

APPENDIX A

Case: 21-55252, 03/09/2022, ID: 12390128, DktEntry: 13, Page 1 of 1

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAR 9 2022

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

LIN OUYANG,

Plaintiff-Appellant,

v.

NORA M. MANELLA, Hon., in her
individual, and official capacity as Presiding
Justice of California Court of Appeal-
Second Appellate District, Div. Four; et al.,

Defendants-Appellees.

No. 20-56071
21-55252

D.C. No. 2:20-cv-05707-SVW-
ADS
Central District of California,
Los Angeles

ORDER

Before: SILVERMAN, CHRISTEN, and LEE, Circuit Judges.

Because the court's August 20, 2021 order dismissing these appeals as
frivolous stated that no further filings will be entertained, the Clerk is directed to
strike the filings submitted at Docket Entry Nos. 15, 16, 18, and 19 in Appeal
No. 20-56071, and Docket Entry Nos. 8, 9, 11, and 12 in Appeal No. 21-55252.

APPENDIX B

Case: 21-55252, 01/10/2022, ID: 12335270, DktEntry: 10, Page 1 of 2

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**FILED**

JAN 10 2022

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

LIN OUYANG,

Plaintiff - Appellant,

v.

NORA M. MANELLA, Hon., in her
individual, and official capacity as
Presiding Justice of California Court of
Appeal-Second Appellate District,
Div. Four; et al.,

Defendants - Appellees.

No. 20-56071

D.C. No. 2:20-cv-05707-SVW-ADS
U.S. District Court for Central
California, Los Angeles**MANDATE**

LIN OUYANG,

Plaintiff - Appellant,

v.

NORA M. MANELLA, Hon., in her
individual, and official capacity as
Presiding Justice of California Court of
Appeal-Second Appellate District,
Div. Four; et al.,

Defendants - Appellees.

No. 21-55252

D.C. No. 2:20-cv-05707-SVW-ADS
U.S. District Court for Central
California, Los Angeles

The judgment of this Court, entered August 20, 2021, takes effect this date.

Case: 21-55252, 01/10/2022, ID: 12335270, DktEntry: 10, Page 2 of 2

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

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Quy Le
Deputy Clerk
Ninth Circuit Rule 27-7

APPENDIX C

Case: 20-56071, 08/20/2021, ID: 12207159, DktEntry: 13, Page 1 of 2

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

AUG 20 2021

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

LIN OUYANG,
Plaintiff-Appellant,
v.
NORA M. MANELLA, Hon., in her
individual, and official capacity as Presiding
Justice of California Court of Appeal-
Second Appellate District, Div. Four; et al.,
Defendants-Appellees.

No. 20-56071
21-55252
D.C. No. 2:20-cv-05707-SVW-
ADS
Central District of California,
Los Angeles
ORDER

Before: SILVERMAN, CHRISTEN, and LEE, Circuit Judges.

The district court denied appellant leave to proceed in forma pauperis because it found the action was frivolous. *See* 28 U.S.C. § 1915(a). On November 20, 2020 and March 25, 2021, this court ordered appellant to explain in writing why these appeals 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 responses to the court's November 20, 2020 and March 25, 2021 orders, we conclude these appeals are frivolous. We therefore deny appellant's motions to proceed in forma pauperis (Docket Entry No. 2 in Appeal No. 20-56071; Docket Entry No. 4 in Appeal No. 21-55252) and

dismiss these appeals as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

All other pending motions are denied as moot.

No further filings will be entertained in these closed cases.

DISMISSED.

APPENDIX D

Case 2:20-cv-05707-SVW-ADS Document 23 Filed 02/16/21 Page 1 of 1 Page ID #:233

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LIN OUYANG, v. NORA M. MANELLA, ET AL.,	PLAINTIFF(S),	CASE NUMBER: 2:20-05707 SVW (ADS)
	DEFENDANT(S)	ORDER ON MOTION FOR LEAVE TO APPEAL IN FORMA PAUPERIS: <input type="checkbox"/> 28 U.S.C. 753(f) <input checked="" type="checkbox"/> 28 U.S.C. 1915

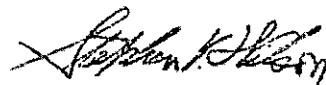
The Court, having reviewed the Motion for Leave to Appeal In Forma Pauperis and Affidavit thereto, hereby ORDERS: (*The check mark in the appropriate box indicates the Order made.*)

The court has considered the motion and the motion is DENIED. The Court certifies that the proposed appeal is not taken in good faith under 28 U.S.C. 1915(a) and is frivolous, without merit and does not present a substantial question within the meaning of 28 U.S.C. 753(f).

The Clerk is directed to serve copies of this Order, by United States mail, upon the parties appearing in this cause.

