APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
SEP 30 2021
MOLLY C. DWYER
CLERK,
U.S. COURT OF
APPEALS

YEHORAM UZIEL,
Plaintiff-Appellant,
v.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES; et al.,

Defendants-Appellees,
and
NORTH VALLEY DISTRICT CHATSWORTH COURTHOUSE,
DEPARTMENT F47,
Defendant

No. 20-55554

D.C. No.
2:19-cv-01458-DSF-JEM

U.S. District Court for Central California, Los Angeles

MANDATE

The judgment of this Court, entered August 23, 2021, 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 THE COURT

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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MEMORANDUM[1]

Appeal from the United States District Court
for the Central District of California
Dale S. Fischer, District Judge, Presiding

Submitted August 19, 2021[2]
Before: GOODWIN, CANBY, and SILVERMAN, Circuit Judges

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

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

Yehoram Uziel, proceeding pro se, appeals the district court's judgment dismissing his action alleging violations of 42 U.S.C. § 1985(2) and (3), 28 U.S.C. § 1343, and 18 U.S.C. § 242 by the litigants, attorneys, trial court, judge, and other parties involved in his previous state-court action. W- ne have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's dismissal based on the *Rooker-Feldman* doctrine, *Maldonado v. Harris*, 370 F.3d 945, 949 (9th Cir. 2004), for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), *Simmons v. Sacramento Cnty. Superior Ct.*, 318 F.3d 1156, 1158 (9th Cir. 2003), as barred by the Eleventh Amendment, *Cholla ready Mix, Inc. v. Civish*, 382 F.3d 969, 973 (9th Cir. 2004), and based on judicial immunity, *Crooks v. Maynard*, 913 F.2d 699, 700 (9th Cir. 1990). We affirm.

The district court properly dismissed Uziel's action as barred by the *Rooker- Feldman* doctrine because his claims directly challenge the state-court judgment and are "inextricably intertwined" with it. *See Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005) ("The *Rooker-Feldman* doctrine . . . .[prohibits] cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments."); *Cooper v.Ramos*, 704 F.3d 772, 779 (9th Cir. 2012) (*Rooker-Feldman* also bars issues that are "inextricably intertwined" with the state-court judgment; an issue is "inextricably intertwined" if "'the relief requested in the federal action would effectively reverse the state court decision or void its ruling'" (citation omitted)).

The district court properly dismissed Uziel's action on the additional ground that he failed to state a claim under 42 U.S.C. § 1985(2) and (3) because he did not allege that defendants conspired to deny him equal protection of the law based on his membership in a protected class, and under 28 U.S.C. § 1343 and 18 U.S.C. § 242 because neither statute provides a private right of

action. *See Allen v. Gold Country Casino*, 464 F.3d 1044, 1048 (9th Cir. 2006) (18 U.S.C. § 242 is a "criminal statute[] that do[es] not give rise to civil liability" and 28 U.S.C. § 1343 is a "jurisdictional statute [that] does not provide a cause of action"); *Bretz v. Kelman*, 773 F.2d 1026, 1029-30 (9th Cir. 1985) (explaining requirements of a claim under § 1985(2) and (3)).

The district court properly dismissed the claims against the Los Angeles County Superior Court and Judge Sandvig in his official capacity as barred by the Eleventh Amendment. *See Greater L.A. Council on Deafness, Inc. v. Zolin*, 812 F.2d 1103, 1110 (9th Cir. 1987) ("[A] suit against the [Los Angeles County] Superior Court is a suit against the State, barred by the eleventh amendment."); *Simmons*, 318 F.3d at 1161 (Eleventh Amendment immunity extends to superior court employees).

The district court properly dismissed the damages claims against Judge Sandvig on the basis of judicial immunity. *See Mireles v. Waco*, 502 U.S. 9, 9, 11-12 (1991) (per curiam) (judges are absolutely immune from suits for damages based on their judicial conduct, except for "actions not taken in the judge's judicial capacity" or when acting in the complete absence of jurisdiction).

The district court did not abuse its discretion by denying Uziel's motions to recuse both the magistrate and district court judges. *See Liteky v. United States*, 510 U.S. 540, 555 (1994) ("judicial rulings alone almost never constitute a valid basis for a bias or partiality motion"); *Glick v. Edwards*, 803 F.3d 505, 508 (9th Cir. 2015) (standard of review).

We decline to consider matters not specifically raised and argued in the opening brief, including the district court's decision granting defendants' motion for sanctions under Federal Rule of Civil Procedure 11. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009) (per curiam).

