NOT FOR PUBLICATION

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DELMER M. ACKELS, Plaintiff-Appellant, v. RANDY M. OLSEN, In His Official Capacity, the State of Alaska; GOLDRICH MINING COMPANY, FKA Squaw Gold Mining Company, Defendants-Appellees.	No. 17-35707 D.C. No. 4:16-cv-00026-TMB MEMORANDUM*

Appeal from the United States District Court
for the District of Alaska
Timothy M. Burgess, Chief Judge, Presiding

Submitted February 13, 2018**

Before: LEAVY, FERNANDEZ, and MURGUIA, Circuit Judges.

Delmer M. Ackels appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action arising from a mining dispute. We have jurisdiction under 28 U.S.C. § 1291. Ackels assigns as error the district court's

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

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

Appendix A

orders denying his motions for default judgment, and we review for an abuse of discretion. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). We affirm.

The district court did not abuse its discretion in denying Ackels's motions for default judgment because several factors supported the denial of default. *See* Fed. R. Civ. P. 55; *Eitel*, 782 F.2d at 1471-72 (setting forth factors for determining whether to enter default judgment).

The district court did not abuse its discretion by denying Ackels's motion to submit a CD-R photo disk as an exhibit to his complaint. *See FTC v. Gill*, 265 F.3d 944, 957 (9th Cir. 2001) (district court has broad discretion to control its docket).

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

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

DELMER M. ACKELS,

Plaintiff,

vs.

GOLDRICH MINING COMPANY, FORMERLY SQUAW GOLD MINING COMPANY,

Defendants.

Case No. 4:16-cv-00026-TMB

JUDGMENT IN A CIVIL CASE

___ **JURY VERDICT.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

_X_ **DECISION BY COURT.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that this case is dismissed with prejudice for lack of subject matter jurisdiction.

APPROVED:

s/TIMOTHY M. BURGESS
TIMOTHY M. BURGESS
United States District Judge

August 15, 2017
Date

LESLEY K. ALLEN
Clerk of Court

Jmt - TMB CV- rev. 9-21-16

Appendix B

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DELMER M. ACKELS,

Plaintiff-Appellant,

v.

RANDY M. OLSEN, In His Official Capacity, the State of Alaska; GOLDRICH MINING COMPANY, FKA Squaw Gold Mining Company,

Defendants-Appellees.

No. 17-35707

D.C. No. 4:16-cv-00026-TMB
District of Alaska,
Fairbanks

ORDER

Before: LEAVY, FERNANDEZ, and MURGUIA, Circuit Judges.

Ackels's motions to amend the petition for panel rehearing and petition for rehearing en banc (Docket Entry Nos. 17 and 19) are granted.

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.

Ackels's petition for panel rehearing and petition for rehearing en banc (Docket Entry Nos. 16 and 18) are denied.

No further filings will be entertained in this closed case.

Appendix C

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

DELMER M. ACKELS,

Plaintiff - Appellant,

v.

RANDY M. OLSEN, In His Official Capacity, the State of Alaska and GOLDRICH MINING COMPANY, FKA Squaw Gold Mining Company,

Defendants - Appellees.

No. 17-35707

D.C. No. 4:16-cv-00026-TMB
U.S. District Court for Alaska, Fairbanks

MANDATE

The judgment of this Court, entered February 23, 2018, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Craig Westbrooke
Deputy Clerk
Ninth Circuit Rule 27-7

Appendix D

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

DELMER M. ACKELS, Plaintiff, vs. GOLDRICH MINING COMPANY, FORMERLY SQUAW GOLD MINING COMPANY, Defendant.	Case No. 4:16-cv-00026-TMB

ORDER DENYING MOTION FOR ATTORNEY FEES

Following the dismissal of this case for lack of subject matter jurisdiction,[1] Goldrich Mining Company timely moved for an award of $25,523.06 in attorney's fees from self-represented plaintiff Delmer Ackels.[2] Goldrich relies on 42 U.S.C. § 1988(b), which permits a defendant who is the prevailing party in an action brought under 42 U.S.C. § 1983 to receive "a reasonable attorney's fee as part of the costs."[3] Section 1988, however, does not provide an independent grant of subject matter jurisdiction.[4] This means that when—as in this case—the

[1] Dkt. 59 at 13.

[2] Dkts. 63 & 64.

[3] 42 U.S.C. § 1988(b); *see also Fox v. Vice*, 563 U.S. 826, 833–36 (2011) (citations omitted).

[4] *Zambrano v. I.N.S.*, 282 F.3d 1145, 1150 (9th Cir. 2002) (*citing, e.g., Branson v. Nott*, 62 F.3d 287, 292–93 (9th Cir. 1995)).

Appendix E

Court does not have subject matter jurisdiction over the underlying § 1983 case, it also does not have any authority to award attorney's fees under § 1988.[5]

IT IS THEREFORE ORDERED:

1. The Motion for Attorney's Fees at Docket 63 is DENIED.

DATED at Anchorage, Alaska, this 28th day of February, 2018.

/s/ Timothy M. Burgess
TIMOTHY M. BURGESS
UNITED STATES DISTRICT JUDGE

[5] *See Branson*, 62 F.3d at 292–93 ("By itself, § 1988 does not provide the district court with jurisdiction to grant an attorney fee award where subject matter jurisdiction to hear the underlying § 1983 claim is lacking . . . ."); *Smith v. Brady*, 972 F.2d 1095, 1097 (9th Cir. 1992) (holding that "if the district court lacked jurisdiction over the underlying suit, 'it had no authority to award attorney's fees'" (quoting *Latch v. United States*, 842 F.2d 1031, 1033 (9th Cir. 1988))).

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

DELMER M. ACKELS,

Plaintiff,

vs.

THE HONORABLE RANDY M. OLSEN, IN HIS OFFICIAL CAPACITY, THE STATE OF ALASKA, GOLDRICH MINING COMPANY, FORMERLY SQUAW GOLD MINING COMPANY,

Defendants.

