

IN THE  
SUPREME COURT OF THE UNITED STATES

DANNY FABRICANT,	)	Case No.
	(	
Petitioner,	)	
	(	
v.	)	
	(	
UNITED STATES COURT OF APPEALS	)	
FOR THE NINTH CIRCUIT,	(	
	)	
Respondent.	(	
	)	

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APPENDICES TO PETITION  
FOR WRIT OF CERTIORARI

DANNY FABRICANT  
84828-012 Suite J  
3901 Klein Blvd  
Lompoc CA 93436-2706  
(telephone) None

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UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

FEB 21 2019

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

DANNY FABRICANT,

Plaintiff-Appellant,

v.

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT,

Defendant-Appellee.

No. 18-16588

D.C. No. 5:18-cv-01965-LHK  
Northern District of California,  
San Jose

ORDER

Before: FERNANDEZ, SILVERMAN, and WATFORD, Circuit Judges.

The district court certified that this appeal is not taken in good faith and revoked appellant's in forma pauperis status. *See* 28 U.S.C. § 1915(a). On October 19, 2018 the court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record and the response to the court's October 19, 2018 order, we conclude this appeal is frivolous. We therefore deny appellant's motions to proceed in forma pauperis (Docket Entry Nos. 8 & 19) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

All other pending motions are denied as moot.

**DISMISSED.**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DANNY FABRICANT,  
Plaintiff,

v.

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT,  
Defendant.

Case No. 18-CV-01965 LHK (PR)

**ORDER OF DISMISSAL WITH  
PREJUDICE**

Plaintiff, a federal prisoner proceeding *pro se*, filed a federal complaint. Plaintiff is granted leave to proceed in forma pauperis in a separate order. For the reasons stated below, the court dismisses the complaint with prejudice for failure to state a claim for relief.

**DISCUSSION**

A. Standard of review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b)(1),  
Case No. 18-CV-01965 LHK (PR)  
ORDER OF DISMISSAL WITH PREJUDICE

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(2). *Pro se* pleadings must, however, be liberally construed. *See Balistreri v. Pacifica Police Dep't.*, 901 F.2d 696, 699 (9th Cir. 1988).

B. Legal claim

According to the complaint, plaintiff was convicted of federal charges in the Central District of California. Plaintiff filed a motion to vacate his sentence, which was denied. The Central District also denied a certificate of appealability. The Ninth Circuit Court of Appeals denied a certificate of appealability as well. Plaintiff filed a motion for reconsideration en banc. Pursuant to Ninth Circuit General Order 6.11, the motion for reconsideration was denied by a panel of judges on behalf of the court.

Plaintiff now challenges the propriety of denying reconsideration en banc without first circulating the request to all the active judges of the Ninth Circuit. Plaintiff states that the Ninth Circuit deprived plaintiff of his right to due process and equal protection by utilizing Ninth Circuit General Order 6.11.

Essentially, plaintiff seeks an order directing the Ninth Circuit to circulate for en banc consideration plaintiff's application for issuance of a certificate of appealability. This complaint could be characterized as either: (1) an effort to appeal the Ninth Circuit's denial of plaintiff's motion for reconsideration en banc, or (2) a petition for mandamus. Either way, this case must be dismissed.

This court has no jurisdiction to entertain an appeal of a Ninth Circuit order. *See generally* Sup. Ct. R. 13, 14. In order to challenge the Ninth Circuit's decision, plaintiff was required to petition for a writ of certiorari from the United States Supreme Court within ninety days of the decision from which he wished to challenge. *See* Sup. Ct. R. 13. In fact, plaintiff did file a petition for a writ of certiorari, which was denied. Dkt. No. 1 at 3.

This court also has no authority under the mandamus statute, 28 U.S.C. § 1361, to issue a writ of mandamus to compel the Ninth Circuit to circulate a motion for reconsideration en banc.

Case No. 18-CV-01965 LHK (PR)  
ORDER OF DISMISSAL WITH PREJUDICE

1 In the context of court-to-court writs, a peremptory writ of mandamus traditionally is used only  
2 "to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to  
3 exercise its authority when it is its duty to do so." *Will v. United States*, 389 U.S. 90, 95 (1967).  
4 This court has no authority to issue a writ of mandamus to the Ninth Circuit because the Ninth  
5 Circuit is not an inferior court relative to this one. *See generally id.*; *see also Mullis v. United*  
6 *States Bankruptcy Court*, 828 F.2d 1385, 1393 n.19 (9th Cir. 1987) (district court has no authority  
7 to review any ruling of a court of appeals).

