also id.* 9. Because Plaintiff did not comply with the Local Rules and the Court's Standing Order by failing to meet and confer with opposing counsel, the Court denies Plaintiff's request. *See Singer*, 2012 WL 123146, at \*1-2. The Court therefore DENIES Plaintiff's motion in full.

**IT IS SO ORDERED.**

Fn 1 Plaintiff also filed a motion to reconsider in the Northern District of California. Dkt. #37.



**SUPPLEMENTAL APPENDIX SJ**

Case 2:16-cv-03279-PSG-JC Dk 53 Filed 07/15/16

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
CIVIL MINUTES - GENERAL**

Case No. CV 16-3279 PSG (JCx)

Date July 15, 2016

Title Charles Kinney v. David Marcus, *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 Case**

On May 18, 2016, the Court ordered Plaintiff Charles Kinney to show cause why his complaint should not be dismissed for failure to state a claim. Dkt. #36. Plaintiff responded on June 8, 2016. Dkt. #47. After considering Plaintiff's response, the Court finds that he has failed to meaningfully address the Court's concerns. The Court therefore DISMISSES the complaint.

**I. Background**

On March 14, 2016, Plaintiff filed suit against Defendants David Marcus, Eric Chomsky,

and Michele R. Clark in the Northern District of California. Dkt. #1. Plaintiff brings three causes of action—two based on Defendants’ allegedly improper collection efforts under the Fair Debt Collection Practices Act (FDCPA), and one seeking the withdrawal of the reference in Defendant Clark’s 2010 bankruptcy. *Compl.* ¶¶ 47–81. The case was assigned to this Court after the Northern District of California granted Defendants’ motion to transfer. Dkts. #8, 29, 32, 34–35.

After reviewing the complaint, the Court was not convinced that it satisfied Federal Rule of Civil Procedure 8. The Court therefore ordered Plaintiff to show cause (“OSC”) why the Court should not *sua sponte* dismiss it. Dkt. #36. Kinney subsequently responded to the OSC. Dkt. #47.

## II. Legal Standard

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*).

### III. Discussion

In its OSC, the Court explained that Plaintiff “has a long history of filing meritless, frivolous, and harassing litigation against” Defendants, and that the complaint in this case “is consistent with [Plaintiff]’s previous filings—it is conclusory, redundant, confusing, and implausible.” Dkt. #36. The Court ordered Plaintiff to explain why his complaint states claims upon which relief can be granted. *Id.*

The vast majority of Plaintiff’s opposition brief consists of conclusory, vague, confusing, and redundant arguments about why Defendants and others have allegedly wronged Plaintiff, *OSC Opp.* 1–8, which is wholly unresponsive to the Court’s OSC. Plaintiff offers only two short paragraphs in response to the Court’s concern regarding the sufficiency of his complaint: The “verified” allegations of the complaint satisfy FRCP 8 as to a FDCPA cause of action. As Judge Gutierrez concedes, all that is necessary is a “short and plain statement of the claim showing that the pleader is entitled to relief” [Dk #36, pg. 1].

Judge Gutierrez’s comments about plaintiff’s disputed status as a “vexatious litigant” (which was recently appealed) and the Judge’s belief that the complaint is “conclusory, redundant, confusing, and implausible” are

evidence of information and details that this Judge has obtained from “extrajudicial sources”. That requires self-recusal of this Judge under the *Grinnell* case noted herein. *Id.* 8.

Nothing presented in these two paragraphs persuades the Court that Plaintiff has stated a claim for relief that is plausible. Although Plaintiff is correct that he only needs to offer a “short and plain statement of the claim showing that the pleader is entitled to relief” to satisfy Rule 8(a)(2), he completely fails to address the Court’s concern that the “conclusory, redundant, confusing, and implausible” allegations in his complaint do not satisfy this standard. The Court thus sees no reason to alter its previous determination that the complaint fails to state any claim upon which relief can be granted and should be dismissed *sua sponte*. See *Haddock v. Countrywide Bank, NA*, No. CV146452PSGFFMX, 2015 WL 9257316, at \*25 (C.D. Cal. Oct. 27, 2015); *Membreno v. Fu Wei*, No. 2:15-cv-06322-ODW (RAOx), 2015 WL 5567763, at \*1 (C.D. Cal. Sept. 22, 2015).<sup>1</sup>