Case No. 4:16-cv-00026-TMB

ORDER ADDRESSING OUTSTANDING MOTIONS AND ORDER TO SHOW CAUSE

On August 1, 2016, Delmer M. Ackels, representing himself, filed a complaint under 42 U.S.C. § 1983.[1] There are 13 motions now ripe in this case, which the Court addresses in the general order of their filing.

BACKGROUND

In his complaint, Ackels alleges Judge Randy M. Olsen "improperly exercised his judicial authority" by acting outside his statutory authority in Alaska Superior Court case number 4FA-07-1131CI.[2] More specifically, Ackels alleges that the "Order in Aide of Final Judgement" and

[1] *See* Docket 1.

[2] Docket 1 at 2. Ackels refers to the case number as "4FA-11-3100CI" but this seems to be a typo, since case documents he references from this case are identified by case number "4FA-07-

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"Order Ejecting the Ackels from Goldrich's Mining Claims," which Judge Olsen issued July 29, 2009 (July 29 Orders) in Alaska Superior Court case number 4FA-07-01131CI, were unrelated to the jury verdict that occurred in that case seven months prior.[3] Ackels alleges that a hearing should have occurred before these orders were issued for the removal of "the Ackels themselves, all of their personal property, equipment, and structures, and their employees" from "all of Goldrich's mining claims, including but not limited to, No. 5 Below Upper Discovery on Big Creek."[4] He further alleges that this hearing should have been before the Alaska Department of Natural Resources (DNR), since it effected his right to be on property described in his DNR miscellaneous land use permit #9960.[5]

Ackels alleges Goldrich Mining Company Inc., formerly Little Squaw Gold Mining Co. Inc., took his personal and real property through the July 29 Orders without due process.[6] Further, Ackels alleges this amounts to an unconstitutional taking.[7]

1131CI" and he also references the case as "4FA-07-1131CI." *See, e.g.,* Docket 1-1, 1-2, 1-3; Docket 1 at 4, 6.

[3] Docket 1 at 4-5.

[4] Docket 1-1 at 1.

[5] Docket 1 at 3-6, 9-10, 17-19; Docket 1-4.

[6] Docket 1 at 2.

[7] Docket 1 at 12, 14-16.

Appendix F

OUTSTANDING MOTIONS

Motion for CD-R Photo Record to be Submitted

At Docket 3, Ackels moves to submit into this Court's record a CD-R disk containing photos of the real and personal property he claims were illegally taken by Goldrich Mining Company, formerly Little Squaw Gold Mining Company between August of 2009 and June of 2010. It seems this photo record was intended to be filed as Exhibit K to his complaint.[8]

For the reasons explained in greater detail below, the submission of this evidence is not necessary at this time and the Motion for CD-R Photo Record to be Submitted, at Docket 3, will be DENIED as moot.

Motion to Dismiss by Judge Olsen

At Docket 8, Judge Olsen requests to be dismissed as a defendant because of judicial immunity. He argues the only limitations to judicial immunity are non-judicial actions and actions taken in the complete absence of all jurisdiction, and that neither of these limitations apply.[9]

In his Complaint, Ackels does not allege that the acts at issue by Judge Olsen are any other than those Judge Olsen performed "in his official capacity."[10] And, in his Opposition, he does not

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[8] Docket 1 at 4 ¶ 9 ("See Exhibit K that shows pictures of the actual property Goldrich took in a 5 day forfeiture order which only provided a few days to move the property, a task that was both legally and logistically impossible").

[9] Docket 8 at 4 (citing *Harvey v. Waldron*, 210 F.3d 1008, 1012 (9th Cir. 2000)).

[10] Docket 1 at 2.

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argue that Judge Olsen acted in complete absence of *all* jurisdiction. Instead, his position is that, "Judge Olsen lacked jurisdiction when he denied Ackels of a hearing before he took action in denying Ackels of his property rights that are protected under the Fourteenth Amendment that guarantees due process."[11]

Rather than argue that Judge Olsen's alleged wrongdoing falls into one of the two exceptions to judicial immunity that Judge Olsen acknowledges in his motion to dismiss, Ackels maintains that judicial immunity does not apply to Judge Olsen because he is not seeking damages from him, he is only seeking declaratory or injunctive relief.[12] In his opposition, Ackels also argues that Judge Olsen has no immunity since his conduct clearly violated established constitutional rights of which a reasonable person would have known.[13] To support this position, he cites to cases that address the qualified immunity applicable to government officials who are not judicial officers.[14] Then, when he purports to cite to cases that pertain to the applicable law on judicial immunity, he cites to case law that predates the 1996 amendments to 42 U.S.C. §1983.[15]

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[11] Docket 12 at 10.

[12] Docket 12 at 6. *See* Docket 1 at 30 ¶ A.

[13] Docket 12 at 4-5.

[14] *Id.* (citing *Collier v. Dickinson*, 477 F.3d 1306 (11th Cir. 2007), which addresses the law applicable to executive-level officials at the Florida Department of Highway Safety & Motor Vehicles; citing *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), which addresses the law applicable to presidential aides; and citing *Saucier v. Katz*, 533 U.S. 194 (2001) which addresses the law applicable to a military police officer in an excessive force claim).

[15] *E.g., Maine v. Thiboutot*, 448 U.S. 1 (1980); *Ex parte Young*, 209 U.S. 123 (U.S. 1908) (although this case does not involve 42 U.S.C. § 1983); *Pierson v. Ray*, 386 U.S. 547 (1967).

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To Ackels's opposition, Judge Olsen replies that it is not clear from the face of his complaint what remedy he is seeking.[16] Judge Olsen references the first paragraph in Ackels prayer for relief:

> Defendant Judge Olsen is liable for appropriate relief for declaratory and injunction damages regarding unlawful and unconstitutional acts that are not supported by law that violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution under 42 U.S.C. § 1983.[17]

Next, Judge Olsen argues Ackels's lawsuit is precluded by the *Rooker-Feldman* doctrine, which states "a federal district court, 'as a court of original jurisdiction, has no authority to review the final determinations of a state court in judicial proceedings'" or constitutional challenges that are "inextricably intertwined" with issues already determined by a state court.[18] Under 28 U.S.C. § 1257, Ackels may only seek review of his appeal to the Alaska Supreme Court of Judge Olsen's decisions in 4FA-07-01131CI by appealing the Alaska Supreme Court's decision to the Supreme Court of the United States.[19]

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[16] Docket 19 at 2.