8 For these reasons, plaintiff's complaint is DISMISSED for failure to state a claim.  
9 Although Federal Rule of Civil Procedure 15(a) is to be liberally applied in favor of amendments  
10 in general, the court finds that giving plaintiff leave to amend would be an exercise in futility  
11 because it is not factually possible for plaintiff to amend the complaint so as to cure the  
12 deficiencies. *See Janicki Logging Co. v. Mateer*, 42 F.3d 561, 566 (9th Cir. 1994).

13 **CONCLUSION**

14 Plaintiff's complaint is DISMISSED with prejudice. The clerk shall terminate all pending  
15 motions and close the file.

16 **IT IS SO ORDERED.**

17 DATED: 6/14/2018

*Lucy H. Koh*

LUCY H. KOH  
UNITED STATES DISTRICT JUDGE

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26 Case No. 18-CV-01965 LHK (PR)  
27 ORDER OF DISMISSAL WITH PREJUDICE

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

MAY 24 2019

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

DANNY FABRICANT,

Plaintiff-Appellant,

v.

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT,

Defendant-Appellee.

No. 18-16588

D.C. No. 5:18-cv-01965-LHK  
Northern District of California,  
San Jose

ORDER

Before: FERNANDEZ, SILVERMAN, and WATFORD, Circuit Judges.

We treat Fabricant's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 22) as a motion for reconsideration and a motion for reconsideration en banc.

The motion for reconsideration is denied and the motion for reconsideration en banc is denied on behalf of the court. *See* 9th Cir. R. 27-10; 9th Cir. Gen. Ord. 6.11.

No further filings will be entertained in this closed case.

FILED

SEP 04 2018

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

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

DANNY FABRICANT,

Plaintiff -- Appellant,

v.

UNITED STATES COURT OF  
APPEALS FOR THE NINTH  
CIRCUIT,

Defendant -- Appellee.

Case No. 18--16588  
(ND/CA 18-CV--1965 LHK (PR))

APPELLANT'S EX PARTE REQUEST  
FOR THIS COURT TO RECUSE  
ITSELF IN THIS APPEAL

Appellant respectfully requests that this Court recuse itself from hearing the herein appeal and assign the appeal to another Circuit's Court of Appeals.

RELEVANT FACTS

This Court is the Appellee in this matter. The underlying lawsuit concerns the Constitutionality of this Court's General Order 6.11.

The district court ordered the underlying case dismissed, in part, because;

"This court has no jurisdiction to entertain an appeal of a Ninth Circuit order. ... This court also has no authority under the mandamus statute, 28 U.S.C. § 1361, to issue a writ of mandamus to compel the Ninth Circuit to circulate a motion for reconsideration en banc."  
Doc. 14, p. 2, last two paragraphs, lines 19--25

The underlying lawsuit (Doc. 1) asked the district court to rule on the Constitutionality of this Court's General Order 6.11,

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vis-a-vis its confliction with F.R.A.P. 35, which requires that all en banc requests be circulated to all active Judges in a Circuit Court of Appeals (Doc. 1, pp. 4-5), and to Order this Court to circulate his en banc request in Fabricant v. United States, 15-56720, to all active Judges. (Doc. 1, p. 5).

#### ARGUMENT

This Court should not be the Court of Appeals that rules on the Constitutionality of one of its own General Orders, that no other Court of Appeals has enacted, either as a Local Rule or a General Order.

#### CONCLUSION

This Court should recuse itself from hearing this appeal and Order the appeal transferred to another Circuit--perhaps the Court of Appeals for the Federal Circuit(?).

Dated: August 29, 2018

DANNY FABRICANT, Appellant

TEXT OF 9th CIRCUIT'S GENERAL ORDER 6.11

6.11. Motions for Reconsideration En Banc

"Any motion of petition seeking en banc review of an order issued by a motions or oral screening panel shall be processed as a motion for reconsideration en banc. The Clerk shall forward a motion for reconsideration en banc of a motion previously considered by a motions or oral screening panel to the appropriate staff attorney for processing. If the motion was decided by published order or opinion, the motion will be circulated to all active judges. In cases involving judgments of death, the Clerk shall forward all motions for reconsideration en banc to Associates.

The motion shall be referred by the staff attorney to the panel which issued the order in issue. The panel may follow the relevant procedures set forth in Chapter 5 in considering the motion for rehearing en banc, or may reject the suggestion on behalf of the Court." (emphasis added)

ORDERS DENYING EN BANC REVIEW, "On behalf of the Court" per  
9th Circuit General Order 6.11, listed in the LEXIS system

Date of Case Name  
Order

LEXIS Cite 9th Cir. No.  
(2017 U.S.App.  
LEXIS \_\_\_\_\_)

DECEMBER, 2017

12/15	<u>Chhun v. United States</u>	26752	16-56846
12/15	<u>Griffith v. Blades</u>	26757	17-35704
12/18	<u>Paul v. Kernan</u>	25661	17-55596

