

IN THE
SUPREME COURT OF THE UNITED STATES

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

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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| B | June 14, 2018 filed Order of the District Court for Northern District of California, in case No. 18-CV-1965 LHK (PR) | 3 |
| C | May 24, 2019 filed Order of the Ninth Circuit Court of Appeals in case No. 18-16588 | 1 |
| D | Appellant's Ex Parte Request for this Court to Recuse Itself in this Appeal filed in the Ninth Circuit Court of Appeals on September 4, 2018 | 2 |
| E | Text of Ninth Circuit General Order 6.11 | 1 |
| F | List of 200 LEXIS reported Orders of the Ninth Circuit of Appeals, between mid-December, 2017 and mid-May, 2019, where the Ninth Circuit invoked their General Order 6.11 to avoid circulating motions/petitions for en banc review/reconsideration to the entire Court | 7 |
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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

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.

Appendix A (1 page)

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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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

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

3 B. Legal claim

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

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

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

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

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

26 Case No. 18-CV-01965 LHK (PR)
27 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).

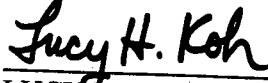
8 For these reasons, plaintiff's complaint is DISMISSED for failure to state a claim.
9 Although Federal Rule of Civil Procedure 15(a) is to be liberally applied in favor of amendments
10 in general, the court finds that giving plaintiff leave to amend would be an exercise in futility
11 because it is 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).

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


18 LUCY H. KOH
19 UNITED STATES DISTRICT JUDGE

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,) Case No. 18-16588
v.) (ND/CA 18-CV-1965 LHK (PR)
UNITED STATES COURT OF)
APPEALS FOR THE NINTH)
CIRCUIT,) APPELLANT'S EX PARTE REQUEST
Defendant - Appellee.) 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."

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

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 Order | Case Name | LEXIS Cite | 9th Cir. No. |
|---------------|-----------|------------|--------------|
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DECEMBER, 2017

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| 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 Order | Case Name | LEXIS Cite | 9th Cir. No. |
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| 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 |

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| 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 |

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

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| 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>Bena 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 |

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| 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 |

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| 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 |

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| 6/01 | <u>Washington v. Arnold</u> | 14646 | 18-55491 |
| 6/01 | <u>United States v. Zavalidroga</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 |

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| 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 |

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| 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 |

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

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| 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 |

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| 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 |

* Appendix F (page 4 of 7)

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| 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 |

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| 11/02 | Vargas-Gutierrez 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 |

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| 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 |

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| 1/22 | Adamyan 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

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| 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

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| 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

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| 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

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| 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

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| 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]

General Docket
United States Court of Appeals for the Ninth Circuit

Court of Appeals Docket #: 18-16588

Docketed: 08/22/2018

Nature of Suit: 2550 Prisoner-Civil Rights

Termed: 02/21/2019

Danny Fabricant v. USCA9

Appeal From: U.S. District Court for Northern California, San Jose

Fee Status: Due

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:

04-50558 **Date Filed:** 11/18/2004 **Date Disposed:** 01/28/2005 **Disposition:** Affirmed -
 Judge Order

04-50566 **Date Filed:** 11/24/2004 **Date Disposed:** 04/15/2005 **Disposition:** Dismissed -
 Judge Order

05-50094 **Date Filed:** 02/15/2005 **Date Disposed:** 05/17/2005 **Disposition:** Dismissed -
 Judge Order

05-50095 **Date Filed:** 02/15/2005 **Date Disposed:** 05/17/2005 **Disposition:** Dismissed -
 Judge Order

05-50123 **Date Filed:** 03/02/2005 **Date Disposed:** 09/07/2007 **Disposition:** Reversed,
 Remanded - Memorandum

05-50234 **Date Filed:** 04/12/2005 **Date Disposed:** 06/20/2005 **Disposition:** Dismissed -
 Judge Order

05-50479 **Date Filed:** 06/28/2005 **Date Disposed:** 09/10/2007 **Disposition:** Affirmed -
 Memorandum

05-50711 **Date Filed:** 09/14/2005 **Date Disposed:** 09/10/2007 **Disposition:** Affirmed -
 Memorandum

08/22/2018 1 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 2 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. [11000170] (JN) [Entered: 09/04/2018 03:41 PM]

09/04/2018 3 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 4 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 5 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); Leader Nat'l Ins. Co. v. Indus. Indem. Ins. Co., 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 6 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 7 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 8 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 9 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 10 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 (FERNAND 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 (FERNAND 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

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]