AFFIRMED.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
SEP 22 2021
MOLLY C. DWYER
CLERK,
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YEHORAM UZIEL,
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v.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES; et al.,

Defendants-Appellees,
and
NORTH VALLEY DISTRICT CHATSWORTH COURTHOUSE, DEPARTMENT F47,
Defendant

No. 20-55554

D.C. No.
2:19-cv-01458-DSF-JEM

U.S. District Court for Central California, Los Angeles

ORDER

Before: GOODWIN, CANBY, and SILVERMAN, Circuit Judges.

The panel has voted to deny the petition for panel Rehearing and recommends denial of the petition for rehearing en banc.

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. Fed. R. App. P. 35.

APPENDIX C

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

YEHORAM UZIEL Plaintiff v. SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES, et al., Defendants	Case No. CV 19-1458-DSF (JEM) JUDGMENT

In accordance with the Order Accepting Findings and Recommendations of United States Magistrate Judge filed concurrently herewith,

IT IS HEREBY ORDERED that the action is dismissed with prejudice

DATED May 18, 2020

/s/ Dale S. Fischer
DALE S. FISCHER
UNITED STATES DISTRICT JUDGE

APPENDIX D1

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV 19-1458-DSF-JEM **Date: July 6, 2020**
Title: Yehoram Uziel v. Superior Court of the State of California for the County of Los Angeles, et al.

CIVIL MINUTES—GENERAL 1
Present: The Honorable MICHAEL W. FITZGERALD, U.S. District Judge

Deputy Clerk:	Court Reporter:
Rita Sanchez	Not Reported

Attorneys Present for Plaintiff: None Present
Attorneys Present for Defendant: None Present

Proceedings (In Chambers): ORDER RE: MOTION FOR RECUSAL OF DISTRICT JUDGE HON. DALE S. FISCHER [14]

Before the Court is Plaintiff Yehoram Uziel's Motion for Recusal of District Judge Dale S. Fischer (erroneously named Fisher) (the "Motion"), filed on July 1, 2020. (Docket No. 136). The Motion was referred to this Court on July 2, 2020. (Docket No. 137). The Court will address only the Motion, and not the underlying merits of Plaintiff's case. For the reasons stated in this Order, the Motion is **DENIED**.

A party may seek to disqualify a United States district judge under 28 U.S.C. § 144 or § 455.

Section 144 provides for disqualification whenever "a party to any proceeding in a district court

makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party." 28 U.S.C. § 144.

Under § 455(a), judges are required to disqualify themselves "in any proceeding in which their impartiality might reasonably be questioned." 28 U.S.C. § 455(a).

Section 455(b)(1) requires judges to disqualify themselves when they have "a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding." 28 U.S.C. § 455(b)(1). Finally, § 455(b)(4) requires a judge to disqualify himself if he knows that he "individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding." 28 U.S.C. § 455(b)(4). The parties can waive grounds for disqualification brought pursuant to §455(a) after a full disclosure on the record, but grounds for disqualification under § 455(b) are not waivable (although recusal claims under § 455 may be lost if not brought in a timely manner). *See* 28 U.S.C. § 455(e).

"The substantive standard for recusal under 28 U.S.C. § 144 and 28 U.S.C. § 455 is the same: '[W]hether a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned.'" *United States v. Hernandez*, 109 F.3d 1450, 1453 (9th Cir. 1997) (quoting *United States v. Studley*, 783 F.2d 934, 939 (9th Cir. 1986)). "Ordinarily, the alleged bias must stem from an 'extrajudicial source.'" *Id.* (quoting *Liteky v. United States*, 510 U.S. 540, 554-56 (1994)). "[J]udicial

rulings alone almost never constitute a valid basis for a bias or partiality motion." *Liteky*, 510 U.S. at 555. "[O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." *Id.*

The Motion, filed pro se, contains largely irrelevant allegations about the underlying case. (Motion at 2-3). The primary basis on which Plaintiff actually seeks
disqualification of Judge Fischer is that (1) Judge Fischer denied Plaintiff's request for recusal of Magistrate Judge John E. McDermott; and (2) she referred Defendant Reif
Law Group P.C. and Brandon S. Rief's Motion for Attorney Fees to the Magistrate Judge for a report and recommendation. (*Id.* at 2).