JANUARY, 2018

Date of Case Name  
Order

LEXIS Cite 9th Cir. No.  
(2018 U.S.App.  
LEXIS \_\_\_\_\_)

1/04	<u>United States v. Iniguez</u>	284	16-50082
1/04	<u>Everett v. U.S. District Court</u>	286	16-73871
1/11	<u>United States v. Chavez</u>	827	16-10305
1/11	<u>Guerra-Mejia v. Sessions</u>	831	16-74017
1/11	<u>Jimenez v. Sessions</u>	833	16-73871
1/11	<u>Hernandez-Pens v. Sessions</u>	835	17-70509
1/12	<u>Garrett v. Parmo</u>	937	16-56352
1/12	<u>Goods v. Baughman</u>	946	17-55288
1/12	<u>Williams v. Beard</u>	949	17-55960
1/16	<u>United States v. Bray</u>	1033	16-50433
1/17	<u>Picket v. Nooth</u>	1097	17-35305
1/17	<u>Davis v. Walker</u>	1102	17-16466
1/17	<u>Devan v. Frick</u>	1106	17-35436
1/17	<u>In re Cota-Becerra</u>	1109	17-71175
1/26	<u>Duarte-Ridriguez v. Sessions</u>	2165	17-71118
1/30	<u>Sasser v. Lizarraga</u>	2303	17-15860
1/30	<u>Wright v. Uribe</u>	2305	16-56887
1/30	<u>Debose v. Asuncion</u>	2306	17-55452
1/30	<u>United States v. Gillenwater</u>	2309	17-35458
1/30	<u>Frank v. Rackley</u>	2314	17-55659
1/30	<u>Hurd v. Lizarraga</u>	2317	17-55686

FEBRUARY, 2018

2/01	<u>United States v. Bhambra</u>	2612	16-10346
2/22	<u>Ward v. Shartle</u>	4273	17-17433
2/22	<u>Rencher v. Williams</u>	4281	17-15823
2/22	<u>Munguia v. Ducart</u>	4338	17-55632

2/23	<u>Wimberly v. United States</u>	4672	17-16281
2/23	<u>United States v. Okeaya-Inneh</u>	4718	17-50161

MARCH, 2018

3/02	<u>Martinez v. Hatton</u>	5536	17-15356
3/09	<u>Zeledon v. Hatton</u>	6023	17-16145
3/09	<u>Bridgette v. Hill</u>	6026	17-56867
3/12	<u>Merrick v. Attorney General</u>	6151	17-16662
3/13	<u>Thuraissigiam v. U.S. Dept. of Homeland Secur.</u>	6369	18-55313
3/19	<u>United States v. Judy</u>	6911	16-10368
3/30	<u>Pena v. Sessions</u>	8171	17-71148
3/30	<u>Voits v. Nooth</u>	8172	18-35069
3/30	<u>Lyons v. White</u>	8192	17-17358

APRIL, 2018

4/09	<u>Erde v. Bodnar</u>	8923	17-55655
4/10	<u>Caldera v. American Medical Collection Agency</u>	8994	17-80142
4/19	<u>United States v. Bennett</u>	9919	17-50086
4/19	<u>Becera-Medina v. Sessions</u>	9933	17-70150
4/20	<u>Ray v. Cate</u>	10065	18-15182
4/20	<u>United States v. Sprat</u>	10177	17-56397
4/20	<u>Valdez v. Apker</u>	10206	17-17281
4/20	<u>Hulsey v. Byrne</u>	10213	17-16478
4/20	<u>Ciotta v. Holland</u>	10239	18-55104
4/20	<u>Lewis v. Ponce</u>	10272	17-16672
4/23	<u>Factor-Blanco v. Sessions</u>	10396	17-71428
4/27	<u>Vargas v. Davey</u>	11257	17-56755
4/30	<u>Hom v. United States</u>	11329	17-17132

MAY, 2018

5/04	<u>Nguyen v. Uttecht</u>	11810	17-35929
5/07	<u>Bray v. Superior Court of California</u>	11941	17-56315
5/17	<u>Ai v. Sessions</u>	12874	18-70032
5/23	<u>Powell v. City of Pasco</u>	13622	17-16586
5/23	<u>San Joaquin Gen. Hospital v. Sheikh</u>	13660	17-35240
5/25	<u>Martinez v. Sessions</u>	13992	17-70758
5/25	<u>Jenson v. EXX Inc.</u>	13996	17-17163
5/25	<u>United States v. Verkler</u>	13999	17-30237
5/29	<u>United States v. Felts</u>	14136	17-50385
5/31	<u>Rodriguez v. County of San Diego</u>	14415	17-55267
5/31	<u>Rodriguez v. Gore</u>	14763	17-55344