The Court also sees no reason to grant leave to amend. “Generally, [Federal Rule of Civil Procedure] 15 advises the court that ‘leave shall be freely given when justice so requires.’ This policy is ‘to be applied with extreme liberality.’” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (per curiam) (quoting *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 712 (9th Cir. 2001)). The Court, however, may deny leave to amend if a plaintiff has repeatedly failed to cure deficiencies or if amendment would be futile. See *Nat’l Council of*

*La Raza v. Cegavske*, 800 F.3d 1032, 1041–42 (9th Cir. 2015). As noted, Plaintiff has a long history of filing meritless litigation against Defendants, and his opposition brief in this case gives the Court no confidence that Plaintiff's complaint can be saved by amendment. The Court thus believes that amendment would be futile.

#### IV. Conclusion

The Court therefore *SUA SPONTE* DISMISSES the complaint WITHOUT LEAVE TO AMEND. The case is now closed.

**IT IS SO ORDERED.**

Fn. 1 Plaintiff's arguments regarding recusal were addressed in a previous order. *See* Dkt. #52 (July 11, 2016 Order).

**SUPPLEMENTAL APPENDIX SK**

Case 2:16-cv-03279-PSG-JC Dk 56 Filed 07/27/16

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

Charles Kinney  
PLAINTIFF(S)

v.

David Marcus, et al  
DEFENDANT(S).

CASE NUMBER:  
CV116-3279 PSG (JCx)

**ORDER TO STRIKE ELECTRONICALLY  
FILED DOCUMENT(S)**

The Court hereby **ORDERS** the documents listed below be **STRICKEN** for failure to comply with the Court's Local Rules, General Orders, and/or Case Management Order, as indicated:

*Date Filed* \_\_7/25/16\_\_

*Doc. No.* \_\_54\_\_

*Title of Document* \_Motion to vacate, motion to amend & or request\_\_

\_\_ Document submitted in the wrong case

\_\_ Incorrect document is attached to the docket entry

\_\_ Document linked incorrectly to the wrong document/docket entry

\_\_ Incorrect event selected. Correct event is

☐ Case number is incorrect or missing  
☒ Hearing information is missing, incorrect, or not timely  
☐ Local Rule 7.1-1 No Certification of Interested Parties and/or no copies  
☐ Case is closed  
☐ Proposed Document was not submitted as separate attachment  
☐ Title page is missing  
☐ Local Rule 56-1 Statement of uncontroverted facts and/or proposed judgment lacking  
☐ Local Rule 56-2 Statement of genuine disputes of material fact lacking  
☐ Local Rule 7-19.1 Notice to other parties of ex parte application lacking  
☐ Local Rule 11-6 Memorandum/brief exceeds 25 pages  
☐ Local Rule 11-8 Memorandum/brief exceeding 10 pages shall contain table of contents  
☒ Other: The hearing date selected was closed on 7/5/16 as to new motions only. Failure to comply with L.R. 5-4.5 Re: Mandatory Chambers.

Dated: 7/27/16  
By: Philip S. Gutierrez  
U.S. District Judge

*cc: Assigned District and/or Magistrate Judge*

**SUPPLEMENTAL APPENDIX SL**

Case 3:16-cv-02160-LB Dk 37 Filed 07/27/16

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**RELATED CASE ORDER**

A Motion for Administrative Relief to Consider Whether Cases Should be Related or a *Sua Sponte* Judicial Referral for Purpose of Determining Relationship (Civil L.R. 3-12) has been filed. The time for filing an opposition or statement of support has passed.

As the judge assigned to case  
3:16-cv-01260-LB Kinney v. Marcus

I find that the more recently filed case(s) that I have Initialed below are related to the case assigned to me, and such case(s) shall be reassigned to me. Any cases listed below that are not related to the case assigned to me are referred to the judge assigned to the next-earliest filed case for a related case determination.