Plaintiff fails to demonstrate why Judge Fischer's actions show a "reasonable person . . . would conclude that the judge's impartiality might reasonable be questioned." *Liteky*, 510 U.S. at 550. Specifically, the Motion must be denied for the following reasons:
First, although Plaintiff asserts that Judge Fischer provided "no explanation or factual basis" when she denied Plaintiff's request for recusal of the Magistrate Judge, this assertion is belied by the record. (Motion at 2). In her order denying Plaintiff's request, Judge Fischer explained that Plaintiff's request for recusal of the Magistrate Judge was denied because "[t]here [was] no evidence that Magistrate Judge McDermott has behaved in any manner that would even arguably suggest a deepseated favoritism or antagonism that would make fair judgment impossible" and because "[t]here [was] no evidence that Magistrate Judge McDermott's R&R [was]

based on anything other than his review of the record and briefs presented in this proceeding." (Docket No. 123 at 2).

Second, there is nothing improper about a district court referring motions to a magistrate judge for proposed findings of fact and recommendations. *See* 28 U.S.C. § 636. In fact, it appears entirely reasonable for Magistrate Judge McDermott to rule on the motion for attorneys' fees given that he is intimately familiar with the facts here.

In sum, Plaintiff presents no evidence and makes no argument that Judge Fischer has any actual bias towards Plaintiff or was acting in any way other than fairly adjudicating the merits. While Plaintiff appears to suggest that Magistrate Judge McDermott was wrong on the merits and that Judge Fischer was wrong to deny his motion to disqualify the Magistrate Judge and to refer the motion for attorneys' fees to the Magistrate Judge, disagreement with a judge's decision is not a sufficient basis to disqualify a judge. Indeed, such allegations and concerns are rank judge-shopping; they are not appropriately considered on a motion for disqualification in the absence of showing particular bias. *See Liteky*, 510 U.S. at 555 (in absence of extrajudicial source of bias party must show facts that establish a 'deep-seated antagonism' toward him or in favor of the other party").

Even construing the Motion liberally, the Court perceives no reason why Judge Fischer cannot fairly and impartially adjudicate this action.

Accordingly, the Motion is **DENIED**.

IT IS SO ORDERED.

APPENDIX D2

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

YEHORAM UZIEL Plaintiff v. SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES, et al., Defendants	Case No. CV 19-1458-DSF (JEM) ORDER DENYING MOTION FOR RECUSAL OF MAGISTRATE JOHN E. McDERMOTT PURSUANT TO 28 U.S.C. § 455

This action was filed on February 27, 2019 by Plaintiff Yehoram Uziel, who represents himself. The nature of the activity in this action since that time can be seen from a review of the docket. Most notably, on March 23, 2020, Magistrate Judge John E. McDermott filed his Report and Recommendation (R&R) recommending that this Court "issue an Order: (1) accepting this Report and Recommendation; (2) granting Defendants' Motions to Dismiss; (3) dismissing the [First Amended Complaint] in its entirety with prejudice; (4) directing that judgment be entered accordingly; (5) granting the Motions for Sanctions filed by Gerber, Palmer, and the RLG Defendants; and (6) directing Gerber, Palmer, and the RLG Defendants to file a motion for attorney's fees detailing the requested fees and an application to tax costs detailing the requested costs within thirty days of the date" this Court issues its order. Plaintiff filed objections to the R&R on April 27 and filed the instant

Motion for Recusal of Magistrate John E. McDermott Pursuant to 28 U.S.C. § 455 on May 14.

Because in the Central District of California, a motion to disqualify a magistrate judge pursuant to 28 U.S.C. §§ 144 or 455 must be made to the assigned district judge, Local Rule 72-5, the matter was assigned to this Court.

Plaintiff states that his Motion is made "on the grounds that the magistrate judge Report and Recommendations raises reasonable questions to the Magistrate Judge impartiality." Mot. at 2.

The Court looks to 28 U.S.C. § 455 in determining whether to disqualify a magistrate judge. See 28 U.S.C. § 455; Liteky v. United States, 510 U.S. 540, 548-49 (1994). The standard for determining disqualification is whether "a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned." Yagman v. Republic Ins., 987 F.2d 622, 626 (9th Cir. 1993) (citations omitted); see, e.g., United States v. Studley, 783 F.2d 934, 939 (9th Cir. 1986).

But "[t]he alleged bias and prejudice to be disqualifying, must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case." United States v. Grinnell Corp., 384 U.S. 563, 583 (1966) (because adverse attitudes evinced by the judge resulted from his study of depositions and briefs, recusal was not appropriate). "[O]pinions formed by the judge on

the basis of facts introduced or events occurring in the course of current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deepseated favoritism or antagonism that would make fair judgment impossible." Liteky, 510 U.S. at 555.