[17] Docket 1 at 30 ¶ A.

[18] Docket 19 at 2-4 (citing to *Worldwide Church of God v. McNair,* 805 F. 2d 888 (9th Cir. 1986); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983)); and *Lance v. Dennis*, 126 S. Ct. 1198 (2006); *Doe & Associates Law Offices v. Napolitano*, 252 F.3d 1026 (9th Cir. 2001)).

[19] Docket 19 at 3. 28 U.S.C. § 1257(a) provides:

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A. Standard of Review

This Court applies the "facial plausibility" pleading standard as analyzed by the Supreme Court in *Ashcroft v. Iqbal* to a motion to dismiss for failure to state a claim.[20] Under that standard, to survive a Rule 12(b)(6) motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim for relief that is plausible on its face.'"[21] In making this determination, the Court can consider "materials that are submitted with and attached to the Complaint," "unattached evidence on which the [C]omplaint 'necessarily relies'" and whose authenticity is not disputed, and "matters of public record" of which the Court can take judicial notice.[22]

The *Iqbal* plausibility standard requires "more than a sheer possibility" of entitlement to relief, though it need not rise to the level of probability.[23] "Threadbare recitals of the elements of

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> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

[20] 556 U.S. 662 (2009).

[21] *Id.* at 678 (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007)).

[22] *United States v. Corinthian Colleges*, 655 F.3d 984, 999 (9th Cir. 2011) (citing *Lee v. L.A.*, 250 F.3d 668, 688-89 (9th Cir. 2001)).

[23] *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556).

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a cause of action, supported by mere conclusory statements," are insufficient.[24] If the plaintiffs "have not nudged their claims across the line from conceivable to plausible, their complaint must be dismissed."[25] But "[w]hen there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief."[26] Making such a determination is "a context-specific task that requires the . . . court to draw on its judicial experience and common sense."[27] In conducting its review, the Court is mindful that it must liberally construe a self-represented plaintiff's pleadings and give the plaintiff the benefit of the doubt.[28]

B. Analysis

One of the cases Ackels cites to in his Complaint is *Pulliam v. Allen*.[29] In *Pulliam v. Allen*, the Supreme Court of the United States addressed the issue of whether a judicial officer acting in

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[24] *Id.* (citing *Twombly*, 550 U.S. at 555).

[25] *Twombly*, 550 U.S. at 570.

[26] *Iqbal*, 556 U.S. at 679.

[27] *Id.* (citation omitted).

[28] *See Hebbe v. Plier*, 627 F.3d 338, 342 (9th Cir. 2010) ("[O]ur 'obligation' remains [after *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)], 'where the petitioner is *pro se*, particularly in civil rights cases, to construe the pleadings liberally and to afford the petitioner the benefit of any doubt.'" (citation omitted)); *Pagayon v. Holder*, 675 F.3d 1182, 1188 (9th Cir. 2011) ("We are particularly careful to give claims raised by *pro se* petitioners their most liberal construction." (citation omitted)).

[29] Docket 1 at 19 ¶ 70.

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her judicial capacity should be immune from prospective injunctive relief.[30] The facts in *Pulliam* involved the constitutionality of a Virginia state magistrate imposing bail on persons arrested for nonjailable offenses under Virginia law, and then incarcerating those defendants who could not meet their bail.[31] The Court explained the public's interest in upholding the doctrine of judicial immunity:

> It is essential in all courts that the judges who are appointed to administer the law should be permitted to administer it under the protection of the law, independently and freely, without favor and without fear. This provision of the law is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence, and without fear of consequences.[32]

At the same time, the Court explained the limits to judicial immunity under the common law:

> We never have had a rule of absolute judicial immunity from prospective relief, and there is no evidence that the absence of that immunity has had a chilling effect on judicial independence. None of the seminal opinions on judicial immunity, either in England or in this country, has involved immunity from injunctive relief. No Court of Appeals ever has concluded that immunity bars injunctive relief against a judge. . . . At least seven Circuits have indicated affirmatively that there is no immunity bar to such relief, and in situations where in their judgment an injunction against a judicial officer was necessary to prevent irreparable injury to a petitioner's constitutional rights, courts have granted that relief.[33]

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[30] *Pulliam v. Allen*, 466 U.S. 522, 528 (1984).

[31] *Id.* at 524-25.

[32] *Pulliam v. Allen*, 466 U.S. 522, 532 (1984) (citing *Scott v. Stansfield*, 3 L.R.Ex., at 223, quoted in *Bradley v. Fisher*, 13 Wall. 335, 350, n., 20 L.Ed. 646 (1872)).

[33] *Pulliam v. Allen*, 466 U.S. 522, 536–37 (1984).

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Ultimately, the Court decided:

> We remain steadfast in our conclusion, nevertheless, that Congress intended § 1983 to be an independent protection for federal rights and find nothing to suggest that Congress intended to expand the common-law doctrine of judicial immunity to insulate state judges completely from federal collateral review. We conclude that judicial immunity is not a bar to prospective injunctive relief against a judicial officer acting in her judicial capacity.[34]

If the case law in *Pulliam* was the final word on the law applicable to this case, Judge Olsen's Motion to Dismiss would not be granted. But, *Pulliam* was partially abrogated by statute when Congress enacted the Federal Courts Improvement Act (FCIA) in 1996.[35] FCIA amended 42 U.S.C. § 1983 so that "injunctive relief shall not be granted" in an action brought against "a judicial officer for an act or omission taken in such officer's judicial capacity ... unless a declaratory decree was violated or declaratory relief was unavailable."[36]

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[34] *Pulliam v. Allen*, 466 U.S. 522, 541–42 (1984).

[35] Pub. L. No. 104-317, 110 Stat. 3847 (1996).