Case 16-cv-02018-MEJ      Kinney v. Takeuchi      LB

**ORDER**

The parties are instructed that all future filings in any reassigned case are to bear the initials of the newly assigned judge immediately after the case number. Any case management conference in any reassigned case will be rescheduled by the Court.



The parties shall adjust the dates for the conference, disclosures and report required by FRCivP 16 and 26 accordingly. Unless otherwise ordered, any dates for hearing noticed motions are vacated and must be re- noticed by the moving party before the newly assigned judge; any deadlines set by the ADR Local Rules remain in effect; and any deadlines established in a case management order continue to govern, except dates for appearance in court, which will be rescheduled by the newly assigned judge.

Dated July 27, 2016                s/            
Laurel Beeler  
USMagistrate Judge

# **SUPPLEMENTAL APPENDIX SM**

Case 3:16-cv-02160-LB Dk 40 Filed 08/04/16

## **UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA**

### **AMENDED RELATED CASE ORDER**

A Motion for Administrative Relief to Consider Whether Cases Should be Related or a *Sua Sponte* Judicial Referral for Purpose of Determining Relationship (Civil L.R. 3-12) has been filed. The time for filing an opposition or statement of support has passed.

As the judge assigned to  
case 3:14-cv-02187-LB Kinney v. Chomsky

I find that the more recently filed case(s) that I have Initialed below are related to the case assigned to me, and such case(s) shall be reassigned to me. Any cases listed below that are not related to the case assigned to me are referred to the judge assigned to the next-earliest filed case for a related case determination.

Case 16-cv-01260-LB	Kinney v. Marcus	LB
Case 16-cv-02018-LB	Kinney v. Takeuchi	LB

### **ORDER**

The parties are instructed that all future filings in any reassigned case are to bear the initials of the newly assigned judge immediately after the case number. Any case management conference in any

reassigned case will be rescheduled by the Court. The parties shall adjust the dates for the conference, disclosures and report required by FRCP 16 and 26 accordingly. Unless otherwise ordered, any dates for hearing noticed motions are vacated and must be re-noticed by the moving party before the newly assigned judge; any deadlines set by the ADR Local Rules remain in effect; and any deadlines established in a case management order continue to govern, except dates for appearance in court, which will be rescheduled by the newly assigned judge.

Dated Aug. 4, 2016            s/        
Laurel Beeler  
US Magistrate Judge

**SUPPLEMENTAL APPENDIX SN**

Case 3:16-cv-02160-LB Dk 41 Filed 08/04/16

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**AMENDED RELATED CASE ORDER**

A Motion for Administrative Relief to Consider Whether Cases Should be Related or a *Sua Sponte* Judicial Referral for Purpose of Determining Relationship (Civil L.R. 3-12) has been filed. The time for filing an opposition or statement of support has passed.

As the judge assigned to  
case 3:14-cv-02187-LB Kinney v. Chomsky

I find that the more recently filed case(s) that I have Initialed below are related to the case assigned to me, and such case(s) shall be reassigned to me. Any cases listed below that are not related to the case assigned to me are referred to the judge assigned to the next-earliest filed case for a related case determination.

Case 16-cv-01260-LB	Kinney v. Marcus	LB
Case 16-cv-02278-HSG	Kinney v. Gutierrez	LB

**ORDER**

The parties are instructed that all future filings in any reassigned case are to bear the initials of the newly assigned judge immediately after the case

number. Any case management conference in any reassigned case will be rescheduled by the Court. The parties shall adjust the dates for the conference, disclosures and report required by FRCivP 16 and 26 accordingly. Unless otherwise ordered, any dates for hearing noticed motions are vacated and must be re-noticed by the moving party before the newly assigned judge; any deadlines set by the ADR Local Rules remain in effect; and any deadlines established in a case management order continue to govern, except dates for appearance in court, which will be rescheduled by the newly assigned judge.

Dated Aug. 4, 2016     \_\_\_s/\_\_\_\_\_  
                                  Laurel Beeler  
                                  US Magistrate Judge