There is no evidence that Magistrate Judge McDermott has behaved in any manner that would even arguably suggest a deepseated favoritism or antagonism that would make fair judgment impossible.

There is no evidence that Magistrate Judge McDermott's R&R is based on anything other than his review of the record and briefs presented in this proceeding. At most, Plaintiff's claims are based on speculation and an obvious dissatisfaction with the magistrate judge's ruling. A motion to recuse, however, must be based on evidence, not speculation. See Yagman, 987 F.2d at 626.

Plaintiff has provided no evidence of actual bias, or even of the appearance of bias. The Court finds no reasonable person with all the facts would conclude that Magistrate Judge McDermott's impartiality might reasonably be questioned.[3]

For these reasons this Court DENIES Plaintiff's motion for recusal.

IT IS SO ORDERED.

Date: /s/ Dale S. Fischer
United States District Judge

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[3] For this reason, the Court need not determine whether the motion was timely

APPENDIX E1

Law Office of Steven A. Simons
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Admitted in Arizona and California

November 20, 2018

Amicus Curiae Letter in Support of Review

The Honorable Chief Justice Tani Gorre Cantil-Sakauye
and Honorable Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, California 94102

Re: Yehoram Uziel v Employment Lawyer's Group Appeal Affirming Superior Court ruling to Strike the Complaint pursuant to CCP 425.16 Supreme Court Case No. S252614 (Court of Appeal No B287207), Amicus Curiae Letter in Support of Petition for Review (Cal. R. Ct. 8.500(g))

To the Honorable Chief Justice and Associate Justices of the California Supreme Court:

Pursuant to California Rules of Court § 8.500(g), I, Steven A. Simons, Esq., duly licensed to practice and practicing before all the Courts of California (S.B. # 131410), submit this letter respectfully requesting that this Court grant Yehoram Uziel' petition for review of the above-referenced decision.

In 2016 I was the corporate counsel for DC Partners Inc., a California Corporation. Mr. Uziel is, and was, its CEO.

The foundation for the Complaint in this matter (LASC case number PC057843) is my testimony. It will be unjust to prevent Uziel from presenting my testimony in the case Uziel v ELG.

It is my understanding that ELG, and its attorneys, successfully prevented Uziel from submitting my declaration, and the Trial Court allowed them to prevail on the Anti SLAPP Motion.

It is my belief that had Judge Sandvig been presented with my testimony, his ruling would be to deny the Anti SLAPP Motion and order the parties to trial.

To be short I never negotiated a "settlement agreement" with ELG or Messrs. Palmer and Gerber. In fact, I was bothered by their frivolous demands and their misrepresentations to the Court. It is my belief, having represented DC Partners, Inc., that Mr. Uziel would have never attempted to file a law suit against ELG without clear evidence and specifically without first securing my consent to testify in the matter.

I believe that Uziel' decision to appear *In Pro Per* was based on his belief that a jury would find in his favor and that in weighing the testimony would believe my testimony. As I understand it, Mr. Uziel saw his legal bills mounting and, despite my best efforts, I could not help him to reduce them. That is when he decided to pay Mr. Gerber what he decided was "ransom" to dismiss the case. In short, Mr. Uziel wanted to stop the bleeding, so he could continue the fight to recover his damages in a different venue. One where he believed that the attorneys for ELG could not hide behind their client (Kepler), as Mr. Uziel believed that the client had nothing to do with the underlying, frivolous, suit.

I read the ruling of Hon Judge Sandvig of LA Superior Court and the Decision of the Appellate Court; both determined that ELG attorneys (Palmer or Gerber) had settlement negotiations with me that resulted in Uziel paying to dismiss the case with prejudice. It is important to note that no one ever asked me to corroborate any of the

statements made by ELG. Furthermore, if I was testifying under oath, I believe that my testimony would support Uziel' contentions that he only paid a ransom to get the trial dismissed. To be sure, the idea of a settlement had never crossed my mind or his – and in fact no settlement agreement was ever signed.

As the Justices will note, each of the decisions in the underlying Courts, blame Uziel for not making his contentions clear. In other words, both Courts fault Mr. Uziel for the fact that they were forced to write their analysis based on only the Defendants (unverified) arguments.

I am writing this letter to call to the Court's attention that there may be an injustice occurring and that our judicial system should allow all citizens to oppose the utilization of our judicial system to commit legal extort. It is my belief that The Courts should apply tougher criteria to verify statement of attorneys as it relates to Anti SLAPP protection. Particularly where, as here, there appears to be a presumption in favor of the attorneys. By doing so the Court can ensure that practicing attorneys do abuse privileges afford by the license to practice law.