[36] As a result of Section 309(c) of FCIA, "Prohibition Against Injunctive Relief Against A Judicial Officer" 42 U.S.C. § 1983 states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, **except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.**

(emphasis added).

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This means the only way judicial immunity could not apply to Judge Olsen is if Judge Olsen violated a declaratory decree, declaratory relief was unavailable to Ackels, or judicial immunity did not apply to Judge Olsen in the first place. Judicial immunity would only not apply to Judge Olsen if, as explained in the Motion to Dismiss at Docket 8, at issue were Judge Olsen's non-judicial actions or actions taken in the complete absence of all jurisdiction.

Ackels does not allege Judge Olsen violated a declaratory decree. He alleges that Judge Olsen violated Ackels's constitutional right to due process by issuing the July 29 Orders without a hearing. Ackels alleges a hearing should have occurred because the July 29 Orders exceeded the scope of decisions previously made in the jury trial in 4FA-07-1131CI, and Alaska Statutes indicate a hearing should have first occured before DNR since the July 29 Orders effected Ackels right to be on property described in a DNR permit issued July 17, 2009, after the jury reached its decision December 12, 2008.[37]

These allegations that Judge Olsen misinterpreted and misapplied the law – and in so doing acted in a manner that exceeded his authority -- is not the same as alleging that Judge Olsen acted in the complete absence of jurisdiction. This is because disagreeing with how a judge interprets the law and applies it to a case is different from arguing that a judge never had it within his power to decide a case or issue a decision in the first place.[38]

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[37] *See* Dockets 1, 1-4, 1-6, 1-7, & 12.

[38] BLACK'S LAW DICTIONARY (10th ed. 2014) (defining "jurisdiction" as "A court's power to decide a case or issue a decree").

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Lastly, Ackels does not allege anything to be at issue other than Judge Olsen's judicial rulings and acknowledges in his Complaint that declaratory relief was available to him. While he did not win his appeal to the Alaska Supreme Court, Ackels acknowledges that he was able to appeal Judge Olsen's decisions to that Court.[39]

C. Conclusion

Accordingly, the Court finds judicial immunity to apply. The Court will GRANT the Motion to Dismiss at Docket 8 and Judge Olsen will be dismissed, with prejudice, as a defendant in this case.

Motions Regarding Default Judgment Against Goldrich

At Docket 11, Ackels filed a Motion for Default Judgment; and, at Dockets 17 and 18, respectively, Ackels filed another Motion for Entry of Default Judgment and a Motion for Entry of Default against Goldrich Mining Company (Goldrich). Ackels alleges that he should be awarded a judgment by default because Goldrich failed to file an answer within the 21 day timeframe under Rule 12 of the Federal Rules of Civil Procedure.[40]

At Docket 13, Goldrich opposes Ackels's Motion for Default for the substantive reason that "[l]ike the Complaint filed in this action, [it] is frivolous[,]" and for more detailed procedural reasons. At Docket 23, Goldrich opposes Ackels's motions at Dockets 17 and 18 by moving to

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[39] Docket 1 at 4, 11.

[40] Docket 11 at 1-2, Docket 16 at 2.

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have them, the Affidavit in Support of Motion for Entry of Default at Docket 16-1, and the Amended Notice of Motion for Default Judgment at Docket 16, struck from the record. Goldrich alleges these documents should be struck from the record because "Ackels has filed motions without attempting to comply with the court rules."[41] Goldrich gives no basis for this conclusion and Ackels seems to have filed these additional documents to address the procedural deficiencies Goldrich noted in his opposition at Docket 13. Regardless of Ackels's motivations, Goldrich offers no additional reasons why these documents should be struck from the record. Accordingly, Goldrich's Motion to Strike, at Docket 23, will be DENIED.

The Court may consider the following factors in determining whether to enter default judgment:

> (1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.[42]

Because there has to be a basis for relief, and this Court has to have jurisdiction to issue a judgment on the merits, Ackels's motions at Dockets 11, 17, 18, 27, and 31, regarding a finding of default by Goldrich, will be DENIED. The Court addresses its concerns regarding deficiencies in Ackels's case in the explanation of its order to show cause below.

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[41] Docket 24 at 4.

[42] *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986) (citing 6 Moore's Federal Practice ¶ 55-05[2], at 55-24 to 55-26).

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Motions Regarding Goldrich's Answer to Ackels's Complaint

At Docket 20, Goldrich moves to strike plaintiff's opposition to Goldrich's Answer. This motion will be GRANTED because there is no basis for plaintiff to believe this filing to be procedurally proper. Accordingly, Ackels's Motion to Amend Plaintiff's Reply to Defendant Goldrich's Answers at Docket 35, which seeks to change the title of its "Opposition" to Goldrich's answers to a "Reply" will also be DENIED as moot.

At Docket 30, Ackels filed a motion to strike Goldrich's answer for being untimely. This motion will be DENIED, for the legal rationale that Goldrich correctly cites, "Cases should be decided upon their merits whenever reasonably possible."[43]

At Docket 41, Ackels moved to Strike Goldrich's Amended Answer based on Federal Rule of Civil Procedure 15(a)(1)(A) "A party may amend its pleading once as a matter of course within 21 days after serving it." Goldrich served its Amended Answer on November 8, 2016, which is within 21 days after it served its first Answer on October 18.[44] Accordingly, Ackels's motion at Docket 41 will be DENIED.

Motion for Order to Show Cause

At Docket 25, Goldrich moves the Court for an order to show cause why Ackels should not be held in contempt of court for having the dates wrong on his Affidavit in Support of Motion for Entry of Default at Docket 16-1. This inconsistency is now of record. Given Ackels's

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[43] Docket 13 at 2 (citing *Eitel v. McCool*, 782 F.2d 1470, 1472 (9th Cir. 1986)).

[44] Docket 32 at 40; Docket 10 at 4.

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explanation at Docket 29 and that no prejudice occurred to Goldrich, the motion for an order to show cause, at Docket 25, will be DENIED.