JUNE, 2018

6/01	<u>Washington v. Arnold</u>	14646	18-55491
6/01	<u>United States v. Zavallidroga</u>	14923	17-17242
6/01	<u>McGuire v. Jones</u>	14924	17-56908
6/19	<u>Jung Hyun Cho v. Select Portfolio</u>	16557	18-15235
6/19	<u>Wilkins v. County of Contra Costa</u>	16571	17-16274
6/19	<u>Four Star v. Billock</u>	16572	18-35167
6/20	<u>Salama v. Sessions</u>	16706	17-72710
6/22	<u>Claus v. Beard</u>	16713	18-80021
6/22	<u>Wilk v. Shartle</u>	17110	17-17248
6/22	<u>Jenkins v. Shartle</u>	17122	17-17100
6/22	<u>Lewis v. Montgomery</u>	17123	17-56604
6/25	<u>United States v. Teaupa</u>	17287	18-15194
6/25	<u>Holmes v. Roberts</u>	17289	18-35187
6/25	<u>Holmes v. Satterberg</u>	17293	18-35188
6/25	<u>Obando v. Neuschmid</u>	17300	18-55385
6/25	<u>Heath v. Spearman</u>	17453	17-55778
6/26	<u>United States v. Ephren</u>	17503	17-35788

JULY, 2018

7/02	<u>United States v. Sperow</u>	18065	17-30006
7/02	<u>Ramos-Gonzales v. Sessions</u>	18068	17-70353
7/02	<u>Ontiveros-Gardea v. Sessions</u>	18087	16-73487
7/02	<u>Kalac v. United States</u>	18190	17-56236
7/12	<u>Gibson v. Haynes</u>	19144	18-35174
7/12	<u>Boatman v. Beard</u>	19137	17-56452
7/12	<u>United States v. Lopez</u>	19138	17-56219
7/12	<u>Gibson v. Haynes</u>	19144	18-35174

AUGUST, 2018

8/03	<u>Langrock v. Superior Court</u>	21751	18-55292
8/28	<u>Stevenson v. Ricjman</u>	24423	17-55889
8/28	<u>Mora-Gutierrez v. Sessions</u>	24431	17-70704
8/28	<u>Vaz v. Sessions</u>	24441	17-71484
8/28	<u>Zaragoza-Navarro v. Sessions</u>	24443	17-72807
8/28	<u>United States v. Galindo</u>	24445	17-10189
8/29	<u>Escarcega v. Frauenheim</u>	24611	17-56041
8/29	<u>Stewart v. Ryan</u>	24613	17-16247
8/29	<u>United States v. Lane</u>	24622	18-15645
8/29	<u>Sarras v. Unknown Party</u>	24624	18-15527
8/29	<u>United States v. Berry</u>	24659	18-55596

AUGUST, 2018 Continued

8/30	<u>United States v. Zavallidroga</u>	24773	18-16214
8/30	<u>Arnett v. Paramo</u>	24775	17-56820

SEPTEMBER, 2018

9/12	<u>Belssner v. One Nevada Credit Union</u>	25874	17-16831
9/13	<u>Singh v. Sessions</u>	26005	17-70893
9/13	<u>Acosta v. Sessions</u>	26015	16-73772
9/19	<u>Mixon v. Nevada</u>	26744	17-17496
9/21	<u>Anderson v. United States</u>	27178	17-17513
9/25	<u>United States v. Fuentes</u>	27420	18-35412

OCTOBER, 2018

10/02	<u>De Leon-Garcia v. Sessions</u>	27938	17-72662
10/02	<u>Wichelman v. Berryhill</u>	27946	17-17225
10/03	<u>Akard v. Shartle</u>	28045	18-15252
10/03	<u>Salas v. Sessions</u>	28049	16-73741 & 17-72036
10/03	<u>Herrera v. Price</u>	28050	18-35230
10/03	<u>Benitez v. Key</u>	28051	18-15677
10/04	<u>Diaz v. Sessions</u>	28155	17-71865
10/04	<u>Bos v. SBA</u>	28156	17-17561
10/04	<u>Young v. Hoestenbach</u>	28162	17-17551
10/04	<u>Lee v. Pirko</u>	28177	17-56931
10/04	<u>Cervantes v. Sessions</u>	28193	17-73378
10/04	<u>United States v. Balik</u>	28194	18-55216
10/04	<u>Spring v. Langford</u>	28340	17-56238
10/11	<u>Monie v. Lewis</u>	28719	18-15355
10/11	<u>Kimmel v. City of Sparks</u>	28721	18-15621
10/11	<u>Gibson v. Lewis</u>	28723	18-15351
10/11	<u>James v. Lewis</u>	28724	18-15334
10/11	<u>United States v. Cutulle</u>	28725	17-10543
10/11	<u>Patang v. Lewis</u>	28728	18-15349
10/11	<u>Delgado-Trujillo v. Sessions</u>	28730	17-72054
10/15	<u>United States v. Steel</u>	28965	17-50100
10/22	<u>Zeiny v. United States</u>	29778	18-15634
* 10/22	<u>HSBC Bank v. Nix</u>	29780	18-35415
10/24	<u>Colter v. Holmberg</u>	30039	17-17264
* 10/22	<u>Navarro v. Cate</u>	29797	18-55777