The current ruling by the Court of Appeal seems to exacerbate Uziel' damages, in that not only is he barred arguing his case before a jury, but the Court has punished him with "attorney's fees" and costs. The current message being sent to our citizen's is that they should not try to pursue justice against attorneys, because the judicial system will not support citizens who exercise their right of petitioning the Courts. Here, I believe that Mr. Uziel only wants is a fair trial.

Finally, as attorney who has been practicing for over 30 years, I have seen many cases, as has this Court. In many cases we refrain from accusing the opponents of fraud or malicious prosecution. In my experience it appears that ELG and Messrs. Palmer and Gerber crossed the line – yet it should be for a jury to decide, not a court on technicalities.

I was not involved in the drafting of the Complaint, opposing the Anti SLAPP Motion, or in Mr. Uziel' appeal. I assume, properly drafted, that a lawyer could overcome the Anti SLAPP and state Uziel "contentions" better,

On March 2018, when the appeal was in play, I was asked to provide a declaration in support of the Complaint, which I gladly provided. Uziel felt that he could not get it to the attention of the Trial Court (because LASC lacked jurisdiction) and the rules of Court of Appeal clearly state that no litigant is allowed (and the Court will not accept) any document not presented to the Trial Court. As I understood it, in Uziel' mind he was in a "Catch – 22" situation.

The Court of Appeal decision upholds the refusal of the Trial Court to not even consider my testimony. It upholds allegations that I know to be untrue, and sends the message that our judicial system is biased toward attorneys that can "out-lawyer" a party who is *In Pro Per.*

The interpretation of state law to strike a complaint against attorneys only, can and has been abused before. I believe that the testimony in my declaration significantly increases the probability of Uziel to prevail on most (if not all of) his claims in trial. I believe that both Judge Sandvig and the Honorable Appellate Court Judges would reconsider their rulings if they had read and considered my Declaration.

I understand, from Mr. Uziel, that this declaration was offered at the request for rehearing, following the decision of the Court of Appeal. On these grounds, I ask this Court's review of the Court of Appeal's decision.

Very truly yours,

/s/ Steven A. Simons

Steven A. Simons, Esq.

APPENDIX E2

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

Yehoram Uziel; Plaintiff, v. Employment Lawyer Group, et at al, Defendants.	CASE NO. PC057843 ORDER STRIKING STATEMENT OF DISQUALIFICATION; VERIFIED ANSWER

Verified Answer of Melvin Sandvig

I, Melvin Sandvig, declare:

1. I am a Judge of the Superior Court and as such was assigned to preside over matters in this case.
2. I am not prejudiced or biased against or in favor of any party to this proceeding or their counsel. I strive to treat all litigants, jurors, attorneys, witnesses and other parties who come to my courtroom with fairness and professional courtesy. I did not engage in any conduct with the intention of influencing the outcome of the underlying case in any manner.
3. All rulings made by me in this action have been based upon facts and arguments officially presented to me and upon my understanding of the law. My statements and rulings are set forth in the records and the files herein, which are the best evidence hereof. To the extent the moving party's statement of those rulings and statements are inconsistent therewith, they are denied.
4. All statements made by me and all actions taken by me in this proceeding have been done in furtherance of what I believe were my judicial duties.

5. I know of no facts or circumstances which would require my disqualification or recusal in this case.

I declare under penalty of perjury that the foregoing is true and correct and of my own personal knowledge, except as to those matters stated to be on my information and belief, and as to those matters, I believe them to be true.

Executed this 23 day of September, 2019 at Chatsworth California.

/s/ Melivin Sandvig

Melvin Sandvig

APPENDIX F

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

YEHORAM UZIEL, Plaintiff, v. GAVIN NEWSOM, Governor of the State of California, Defendants	Case No. CV 21-7320 MWF SELF-REPRESENTATION ORDER

One or more of the parties to this action has elected to appear *pro se*. Persons appearing before the Court are not required to retain the services of a lawyer or obtain the advice of counsel. Individual litigants may represent themselves *pro se*, but corporations and associations must be represented by counsel. *See Church of the New*

Testament v. United States, 783 F.2d 771, 773 (9th Cir. 1986) (unincorporated association); *In Re Highley*, 459 F.2d 554, 555 (9th Cir. 1972) (corporations). In addition, non-attorney litigants may not represent other individual litigants or trusts for which they serve as trustee. *See Johns v. County of San Diego*, 114 F.3d 874, 876

(9th Cir. 1997) (minor children); *C.E. Pope Equity Trust v. United States*, 818 F.2d 696, 697-98 (9th Cir. 1987) (trust); *McShane v. United States*, 366 F.2d 286, 288 (9th

Cir. 1996) (other litigants). A partner may not represent his or her own interest in a partnership *pro se*, and a sole shareholder may not represent a corporation. *See In Re*

Am. West Airlines, 40 F.3d 1058, 1059 (9th Cir. 1994) (per curiam) (partner); *United States v. High Country*

Broad Co., Inc., 3 F.3d 1244, 1245 (9th Cir. 1993 (per curiam)
(shareholder).