ORDER TO SHOW CAUSE

In Judge Olsen's reply, at Docket 19, the idea that the *Rooker-Feldman* doctrine might apply to this case was first introduced. Ackels was not given the opportunity to respond to this idea and Goldrich has not argued the applicability of this doctrine. If the *Rooker-Feldman* doctrine applies, this Court does not have jurisdiction; and, "[i]f the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action."[45]

The Court would like Ackels to explain why what he is asking of this Court is not precluded by the *Rooker-Feldman* doctrine. As explained in Docket 19 beginning at page 2, under the *Rooker-Feldman* doctrine, a federal district court has no authority to review the final decisions of a state court, and this is understood to occur when there is an inextricable intertwining of the issues resolved by the state court to the constitutional challenge brought to the federal district court.

The *Rooker-Feldman* doctrine developed out of the Full Faith and Credit Act's[46] requirement that a federal court give preclusive effect to a state-court judgment, but it does not "stop a district court from exercising subject-matter jurisdiction simply because a party attempts to litigate in federal court a matter previously litigated in state court."[47] "If a federal plaintiff

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[45] Fed.R.Civ.P. (12)(h)(3).

[46] *See* 28 U.S.C. § 1738.

[47] *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 293 (2005).

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present[s] some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party . . . , then there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion."[48]

Accordingly, **Ackels is on notice that if he fails to show cause why the *Rooker-Feldman* doctrine does not apply, his case will be dismissed for lack of jurisdiction and failure to state a claim upon which relief may be granted.**

IT IS THEREFORE ORDERED:

1. The Motion to Dismiss at Docket 8 is GRANTED. The Honorable Randy M. Olsen is dismissed with prejudice as a defendant in this case.
2. Ackels's Motion for CD-R Photo Record to be Submitted at Docket 3, Motion to Amend Affidavit in Support of Motion for Entry of Default at Docket 31, and Motion to Amend Plaintiff's Reply to Defendant Goldrich's Answers at Docket 35, are DENIED as moot.
3. Ackels's Motion for Default Judgment at Docket 11, Motion for Entry of Default Judgment at Docket 17, Motion for Entry of Default against Goldrich at Docket 18, Motion to Strike Defendant's Opposition to Motion for Default Judgment at Docket 27, Motion to Strike the Defendant's Answer at Docket 30, and Plaintiff's Motion to Strike Defendant Goldrich's Amended Answer at Docket 41, are DENIED.

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[48] *Id.* (citing *GASH Assocs. v. Rosemont,* 995 F.2d 726, 728 (7th Cir. 1993); accord *Noel v. Hall,* 341 F.3d 1148, 1163–1164 (9th Cir. 2003)).

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4. Goldrich's Motion to Strike, at Docket 23, and Motion for an Order to Show Cause, at Docket 25, are DENIED.
5. Goldrich's Motion to Strike Plaintiff's Opposition to Goldrich's Answer, at Docket 20, is GRANTED in part: Plaintiff's Opposition to Defendant Goldrich's Answers, at Docket 15 and 15-1 is stricken from the record; and DENIED in part: no attorneys fees or costs are awarded Goldrich.
6. Ackels is ordered to show cause on or before March 3, 2017 why the *Rooker-Feldman* doctrine does not bar him from stating a claim upon which relief may be granted and causing this Court to dismiss his case with prejudice.
7. Goldrich is given ten (10) days after Ackels's filing to file a response.
8. Ackels has seven (7) days after the filing of Goldrich's response to file a reply.
9. The parties are discouraged from filing any more Motions to Strike.

DATED at Anchorage, Alaska, this 7th day of February, 2017.

/s/ Timothy M. Burgess
TIMOTHY M. BURGESS
UNITED STATES DISTRICT JUDGE

Appendix F

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

DELMER M. ACKELS,

Plaintiff,

vs.

GOLDRICH MINING COMPANY, FORMERLY SQUAW GOLD MINING COMPANY,

Defendant.

Case No. 4:16-cv-00026-TMB

ORDER ADDRESSING FILINGS SUBSEQUENT TO ORDER TO SHOW CAUSE

On February 2, 2017, the Court ordered self-represented Plaintiff Delmer M. Ackels to show cause why the *Rooker-Feldman* doctrine does not bar him from stating a claim upon which relief may be granted.[1] Ackels, accordingly, timely filed a Memorandum to Show Cause on February 27, 2017, to which Goldrich Mining Company timely filed a response on March 6, 2017, and Ackels timely filed a reply on March 13, 2017.[2] Ackels then filed a motion to amend his complaint when he realized through the briefing on the *Rooker-Feldman* doctrine that he had forgotten to assert diversity jurisdiction.[3] The Court addresses these filings in turn.

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[1] Docket 48 at 16. Goldrich was given ten (10) days after Ackels's filing to file a response; Ackels was given seven (7) days after the filing of Goldrich's response to file a reply. *Id.*

[2] *See* Dockets 49, 52, & 54.

[3] *See* Docket 55.

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Ackels maintains that the Rooker-Feldman Doctrine "does not apply to this case because Mr. Ackels was never allowed a hearing before Mr. Ackels property was unreasonably taken by Goldrich. This court can review violations of 'procedural due process' that was [sic] lacking in this case."[4] Ackels misunderstands the applicability of the *Rooker-Feldman* doctrine to be limited to only cases where "the federal plaintiff had a full and fair opportunity to raise the claim in the state proceedings."[5] For this and the reasons explained in greater detail below, Ackels does not show cause why, in applying the *Rooker-Feldman* doctrine, the Court should not dismiss this case for lack of jurisdiction—nor does his attempt to amend his complaint cure this deficiency.

Order to Show Cause

Ackels contends that since his property was taken without a hearing a "gross procedural error" occurred in his state court decision and therefore the *Rooker-Feldman* doctrine does not apply to this case.[6] To support his position, Ackels cites to *Twin City Fire Ins. Co. v. Adkins,* 400 F.3d 293, 301 (6th Cir. 2005), and *In re Sun Valley Foods Co.*, 801 F.2d 186 (6th Cir. 1986),[7] neither of which is binding precedent on this Court.[8]

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[4] Docket 49 at 6.

[5] *Id.* at 8.