## OCTOBER, 2018 Continued

10/30	Valente v. Keller Williams realty	30751	17-17484
10/30	Ramirez-Mendoza v. Sessions	30757	18-70236
10/31	De La Cruz-Rojas v. Sessions	30912	18-70555

## NOVEMBER, 2018

11/02	Vargas-Guitierrez v. Sessions	31175	18-71443
11/05	United States v. Okeaya-Inneh	31299	18-55648
11/16	United States v. Acosta	32615	18-15965
11/16	Voits v. Nooth	32617	18-35416
11/30	Yokis v. Ryan	33747	18-15233
11/30	Alford v. Carlton	33749	18-15857

## DECEMBER, 2018

12/03	Bryan v. City of Carlsbad	34137	18-55434
12/20	United States v. Shepard	36282	18-15982
12/21	Vega v. United States	36319	18-35327
12/21	Sanchez v. Rackley	36323	18-15210
12/21	Ring v. Ryan	36412	18-15458
12/21	Arceo v. King	36413	18-15434
12/21	Joiner v. Sutton	36415	18-55554

## ADD-ONS (Printed in later LEXIS monthly updates)

4/27	Vargas v. McMahon	10931	18-15782
7/12	Downs v. Beard	19125	18-15782

[NOTE: After the Fabricant v. Shartle, 707 Fed.Appx. 902 (9th Cir. 12/18/2017) Memorandum Opinion came out, the folks at LEXIS started reporting 9th Circuit Orders denying en banc requests 'on behalf of the Court.' Three such Orders dated between 12/15 and 12/18/2017 were reported and are listed above. For 2018, 147 nearly identical Orders were reported. As of the June, 2019 LEXIS update in the Bureau of Prisons' system (which is a month+ behind), through mid-May, 2019, there are similar Orders reported.]

## JANUARY, 2019

1/02	DeFuentes v. Whitaker	2019 U.S. App. LEXIS 65	17-72736
1/03	Bolar v. Whitaker	164	18-35068
1/03	Sloan v. Spear	166	18-15099
1/08	Acevedo-Martinez v. Whitaker	572	18-70966
1/09	Martinez-Rosales v. Whitaker	809	18-70988
1/18	Sanchez-Canesco v. Whitaker	1806	18-71699

JANUARY, 2019      Continued

1/22	Adamyman v. Pfizer, Inc.	2092	18-80059
1/24	Perez-Contrares v. Whitaker	2414	18-70808
1/24	Contreres v. Whitaker	2426	18-71126
1/25	Hernandez-Vidales v. Whitaker	2629	17-73280
1/25	Reyes-Ricardo v. Whitaker	2660	18-70574
1/25	Santiago v. Whitaker	2665	18-70574
1/28	United States v. Clerlock	2845	18-16855
1/28	United States v. Zavalidroga	2852	18-17283
1/29	Stargaze Mgmt. LLC v. George Smith Partners	2975	18-55114
1/30	United States v. Gomez	3103	18-50413

FEBRUARY, 2019

2/04	Albra v. Selene Finance	3466	18-17433
2/27	Cruz v. Hedgpeth	6038	18-55601
2/27	Winkles v. United States	6130	18-56326
2/28	United States v. Lovett	6211	18-16498
2/28	Atwood v. United States Attorney General	6294	18-16513

MARCH, 2019

3/01	Leal v. Ryan	6428	17-16897
3/01	Paul v. Gibson	6430	18-55751
3/01	Williams v. Robertson	6457	18-55659
3/15	Williams v. Paramo	7738	18-55723
3/15	Olson v. McCloud	7767	18-35532
3/21	Melaragno v. Providence Health	8557	17-56742
3/21	Duran v. Cate	8610	18-56223
3/22	Fonseca v. Barr	8751	18-71277
3/22	Rivera-Avendano v. Barr	8806	18-70642
3/22	Silva v. Barr	8808	18-70740
3/27	Jimenez v. Barr	9150	17-70796

APRIL, 2019

4/01	United States v. Benevente	9553	18-16360
4/01	Marta v. McDowell	9558	18-55949
4/01	Petitta v. Paramo	9567	18-17251
4/02	Derrick v. Koenig	9695	18-56479
4/09	Shu v. Brennan	10525	18-55290
4/09	Garcia v. Heath	10526	18-15560
4/12	Davis v. Adler	10936	18-56168