Proceeding *pro se* has significant risks, and this Court wishes to make some of those risks known at the outset of this proceeding:

- Generally speaking, non-attorney litigants are less like to be victorious than those assisted by counsel.
- The opposing party may have a lawyer, and that lawyer's duty is to achieve victory for his or her client. He or she will take every step legally permissible to that end.
- The Court is a neutral adjudicator of the law. The role of the judge is to resolve disputes arising between the parties in accordance with the law. As such, the judge cannot assist you, cannot answer your legal questions, and cannot take sides in the dispute, nor can any members of the judge's staff.
- You will be proceeding alone in a complex area where experience and professional training are greatly desired.

Simply stated, when you elect to proceed *pro se*, you are on your own and become personally responsible for litigating your action in accordance with the rules.

Practice in the federal courts is governed by the Federal Rules of Civil Procedure.

You **must** become familiar with these rules. You will be held to the same standards as a lawyer as far as complying with the Court procedures and the rules and regulations of the court system.

Because litigating an action in federal court often requires a great deal of time, preparation, knowledge, and skill, this Court highly recommends against proceeding with the assistance of counsel. Some attorneys will represent clients on a contingency fee basis, where the fees associated with representation are subtracted from a

judgment in favor of the client[4].1 However, should you wish to continue without counsel – fully understanding the risks – you are hereby ordered to carefully review the remainder of this Order, as it contains instructions for proceeding in this Court which **must** be followed.

This Order, while not comprehensive – and not a substitute for fully familiarizing yourself with the Federal Rules of Civil Procedure, the Federal Rules of Evidence, the Local Rules for the United States District Court for the Central District of California, the Orders of this Court, including the Court's Procedures and Schedules, Order Setting Scheduling Conference, and Order Re Jury Trial and Order Re Court Trial, as well as federal and state case law applicable to this action – is intended to bring certain aspects of law and motion practice to your attention at an early stage in the litigation to remedy problems commonly associated with *pro se* pleadings[5].

Communications with Chambers: Pursuant to Local Rule 83-2.11, parties **shall refrain** from writing letters to the judge, making telephone calls to chambers, or otherwise communicating with the judge unless opposing counsel is present. You may contact the Courtroom Deputy, Rita Sanchez, at rita_sanchez@cacd.uscourts.gov or (213) 894-1527, with appropriate inquiries. The Courtroom Deputy is **not** an attorney and will not provide you with any legal advice. The Courtroom Deputy cannot waive any of the requirements of this, or any other, Order. Should you wish to bring any matter to the attention of the Court, you **must** do so in writing, and file and serve it on the opposing party.

Jurisdiction: The Federal Rules of Civil Procedure require that "[a] pleading which sets forth a claim for relief ... shall contain (1) a short and plain statement of

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[4] The Los Angeles County Bar Association Lawyer Referral and Information Service may be able to refer you to a lawyer who may or may not be willing to take your case on a contingency basis.

[5] The Local Rules for the United States District Court for the Central District of California are available on the District Court's website: www.cacd.uscourts.gov

the grounds upon which the court's jurisdiction depends." Fed.R.Civ.P. 8(a). This District's Local Rules further provide that "[t]he statutory or other basis for the exercise of jurisdiction by this Court shall be plainly stated in ... any document invoking this Court's jurisdiction. Local Rule 8-1.

This is extremely important. Unlike state courts, federal courts are not courts of general jurisdiction, and can only preside over matters authorized by the Constitution and Congress. *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541, 106 S. Ct. 1326, 1331, 89 L. Ed. 2d 501 (1986). In other words, the party filing the action must **prove** to the Court that jurisdiction over the action exists **before** the Court can reach the merits of the Complaint. *See Smith v. McCullough*, 270 U.S. 456,

459, 46 S. Ct. 338, 339, 70 L. Ed. 682 (1926) (A "plaintiff, suing in federal court, must show in his pleading, affirmatively and distinctly, the existence of whatever is essential to federal jurisdiction ....").