[6] *Id.*

[7] *Id.*

[8] *See Farrakhan v. Gregoire*, 590 F.3d 989, 1000 (9th Cir. 2010) ("Out-of-circuit cases are not binding on this Court and therefore do not constitute 'controlling authority.'"), *overruled on other grounds*, 623 F.3d 990 (9th Cir. 2010) (en banc).

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Nor are *Twin City Fire* or *In re Sun Valley Foods Co.* persuasive. To begin with, *In re Sun Valley Foods Co.* explicitly contradicts Ackels's interpretation of the *Rooker-Feldman* doctrine:

> **Review of final determinations in state judicial proceedings can be obtained only in the United States Supreme Court. A United States district court "has no authority to review final judgments of a state court in judicial proceedings." This is true, even though the state court judgment may have been erroneous.**[9]

Twin City Fire involves a situation different from this case and therefore similarly does not support Ackels's position. The parties in *Twin City Fire* had not previously litigated any issues in state court. Instead, they had their initial trial court matter heard by a federal district court pursuant to that court's diversity jurisdiction. *Twin City Fire* thus did not involve a state court's prior decision involving the same parties and, therefore, *Rooker-Feldman* doctrine did not apply. As the Sixth Circuit explained:

> This doctrine is inapposite in the present case, however, because *Rooker/Feldman* "does not apply to bar a suit in federal court brought by a party that was not a party in the preceding action in state court." *United States v. Owens,* 54 F.3d 271, 274 (6th Cir.1995); *see also Hood v. Keller,* 341 F.3d 593, 597 (6th Cir. 2003) ("**The purpose of the doctrine is to prevent a party losing in state court . . . from seeking what in substance would be appellate review of the state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights.**") (quotation marks omitted).[10]

Ackels next looks for support in Justice Scalia's and Justice Brennan's concurring opinions in *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1 (1987).[11] The principal issue in *Pennzoil* was whether

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[9] *In re Sun Valley Foods Co.*, 801 F.2d at 189 (citations omitted) (emphasis added).

[10] *Twin City Fire,* 400 F.3d at 297–98 (emphasis added).

[11] Docket 49 at 8–9.

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a federal district court could lawfully enjoin a plaintiff who had prevailed in a state court trial from executing the judgment in its favor while appeal of that judgment was pending in a state appellate court.[12] Based on principles of comity, the majority opinion in *Pennzoil* found that the federal district court and court of appeals should have deferred to the state court and should not have exercised jurisdiction and heard the merits of the *Pennzoil* case.[13] The concurring opinions Ackels references found the *Rooker-Feldman* doctrine to not bar the federal court's jurisdiction in *Pennzoil* because they did not consider the issue before the court to involve the reasons the state court issued the Texas judgment.[14] Here, by contrast, Ackels specifically wishes to challenge the

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[12] Pennzoil, 481 U.S. at 3.

[13] *Id.* at 17–18.

[14] Scalia's opinion provides,

> I write separately only to indicate that I do not believe that the so-called *Rooker-Feldman* doctrine deprives the Court of jurisdiction to decide Texaco's challenge to the constitutionality of the Texas stay and lien provisions. In resolving that challenge, **the Court need not decide any issue either actually litigated in the Texas courts or inextricably intertwined with issues so litigated.**

Id. at 18 (emphasis added).

Brennan's opinion provides:

> In *Rooker* and *Feldman,* the Court held that lower federal courts lack jurisdiction to engage in appellate review of state-court determinations. In this case, however, **Texaco filed the § 1983 action** only to protect its federal constitutional right to a meaningful opportunity for appellate review, **not to challenge the merits of the Texas suit.** Texaco's federal action seeking a stay of judgment pending appeal is therefore an action " 'separable from and collateral to' " the merits of the state-court judgment.

Id. at 21 (emphasis added).

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reasons the state court issued the judgment against him. Hence, the *Pennzoil* case involved a different situation than the case at hand and the outcomes Ackels references are not analogous.

Indeed, Ackels openly seeks to ask this Court to reconsider the state court's decision to award Ackels's property to Goldrich based on the Alaska Court System violating his federal right to due process. He argues,

- This court has subject matter jurisdiction to decide on "procedural due process" errors in State cases.[15]
- Because Judge Olsen arbitrarily voided Ackels mining permit Mr. Ackels with his wife Gail and a mine worker was forced to leave everything behind.[16]
- The court records are the proof that Mr. Ackels "procedural due process was violated."[17]
- [I]f the parties are still litigating on the merits and the taking of Mr. Ackels property, then why did this court den[y] Mr. Ackels of his rights of entering his evidence in the complaint of his CD-R photo record?[18]
- The "inextricably intertwined" or res judicata does not apply to Mr. Ackels case because he did not have a full and fair opportunity to raise the claim in the state proceeding when Mr. Ackels was denied of a hearing before his property was taken[.][19]

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[15] Docket 49 at 3.

[16] *Id.* at 5.

[17] *Id.*

[18] *Id.* at 6–7.

[19] *Id.* at 9–10.

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Consequently, Ackels has failed to show cause why the *Rooker-Feldman* doctrine does not apply. He, instead, shows that this case falls squarely under the *Rooker-Feldman* doctrine. The *Rooker-Feldman* doctrine states "a federal district court, 'as a court of original jurisdiction, has no authority to review the final determinations of a state court in judicial proceedings'" or constitutional challenges that are "inextricably intertwined" with issues already determined by a state court.[20] By seeking to challenge the state court's procedure, Ackels brings a constitutional challenge that is "inextricably intertwined" with issues he already had determined by the Alaska Court System. Thus, the *Rooker-Feldman* doctrine will be applied to this case and cause the Court to decline to exercise jurisdiction and dismiss the case accordingly.

Ackels's "Discussion On This Court's Orders"

Ackels's Memorandum additionally seeks clarification regarding why the Court denied his motion for default judgment. The Court liberally construes Ackels's postulations as a motion for reconsideration and generously addresses them below.