APRIL, 2019 Continued

4/22	Galan v. Sessions	11751	18-71906
4/23	Lena v. Coley	11955	18-56210
4/23	Ross v. Amsberry	11961	18-35692
4/23	Touma v. General Counsel	11975	18-55996
4/23	Mejicanos-Garcia v. Sessions	12016	17-71184
4/25	Greenwood v. Macomber	12451	18-55872
4/26	Mintz v. Ryan	12674	18-16883
4/26	Grigsby v. Baltazar	12728	18-16428
4/26	Islas v. Ryan	12789	18-16856
4/26	United States v. King	12805	18-16566
4/30	Ware v. Bank of Amercia Corp	13063	18-35190

MAY, 2019

5/02	Frerks v. United States District Court	13316	18-80136
5/07	Chambers v. Herrera	13653	18-56454
5/07	Carreon-Podesto v. Barr	13645	18-70756
5/08	Igbinova v. Cox	13800	18-16580

[5/23	Fabricant v. United States Court of Appeals for the Ninth Circuit	_____	18-16588]
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**General Docket**  
**United States Court of Appeals for the Ninth Circuit**

<b>Court of Appeals Docket #:</b> 18-16588 <b>Nature of Suit:</b> 2550 Prisoner-Civil Rights Danny Fabricant v. USCA9 <b>Appeal From:</b> U.S. District Court for Northern California, San Jose <b>Fee Status:</b> Due	<b>Docketed:</b> 08/22/2018 <b>Termed:</b> 02/21/2019
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**Case Type Information:**

- 1) prisoner
- 2) federal
- 3) civil rights

**Originating Court Information:**

**District:** 0971-5 : 5:18-cv-01965-LHK  
**Trial Judge:** Lucy H. Koh, District Judge  
**Date Filed:** 03/30/2018

Date Order/Judgment:	Date Order/Judgment EOD:	Date NOA Filed:	Date Rec'd COA:
06/14/2018	06/14/2018	08/17/2018	08/21/2018

**Prior Cases:**

<u>04-50558</u> Judge Order	Date Filed: 11/18/2004	Date Disposed: 01/28/2005	Disposition: Affirmed -
<u>04-50566</u> Judge Order	Date Filed: 11/24/2004	Date Disposed: 04/15/2005	Disposition: Dismissed -
<u>05-50094</u> Judge Order	Date Filed: 02/15/2005	Date Disposed: 05/17/2005	Disposition: Dismissed -
<u>05-50095</u> Judge Order	Date Filed: 02/15/2005	Date Disposed: 05/17/2005	Disposition: Dismissed -
<u>05-50123</u> Remanded - Memorandum	Date Filed: 03/02/2005	Date Disposed: 09/07/2007	Disposition: Reversed,
<u>05-50234</u> Judge Order	Date Filed: 04/12/2005	Date Disposed: 06/20/2005	Disposition: Dismissed -
<u>05-50479</u> Memorandum	Date Filed: 06/28/2005	Date Disposed: 09/10/2007	Disposition: Affirmed -
<u>05-50711</u> Memorandum	Date Filed: 09/14/2005	Date Disposed: 09/10/2007	Disposition: Affirmed -