Federal jurisdiction may be alleged either pursuant to 28 U.S.C. Section 1331 for actions "arising under the Constitution, laws, or treaties of the United States,"

otherwise known as "federal question" jurisdiction, or 28 U.S.C. Section 1332 as an action "between citizens of different States," otherwise known as "diversity" jurisdiction.

To allege federal question jurisdiction, the complaint should identify which right(s) the plaintiff(s) claim have been violated, and which law, statute, or constitutional amendment provides that right. *See Keniston v. Roberts*, 717 F.2d 1295, 1298 (9th Cir. 1983).

Diversity jurisdiction has **two** requirements. First, diversity jurisdiction requires complete diversity of citizenship, that is, all plaintiffs must have a different citizenship from all defendants. *See Owen Equipment and Erection Co. v. Kroger*, 437 U.S. 365, 373, 98 S. Ct. 2396, 2402, 57 L. Ed. 2d 274 (1978). Residence and citizenship are distinct concepts, with significantly different jurisdictional ramifications: "[i]n order to be a citizen of a

State within the meaning of the diversity statute, a natural person must both be a citizen of the United States *and* be domiciled within the State." *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 828, 109 S. Ct. 2218, 2221, 104 L. Ed. 2d 893 (1989). "A person's domicile is her permanent home, where she resides with the intention to remain or to which she intends to return. A person residing in a given state is not necessarily domiciled there, and thus is not necessarily a citizen of that state." *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001) (citations omitted). Corporations are citizens of both their state of incorporation and the state in which they have their principal place of business. *See* 28 U.S.C. Section 1332(c)(1); *see also New Alaska Dev. Corp. v. Guetschow*, 869 F.2d 1298, 1300-01 (9th Cir. 1989). Unincorporated associations are citizens of the states of each member. *See Fifty Associates v. Prudential Ins. Co. of Am.*, 446 F.2d 1187, 1190 (9th Cir. 1970). Second, when jurisdiction is based on diversity of citizenship, district courts do not have original jurisdiction unless a party alleges an amount in controversy exceeding $75,000. *See* 28 U.S.C. Section 1332(a).

Finally, you should understand that it is **insufficient** for a party to merely claim that jurisdiction exists. Sufficient **facts** must be alleged to allow the Court to assess whether it has jurisdiction over the action.

Service: Service is the formal delivery of a legal pleading. The Federal Rules of Civil Procedure have different requirements for service to be effective depending on the type of entity to be served: service on an individual within the United States is governed by Fed.R.Civ.P. 4(e); corporations and associations must be served in conformity with Fed.R.Civ.P. 4(h); the United States and its agencies must be served pursuant to Fed.R.Civ.P. 4(i); and state and local governmental units require service under Fed.R.Civ.P. 4(j).

Time limits for service of the complaint are set forth in Fed.R.Civ.P. 4(m). It is important to promptly and

properly serve the opposing party, especially with the summons and complaint when initiating an action, because **failure to serve within the time limits specified by the Federal Rules will result in the dismissal of your action for lack of prosecution.** You **must** always inform the Court whenever you serve a filing on an opposing party; this is done by filing a proof of service. *See* Fed.R.Civ. P. 4(l).

Discovery: Discovery is the mechanism by which the parties to an action collect evidence relating to the case from one another. Certain information is expected to be provided to the other side without a request. *See* Fed.R.Civ.P. 26(a). If the other side seeks to obtain discovery from you, you must cooperate and provide the information sought on "any matter, not privileged, that is relevant to the claim or defense of any party." Fed.R.Civ.P. 26(b)(1). The principal forms of discovery envisioned by the Federal Rules are the production and inspection of documents, requests for admission, depositions, and interrogatories. Discovery disputes are

resolved by, and should be brought to the attention of, the magistrate judge assigned to the action. Discovery should begin early in the litigation and may commence prior

to the Scheduling Conference.

Motions: Motions are requests to the Court to make a specified ruling or order. The opposing party may file a motion to dismiss your action, pursuant to Fed.R.Civ.P.