A. Application of *Eitel v. McCool*

Ackels does not understand why the Court denied his motion for default judgment against Goldrich by using Goldrich's cited case, *Eitel v McCool,* 782 F. 2d 1470 (9th Cir. 1986).[21] Ackels misunderstands an entry of default to be the same as an entry of a default judgment and therefore

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[20] Docket 48 at 5 (citing Docket 19 at 2–4 (Judge Olsen's Reply to Opposition to Motion to Dismiss); *Worldwide Church of God v. McNair,* 805 F.2d 888 (9th Cir. 1986); *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462 (1983); *Lance v. Dennis,* 126 S. Ct. 1198 (2006); *Doe & Associates Law Offices v. Napolitano,* 252 F.3d 1026 (9th Cir. 2001)).

[21] Docket 49 at 11.

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misunderstands the outcome in *Eitel.*[22] Additionally, Ackels seems to think the Court cited *Eitel* because the parties in *Eitel* were in a similar situation as the parties in this case and, therefore, the same Court decision that he understood to have occurred in *Eitel* should occur in this case.

Ackels understands the *Eitel* case as being "not litigated on the merits when a default judgement was proper."[23] But the Ninth Circuit Court of Appeals found in *Eitel* "that the district court did not abuse its discretion in **denying** the default judgment."[24] The case in *Eitel* was not litigated on the merits not because default judgment was proper, but because the parties in *Eitel* had stipulated to a dismissal.[25] The parties in this case have not stipulated to a dismissal.

The Court cited to *Eitel* for the rule of law it explained:

> Factors which may be considered by courts in exercising discretion as to the entry of a default judgment include: (1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's substantive claim, (3) the sufficiency of the complaint, (4)

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[22] *See* Ackels discussion beginning in Docket 49 at 11 (citing *Eitel* for "**[Here], the entry of default pursuant to Rule 55 (a) was proper.**" and concluding, "This case was not litigated on the merits when a default judgement was proper."). *Eitel v McCool,* 782 F.2d 1470, 1471 (9th Cir. 1986) explains:

> Eitel apparently fails to understand the two-step process required by Rule 55. *See* 6 *Moore's Federal Practice* ¶ 55.02[3], at 55-8. Here, the *entry of default* pursuant to Rule 55(a) was proper. **However, because McCool had filed a notice of appearance, *entry of judgment* by the clerk under Rule 55(b)(1) as requested by Eitel would have been improper.**

(bold emphasis added). *See also* Fed. R. Civ. P. 55 (distinguishing between an entry of default and entry of default judgment).

[23] Docket 49 at 11.

[24] *Eitel,* 782 F.2d at 1472 (emphasis added).

[25] *Id.* at 1472-73.

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> the sum of money at stake in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.[26]

The Court in this case, similar to the *Eitel* court, applied the general rule that default judgments are ordinarily disfavored and, "Cases should be decided upon their merits whenever reasonably possible."[27] The Court cannot consider the second *Eitel* factor, however, regarding "the merits of a plaintiff's substantive claim" (whether there is a basis for relief) if it does not have subject-matter jurisdiction (have it within the Court's power to consider the merits of a plaintiff's claim).

"Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute."[28] It is Ackels's burden, as the plaintiff, to show that this Court has jurisdiction to hear his case.[29] "If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action."[30] And, as explained above, the *Rooker-Feldman*

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[26] *Eitel*, 782 F.2d at 1471–72 (citing 6 Moore's Federal Practice ¶ 55-05[2], at 55-24 to 55-26); cited at Docket 48 at 12.

[27] Quoting Docket 48 at 13 (citing *Eitel*, 782 F. 2d at 1472).

[28] *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994) (citations omitted); *see also Black's Law Dictionary* (10th ed. 2014) (Jurisdiction is "[a] court's power to decide a case or issue a decree").

[29] *K2 America Corp. v. Roland Oil & Gas, LLC*, 653 F.3d 1024, 1027 (9th Cir. 2011) ("We 'presume[ ] that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction.'") (quoting *Kokkonen*, 511 U.S. at 377)). *See also* Fed. R. Civ. P. 8(a)(1).

[30] Fed. R. Civ. P. 12(h)(3).

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doctrine prevents a court from having jurisdiction over issues regardless of if Ackels is asserting jurisdiction based on a constitutional question or diversity amongst the parties.[31]

If the Court were to grant a motion for default judgment, it would be acknowledging that it has jurisdiction and the ability to consider the merits of a case. Conversely, this means if the Court does not have jurisdiction, it does not have a basis to consider the merits of a case and grant a default judgment. Thus, the issuance of a default judgment is not based purely on a strict application of procedural timing rules. The issuance of a default judgment requires consideration of substantive issues, or whether a plaintiff's case has merit regardless of a defendant's failure to respond.

B. Impact of Goldrich's Initial Answer Being Filed One Day Late

Ackels's complaint in this case was filed August 1, 2016.[32] Goldrich concedes Ackels's complaint was served on Goldrich September 26, 2016.[33] Goldrich filed an answer 22 days after being served, on October 18, 2016.[34] Federal Rule of Civil Procedure 12(a)(1)(A)(i) provides, "A defendant must serve an answer within 21 days after being served with the summons and

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[31] *See Noel v.* Hall, 341 F.3d 1148, 1155 (9th Cir. 2003).

[32] *See* Docket 1.

[33] *See* Docket 6; Docket 13 at 1.

[34] *See* Docket 10.

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complaint." Goldrich's initial answer was thus filed one day late; but, the Court declined to strike this answer because "Cases should be decided upon their merits whenever reasonably possible."[35]

Ackels provides examples of when strict applications of timeframes have been applied to his prejudice and asks, "What is the difference in this case between Ackels untimely filing and Goldrich['s] untimely filing?" and "What is Mr. Ackels to think when he has to follow the rules but Goldrich Mining Co. does not?"[36] All of Ackels's examples, however, differ from this case in that they concern issues brought to courts of appeals.[37]

Procedural rules balance a court's interests in fairness and efficiency. As explained in the decisions Ackels attaches, the Bankruptcy Appellate Panel of the Ninth Circuit[38] and the United States Court of Appeals for the Ninth Circuit[39] do not apply the same procedural rules as this Court. This means those appellate courts are guided by different legal rules and principles than this Court, which is guided in this case by the Federal Rules of Civil Procedure. Accordingly, Ackels

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[35] Docket 48 at 13; *see cf. United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981) (in exercising its discretion "a court must be guided by the underlying purpose of [Federal Rule of Civil Procedure] 15 to facilitate decision on the merits, rather than on the pleadings or technicalities").