- |            |           |   |
|------------|-----------|---|
| 08/22/2018 | <u>1</u>  | DOCKETED CAUSE AND ENTERED APPEARANCE OF PRO SE APPELLANT AND NO APPEARANCE FOR APPELLEE. SEND MQ: No. The schedule is set as follows: Appellant Danny Fabricant opening brief due 10/16/2018. [10985688] (RT) [Entered: 08/22/2018 11:57 AM]   |
| 09/04/2018 | <u>2</u>  | <b>Streamlined request by Appellant Danny Fabricant to extend time to file the brief is approved. Amended briefing schedule: Appellant Danny Fabricant opening brief due 11/15/2018.</b> [11000170] (JN) [Entered: 09/04/2018 03:41 PM]   |
| 09/04/2018 | <u>3</u>  | Filed Appellant Danny Fabricant ex parte motion for this court to recuse itself in this appeal. Deficiencies: None. Served on 08/29/2018. [11000300] (QDL) [Entered: 09/04/2018 04:11 PM]   |
| 09/20/2018 | <u>4</u>  | Filed referral notice (Deputy Clerk:CKP): Referring to the district court for determination whether in forma pauperis status should continue for this appeal. [11018819] (CKP) [Entered: 09/20/2018 10:33 AM]   |
| 09/20/2018 | <u>5</u>  | Filed clerk order (Deputy Clerk: DA): The district court's judgment was entered on June 14, 2018. On July 9, 2018, the district court received appellant's motion titled "motion for clarification of order of dismissal with prejudice." A review of the record indicates appellant's July 9, 2018 filing may constitute one of the motions listed in Federal Rule of Appellate Procedure 4(a)(4). Accordingly, proceedings in this court shall be held in abeyance pending the district court's consideration of whether appellant's July 9, 2018 filing constitutes one of the motions listed in Federal Rule of Appellate Procedure 4(a)(4) and, if so, whether the motion should be granted or denied. See Fed. R. App. P. 4(a)(4); <i>Leader Nat'l Ins. Co. v. Indus. Indem. Ins. Co.</i> , 19 F.3d 444, 445 (9th Cir. 1994). To appeal the district court's ruling on a post-judgment motion, appellant must file an amended notice of appeal within the time prescribed by Federal Rule of Appellate Procedure 4. The Clerk shall serve this order on the district court. [11018941] (CKP) [Entered: 09/20/2018 11:05 AM] |
| 09/27/2018 | <u>6</u>  | Received notice of change of address and request to mark envelop "enroute-please hold until arrival" dated 09/10/2018 from Danny Fabricant. New address: 3901 Klein Blvd., Lompoc, CA 93436. [11028036] --[Edited: Updated Address. 09/27/2018 by TYL] (QDL) [Entered: 09/27/2018 04:18 PM]   |
| 10/01/2018 | <u>7</u>  | Received copy of District Court order filed on 09/24/2018: Order denying motion for reconsideration; order certifying that appeal is not taken in good faith. [11032352] (QDL) [Entered: 10/02/2018 01:33 PM]   |
| 10/10/2018 | <u>8</u>  | Filed Appellant Danny Fabricant motion to proceed In Forma Pauperis. Deficiencies: None. Served on 10/04/2018. [11043405] (QDL) [Entered: 10/11/2018 01:33 PM]  |
| 10/15/2018 | <u>9</u>  | Received copy of amended notice of appeal from district court filed on 10/09/2018. [11049408] (QDL) [Entered: 10/16/2018 04:51 PM]  |
| 10/19/2018 | <u>10</u> | Filed clerk order (Deputy Clerk: CO): On September 20, 2018, this court issued an order staying appellate proceedings pending disposition of the July 9, 2018 motion in the district court. On September 24, 2018, the district court denied the  |

motion. The stay order filed September 20, 2018, is lifted and this appeal shall proceed. A review of the district court's docket reflects that the district court has certified that this appeal is not taken in good faith and has revoked appellant's in forma pauperis status. See 28 U.S.C. § 1915(a). This court may dismiss a case at any time, if the court determines the case is frivolous. See 28 U.S.C. § 1915(e)(2). Within 35 days after the date of this order, appellant must: (1) file a motion to dismiss this appeal, see Fed. R. App. P. 42(b), or (2) file a statement explaining why the appeal is not frivolous and should go forward. If appellant files a statement that the appeal should go forward, appellant also must: (1) file in this court a motion to proceed in forma pauperis, OR (2) pay to the district court \$505.00 for the filing and docketing fees for this appeal AND file in this court proof that the \$505.00 was paid. If appellant does not respond to this order, the Clerk will dismiss this appeal for failure to prosecute, without further notice. See 9th Cir. R. 42-1. If appellant files a motion to dismiss the appeal, the Clerk will dismiss this appeal, pursuant to Federal Rule of Appellate Procedure 42(b). If appellant submits any response to this order other than a motion to dismiss the appeal, the court may dismiss this appeal as frivolous, without further notice. If the court dismisses the appeal as frivolous, this appeal may be counted as a strike under 28 U.S.C. § 1915(g). The briefing schedule for this appeal and all pending motions are stayed. The Clerk shall serve on appellant: (1) a form motion to voluntarily dismiss the appeal, (2) a form statement that the appeal should go forward, and (3) a Form 4 financial affidavit. Appellant may use the enclosed forms for any motion to dismiss the appeal, statement that the appeal should go forward, and/or motion to proceed in forma pauperis. [11053383] (CKP) [Entered: 10/19/2018 11:18 AM]