12, or a motion for summary judgment pursuant to Fed.R.Civ.P. 56. If the opposing party files and served a motion on you, you **must** oppose it if you disagree with the requested relief. **Failure to oppose an otherwise properly supported motion may result in the Court granting that motion.** *See* Local Rule 7-12. **Depending on the motion, this may result in the dismissal of your case.**

To oppose a motion, you **must** present the Court with a statement explaining the basis of your opposition and he legal authority supporting your contentions. You

must also file any evidence upon which you intend to base your opposition to a motion for summary judgment. Pursuant to Local Rule 7-9, your opposition is due **not later** than twenty-one (21) days before the date designated for hearing of the motion. If you need additional time to oppose the motion, you **must** file and serve an *ex parte* application requesting an extension of time **prior** to the date on which your opposition is due, and must demonstrate that the additional time you seek is warranted and that the requested extension is not a crisis of your creation, thus precluding you from seeking *ex parte* relief. *See Mission Power Eng'g Co. v. Continental Cas Co.*, 883 F.Supp. 488, 492 (C.D. Cal. 1995).

Motion to Dismiss: A Fed.R.Civ.P. 12(b)(6) motion to dismiss for failure to state a claim tests the legal sufficiency of the claims asserted in the complaint. A dismissal under Rule 12(b)(6) is proper only where there is either a "lack of a cognizable legal theory," or "the absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990). The Court must deny the motion unless it appears that the plaintiff can prove no set of facts that would entitle him to relief. *See Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S. Ct. 99, 102, 2 L. Ed. 2d 80 (1957). When evaluating a Rule 12(b)(6) motion, the Court must accept all material allegations in the complaint as true and construe them in the light most favorable to the non-moving party. *See Barron v. Reich*, 13 F.3d 1370, 1374 (9th Cir. 1994). However, the Court is not bound to assume the truth of legal conclusions merely because they are stated in the form of factual allegations. *See Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981). Dismissal is proper if a complaint is vague, conclusory, and fails to set forth any material facts in support of the allegations. *See North Start Int'l v. Arizona Corp. Comm'n.*, 720 F.2d 578, 583 (9th Cir. 1983).

Motion for Summary Judgment: Summary judgment may be granted when there are no material facts in

dispute between the parties, making a trial unnecessary. To resist summary judgment under Fed.R.Civ.P. 56, you **must** submit affidavits or other documentary evidence, such as depositions and answers to interrogatories, which set forth specific facts showing there is a genuine issue for trial. *See* K*lingele v. Eikenberry*, 849 F.2d 409, 411-12 (9th Cir. 1988). Failure to do so may result in the entry of summary judgment against you. You should also note that Rule 56(e) requires that affidavits or declarations shall be made on personal knowledge, set forth facts that are admissible as evidence, and show affirmatively that the affiant is competent to testify to the matters stated therein. **Should you fail to contradict the moving party with counter-affidavits, declarations or other evidence, the moving party's evidence may be taken as the truth, and final judgment may be entered against you without a trial, thus ending your case.** *See Rand v. Rowland*, 154 F.3d 952, 960-61 (9th Cir. 1998). To effectively address a summary judgment motion, you should be aware of, and familiar with, the following United States Supreme Court cases on summary judgment: *Celotex v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986).

PRO SE CLINIC: The Court may not provide advice to any party, including persons who are not represented by a lawyer. (Such persons are known as "pro se litigants.") However, this District does have a "Pro Se Clinic" that can provide information and assistance about many aspects of civil litigation in this Court. Public

Counsel's Federal Pro Se Clinic provides free legal assistance to people representing themselves in the United States District Court for the Central District of California. The Pro Se Clinic is located at the Roybal Federal Building and Courthouse, 255 East Temple Street, Los Angeles, California 90012.

The Los Angeles Clinic operates by appointment only. You may schedule an appointment either by calling the Clinic or by using an internet portal. You can call the clinic at (213) 385-2977, ext. 270, or you can submit an internet request at the following site: http://prose.cacd.uscourts.gov/los-angeles.

Clinic staff can respond to many questions with a telephonic appointment or through your email account. It may be more convenient to email your questions or schedule a telephonic appointment. Staff can also schedule you for an in-person appointment at their location in the Roybal Federal Building and Courthouse.

The Court has information of importance to pro se litigants at the "People Without Lawyers" link, http://prose.cacd.uscourts.gov/.

ELECTRONIC DOCUMENT SUBMISSION SYSTEM (EDSS): The Clerk's Office has created the Electronic Document Submission System (EDSS) which will allow pro se litigants to submit documents for filing through an online portal, in lieu of submission by U.S. mail or in-person at Civil Intake. EDSS is a document delivery system; documents submitted through EDSS are **not** automatically uploaded on CM/ECF. Pro se litigants may submit documents in PDF format for review and filing by the Clerk's Office. For more information and to access EDSS,

IT IS SO ORDERED:

Dated: September 16, 2021

/s/ MICHAEL W. FITZGERALD
United States District Judge