

EXHIBIT A

FILED

UNITED STATES COURT OF APPEALS

APR 19 2019

FOR THE NINTH CIRCUIT

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

ALFRED LAM, on behalf of themself and
of Asian Pacific American employees and
representative of the class of the same or
similarly situated CCSF employees;
PAULA LEIATO, on behalf of themselves
and of Asian Pacific American employees
and representative of the class of the same
or similarly situated CCSF employees,

Plaintiffs-Appellants,

v.

CITY AND COUNTY OF SAN
FRANCISCO; et al.,

Defendants-Appellees.

No. 16-16559

D.C. No. 4:10-cv-04641-PJH
Northern District of California,
Oakland

ORDER

Before: WALLACE, FARRIS, and TROTT, Circuit Judges.

Appellant's motion for reconsideration is DENIED.

No further motions will be entertained in this closed case.

NOT FOR PUBLICATION

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UNITED STATES COURT OF APPEALS

MAR 18 2019

FOR THE NINTH CIRCUIT

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

ALFRED LAM, on behalf of themselves and
of Asian Pacific American employees and
representative of the class of the same or
similarly situated CCSF employees and
PAULA LEIATO, on behalf of themselves
and of Asian Pacific American employees
and representative of the class of the same or
similarly situated CCSF employees,

Plaintiffs-Appellants,

v.

CITY AND COUNTY OF SAN
FRANCISCO; et al.,

Defendants-Appellees.

No. 16-15596
16-16559

D.C. No. 4:10-cv-04641-PJH

ALFRED LAM; PAULA LEIATO,

Plaintiffs-Appellants,

v.

CITY AND COUNTY OF SAN
FRANCISCO; et al.,

Defendants-Appellees.

No. 17-15208

D.C. No. 4:08-cv-04702-PJH

MEMORANDUM*

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

Appeal from the United States District Court
for the Northern District of California
Phyllis J. Hamilton, Chief Judge, Presiding

Submitted March 14, 2019**

Before: WALLACE, FARRIS, and TROTT, Circuit Judges.

In these appeals, Alfred Lam and Paula Leiato appeal pro se from the district court's summary judgment in their action alleging employment discrimination; from the district court's award of costs to the defendants; and from the district court's denial of their motion to reconsider a prior summary judgment. We affirm in part and dismiss in part.

In Appeal No. 16-15596, Lam and Leiato appeal from the district court's summary judgment. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Vasquez v. County of Los Angeles*, 349 F.3d 634, 639 (9th Cir. 2003), and we affirm.

The district court properly granted summary judgment on Lam's and Leiato's discrimination claims because Lam and Leiato failed to raise a genuine dispute of material fact as to whether defendants took adverse action against plaintiffs, and whether defendants had legitimate, non-discriminatory motives for

** Lam and Leiato's request for oral argument is denied, because the panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

their actions. *Id.* at 640-42 (providing framework for analyzing discrimination claims). Lam and Leiato's contentions that the district court ignored relevant evidence or was biased against them are unsupported by the record. *See, e.g., Brown Bag Software v. Symantec Corp.*, 960 F.2d 1465, 1474 (9th Cir. 1992) (district court's failure to refer to declaration and exhibits in summary judgment order was harmless where plaintiff failed to argue how consideration of declaration would have changed result reached by district court).

The district court properly concluded that Lam and Leiato, as pro se litigants, lacked the authority to represent a class. *See C.E. Pope Equity Trust v. United States*, 818 F.2d 696, 697 (9th Cir. 1987) ("Although a non-attorney may appear in propria persona in his own behalf, that privilege is personal to him He has no authority to appear as an attorney for others than himself."). To the extent Lam and Leiato contend that reversal is required due to alleged ineffective assistance of counsel, this contention is without merit. *See, e.g., Nicholson v. Rushen*, 767 F.2d 1426, 1427 (9th Cir. 1985) (plaintiff in a civil case has no right to effective assistance of counsel). We reject Lam and Leiato's remaining arguments as unsupported by the record.

The district court did not abuse its discretion in awarding costs to defendants because Lam and Leiato failed to establish why the defendants were not entitled to costs. *See Save Our Valley v. Sound Transit*, 335 F.3d 932, 944-45 n.12 (stating

standard of review and burden of proof).

In Appeal No. 16-16559, Lam and Leiato appeal the district court's order denying their second motion to reconsider the district court's costs award. We dismiss this appeal because it was not timely filed. *See* Fed. R. App. Proc. 4(a)(1)(A), 26(a)(1); *United States v. Sadler*, 480 F.3d 932, 937 (9th Cir. 2007) (untimely civil appeals must be dismissed for lack of jurisdiction).

In Appeal No. 17-15208, Lam and Leiato appeal the district court's order denying their motion for relief under Federal Rules of Civil Procedure 59(b), (e), 60(b), and 60(d)(3) as "untimely and meritless". We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion. *School Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993) (Rule 59(e) and Rule 60(b)). We affirm.

The district court correctly exercised its discretion in denying Lam and Leiato's motion. The district court properly determined that all of the twenty-two alleged questionable grounds for relief were untimely because their motion was filed more than four years after the entry of judgment.

APPEAL NOS. 16-15596 and 17-15208 AFFIRMED.

APPEAL NO. 16-16559 DISMISSED.