- 10/26/2018 11 Filed Appellant Danny Fabricant motion to extend time to file appellant opening brief for 90 days. Deficiencies: None. Served on 10/20/2018. [11065719] (QDL) [Entered: 10/30/2018 11:19 AM]
- 11/14/2018 12 Filed Appellant Danny Fabricant letter dated 11/08/2018 re: request for copy of orders, notice of change of address. New address: 3901 Klein Blvd., Lompoc, CA 93436. Paper filing deficiency: None. (Sent appellant copy of docket entry #10 per request) [11087793] (QDL) [Entered: 11/14/2018 03:20 PM]
- 11/16/2018 13 Mail returned on 11/14/2018 addressed to Danny Fabricant, re: 10/19/2018 order [10]. Returned envelope notes: return to sender, refused, unable to forward. Resending to: case files; order was already resent on 11/14/2018 per appellant's request [12]. [11090635] (LA) [Entered: 11/16/2018 11:47 AM]
- 11/23/2018 14 Filed Appellant Danny Fabricant motion to extend time to file statement. Deficiencies: None. Served on 11/19/2018. [11097649] (QDL) [Entered: 11/23/2018 04:36 PM]
- 12/04/2018 15 Filed clerk order (Deputy Clerk: CO): Appellant's motion for a 30-day extension of time [14] to respond to this court's October 19, 2018 order is granted. Appellant shall file a response on or before December 27, 2018. Failure to comply with this order shall result in the automatic dismissal of this appeal by the Clerk for failure to prosecute under Ninth Circuit Rule 42-1. Appellant's motion for extension of time to file opening brief [11] is denied as unnecessary. The briefing schedule for this appeal remains stayed pending further order of

- the court. All other pending motions will be addressed by separate order following appellant's compliance with the October 19, 2018 order. [11108767] (CKP) [Entered: 12/04/2018 11:22 AM]
- 12/24/2018 16 Filed Appellant Danny Fabricant second motion to extend time to respond to this Court's October 19, 2018 order. Deficiencies: None. Served on 12/18/2018. [11133108] (QDL) [Entered: 12/26/2018 09:02 AM]
- 12/27/2018 17 Filed clerk order (Deputy Clerk: CO): Appellant's second motion for a 30-day extension of time [16] to respond to this court's October 19, 2018 order is granted. Appellant shall file a response on or before January 27, 2019. Further motions for an extension of time to respond will be disfavored. Failure to comply with this order shall result in the automatic dismissal of this appeal by the Clerk for failure to prosecute under Ninth Circuit Rule 42-1. The briefing schedule for this appeal remains stayed pending further order of the court. All other pending motions will be addressed by separate order following appellant's compliance with the October 19, 2018 order. [11134990] (CKP) [Entered: 12/27/2018 02:09 PM]
- 01/10/2019 18 Filed Appellant Danny Fabricant statement that appeal should go forward. Served on 01/01/2019. [11148874] (QDL) [Entered: 01/10/2019 02:50 PM]
- 01/10/2019 19 Filed Appellant Danny Fabricant motion to proceed In Forma Pauperis. Deficiencies: None. Served on 01/01/2019. [11148880] (QDL) [Entered: 01/10/2019 02:52 PM]
- 02/21/2019 20 Filed order (FERDINAND F. FERNANDEZ, BARRY G. SILVERMAN and PAUL J. WATFORD) The district court certified that this appeal is not taken in good faith and revoked appellant's in forma pauperis status. See 28 U.S.C. § 1915(a). On October 19, 2018 the court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. See 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious). Upon a review of the record and the response to the court's October 19, 2018 order, we conclude this appeal is frivolous. We therefore deny appellant's motions to proceed in forma pauperis (Docket Entry Nos. [8] & [19]) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2). All other pending motions are denied as moot. DISMISSED. [11202265] (JMR) [Entered: 02/21/2019 09:47 AM]
- 03/05/2019 21 Received Appellant Danny Fabricant addendum to application to proceed in forma pauperis. Deficiency: Case closed per 2/21/2019. [11217551] (NAC) [Entered: 03/06/2019 08:52 AM]
- 03/22/2019 22 Filed Appellant Danny Fabricant motion to reconsider Panel order of the Court filed on 02/21/2019. Deficiencies: None. Served on 03/19/2019. (Entitled Petition for Panel rehearing; suggestion for rehearing en banc) [11239241] (NAC) [Entered: 03/22/2019 01:44 PM]
- 05/24/2019 23 Filed order (FERDINAND F. FERNANDEZ, BARRY G. SILVERMAN and PAUL J. WATFORD) We treat Fabricant's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. [22]) as a motion for reconsideration and a motion for reconsideration en banc. The motion for reconsideration is denied and the motion for reconsideration en banc is denied

Appendix G (page 4 of 5)

on behalf of the court. See 9th Cir. R. 27-10; 9th Cir. Gen. Ord. 6.11. No further filings will be entertained in this closed case. [11308365] (OC) [Entered: 05/24/2019 09:35 AM]

06/03/2019 24 MANDATE ISSUED. (FFF, BGS and PJW) [11316577] (NAC) [Entered: 06/03/2019 07:36 AM]

06/10/2019 25 Received Appellant Danny Fabricant request for docket sheet. (sent copy of docket sheet 06/12/2019). [11325989] (NAC) [Entered: 06/11/2019 07:41 AM]