[36] Docket 49 at 16.

[37] *Id.* at 12–13 and exhibits found at Dockets 49-1 through 49-8.

[38] *E.g.*, Docket 49-1 at 3 (explaining Fed. R. Bankr. P. 9006(a), unlike Fed. R. Civ. P. 6(a)(2), excludes intermediate Saturdays, Sundays and legal holidays only from time periods of less than eight (8) days).

[39] *E.g.*, Docket 49-8 at 1 (citing Fed. R. App. Proc. 4(a)(l)(A) to explain that appeal was untimely since it was filed more than 30 days after the Bankruptcy Appellate Panel's decision).

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observations do not indicate that he has been treated differently from Goldrich, but that the Federal Rules of Civil Procedure that apply to this Court tend—more than other courts' rules—to favor decisions being made based on a case's merits.[40]

Motion to Amend Complaint

At Docket 55, Ackels asks to amend his complaint so that he can attempt to assert diversity jurisdiction. In his reply to Goldrich's opposition to this motion, "Mr. Ackels concedes that its original complaint failed to adequately allege diversity jurisdiction and is the only reason Mr. Ackels amended his complaint."[41] Ackels seems to agree with Goldrich that, "a comparison of the First Amended Complaint and the Complaint filed back on August 1 reveals that they are identical except for the first page, where the proposed First Amended Complaint adds a reference to 28 U.S.C.A. § 1653."[42]

The United States Court of Appeals for the Ninth Circuit in *U.S. v. Webb*, 655 F.2d 977, 979–80 (9th Cir. 1981) explains that Federal Rule of Civil Procedure 15

> places leave to amend, after a brief period in which a party may amend as of right, within the sound discretion of the trial court. In exercising this discretion, a court must be guided by the underlying purpose of Rule 15 to facilitate decision on the merits, rather than on the pleadings or technicalities. Accordingly, Rule 15's policy of favoring amendments to pleadings should be applied with "extreme liberality."
>
> In *Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227, 230, 9 L.Ed.2d 222 (1962), the Supreme Court identified four factors relevant to whether a motion for leave to amend pleadings should be denied: undue delay, bad faith or dilatory

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[40] *See cf. U.S. v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981).

[41] Docket 58 at 2.

[42] Quoting Docket 57 at 2. *See* Docket 58 at 2 (Ackels's Reply) ("the only change[] is the front page which only applies to the jurisdiction").

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> motive, futility of amendment, and prejudice to the opposing party. In *Howey v. United States*, 481 F.2d 1187 (9th Cir. 1973), this Court analyzed these factors, and concluded that they are not of equal weight. Specifically, we noted that delay alone no matter how lengthy is an insufficient ground for denial of leave to amend. "Only where prejudice is shown or the movant acts in bad faith are courts protecting the judicial system or other litigants when they deny leave to amend a pleading." "The mere fact that an amendment is offered late in the case is ... not enough to bar it."[43]

The Court does not find Ackels to seek to amend his complaint out of bad faith, but the Court will not grant Ackels's motion. The Court's Order at Docket 48 dismissed with prejudice the Honorable Randy M. Olsen as a defendant in this case.[44] While Judge Olsen's continued inclusion was likely an oversight by Ackels, allowing an amended complaint to go forward that includes a defendant who has been dismissed with prejudice would be prejudicial to that defendant and would cause undue delay since it has already been established that all claims against Judge Olsen are barred by judicial immunity.[45] Additionally, the amendment Ackels seeks to make would be futile, and "futile amendments should not be permitted."[46] As explained above, regardless of whether Ackels asserts this Court has jurisdiction based on diversity among the parties or a violation of his rights under the U.S. Constitution, his cause of action is barred by the *Rooker-Feldman* doctrine.

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[43] *Webb*, 655 F.2d at 979-80 (citations omitted).

[44] Docket 48 at 15 ¶ 1.

[45] *See* Docket 48 (Order Addressing Outstanding Motions and Order to Show Cause).

[46] *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 188 (9th Cir. 1987) (citing *Klamath–Lake Pharm. v. Klamath Med. Serv. Bureau*, 701 F.2d 1276, 1293 (9th Cir. 1983)).

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IT IS THEREFORE ORDERED:

1. Ackels's Memorandum to Show Cause at Docket 49 is DENIED. The *Rooker-Feldman* doctrine applies to this case and prevents this Court from having jurisdiction. The case is DISMISSED WITH PREJUDICE for lack of subject matter jurisdiction. The Clerk of Court is directed to enter a judgment accordingly.
2. Ackels's Motion to Amend Complaint at Docket 55 is DENIED for being prejudicial, causing undue delay, and being futile.
3. Any other outstanding motions are DENIED AS MOOT.

DATED at Anchorage, Alaska, this 14th day of August, 2017.

/s/ Timothy M. Burgess
TIMOTHY M. BURGESS
UNITED STATES DISTRICT JUDGE

Appendix G

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

DELMER M. ACKELS, Plaintiff, vs. GOLDRICH MINING COMPANY, FORMERLY SQUAW GOLD MINING COMPANY, Defendant.	Case No. 4:16-cv-00026-TMB

ORDER ON MOTION FOR RECONSIDERATION

At docket 61, self-represented Plaintiff Delmer M. Ackels requests the Court to reconsider its order at docket 59, which dismissed this case. "Reconsideration is 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."[1] Ackels has not demonstrated that any of these circumstances exists in this case. **Therefore, the motion for reconsideration at docket 61 is DENIED.**

IT IS SO ORDERED.

DATED at Anchorage, Alaska, this 25th day of August, 2017.

/s/ Timothy M. Burgess
TIMOTHY M. BURGESS
UNITED STATES DISTRICT JUDGE

[1] *School Dist. No. 1J Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).

Appendix H