February 16, 2021

Date



United States District Judge

The Court has considered the motion and the motion is GRANTED. It appears to the Court that the proposed appeal is taken in good faith within the meaning of 28 U.S.C. 1915(a). The Court certifies that the proposed appeal is not frivolous, that it presents a substantial question. The within moving party is authorized to prosecute an appeal in forma pauperis to the United States Court of Appeals for the Ninth Circuit without pre-payment of any fees or costs and without giving security therefor.

A transcript is needed to decide the issue presented by the proposed appeal, all within the meaning of 28 U.S.C. 753 (f). The Court Reporter is directed to prepare and file with the Clerk of this Court an original and one copy of a transcript of all proceedings had in this Court in this cause; the attorney for the appellant is advised that a copy of the transcript will be made available. The expense of such transcript shall be paid by the United States pursuant to 28 U.S.C. 1915(c) and 753(f).

The Clerk is directed to serve copies of this Order upon the parties appearing in this cause.

Date

United States District Judge

APPENDIX E

Case 2:20-cv-05707-SVW-ADS Document 22 Filed 02/16/21 Page 1 of 13 Page ID #:220

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LIN OUYANG,

Plaintiff,

NORA M. MANELLA, et al.,

Defendants.

Case No. 2:20-05707 SVW (ADS)

**ORDER DENYING MOTION TO
VACATE JUDGMENT****I. INTRODUCTION**

Before the Court is Plaintiff Lin Ouyang's ("Plaintiff") Motion to Alter Order Denying Motion to Vacate. [Dkt. No. 19]. The Court construes this as a motion to amend, alter, or vacate judgment ("Motion") pursuant to Federal Rule of Civil Procedure 59(e). This is the second such request by Plaintiff. Also, before the Court is Plaintiff's Motion for Leave to Appeal *In Forma Pauperis* ("IFP") with supporting affidavit. [Dkt. No. 20]. This is the second such request to proceed IFP on appeal by Plaintiff. The Motions are denied for the reasons set forth in more detail below.

1 **II. RELEVANT PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

2 The Court has already detailed Plaintiff's extensive history of litigation stemming
3 from a 2014 employment action initially filed in Los Angeles Superior Court, which
4 Plaintiff continues to contest. As this Court has explained, based on the complaints and
5 previous Motion to Alter, Amend, or Vacate Judgment [Dkt. No. 10], it is clear Plaintiff
6 is attempting to use the federal courts to overturn decisions made by the state courts.
7 This second Motion to Alter, Amend, or Vacate Judgment [Dkt. No. 19] seeks to vacate
8 this Court's previous Order denying the first such Motion, which objected to the Court's
9 dismissal of this case [Dkt. No. 16]. The Court has already considered Plaintiff's
10 objections to dismissal and has made clear that there are many reasons why this case
11 was dismissed. No further objections need be considered, but, in the interest of judicial
12 efficiency, the Court will consider each of Plaintiff's ten new objections in turn.

13 **III. ANALYSIS**

14 **A. Standard of Review Under Rule 59(e)**

15 The Motion relies on Rule 59(e) and specifically moves to prevent manifest
16 injustice. Under Rule 59(e), a party may move to alter or amend a judgment "no later
17 than 28 days after the entry of judgment." Fed. R. Civ. P. 59(e). In general, there are
18 four grounds upon which a Rule 59(e) motion may be granted: (1) if such motion is
19 necessary to correct manifest errors of law or fact upon which the judgment rests; (2) if
20 such motion is necessary to present newly discovered or previously unavailable
21 evidence; (3) if such motion is necessary to prevent manifest injustice; or (4) if the
22 amendment is justified by an intervening change in controlling law. Allstate Ins. Co. v.
23 Herron, 634 F.3d 1101, 1111 (9th Cir. 2011). District courts have considerable discretion
24 in granting or denying such motions, and relief under Rule 59(e) is "extraordinary" and

1 "should be used sparingly." McDowell v. Calderon, 197 F.3d 1253, 1255 n.1 (9th Cir.
2 1999); Weeks v. Bayer, 246 F.3d 1231, 1236 (9th Cir. 2001) ("[j]udgment is not properly
3 reopened 'absent highly unusual circumstances, unless the district court is presented
4 with newly discovered evidence, committed clear error, or if there is an intervening
5 change in the controlling law.'") (citing 389 Orange St. Partners v. Arnold, 179 F.3d 656,
6 665 (9th Cir. 1999)).

7 As relevant here, clear error occurs where the court "is left with the definite and
8 firm conviction that a mistake has been committed." Smith v. Clark Cty. Sch. Dist., 727
9 F.3d 950, 955 (9th Cir. 2013). To find "clear error," the error must be "manifestly
10 unjust." Zimmerman v. City of Oakland, 255 F.3d 734, 740 (9th Cir. 2001). More
11 specifically, "[a] manifest injustice is defined as an error in the trial court that is direct,
12 obvious, and observable." Brooks v. Tarsadia Hotels, No. 3:18-cv-2290-GPC-KSC, 2020
13 U.S. Dist. LEXIS 22035, 2020 WL 601643, at *5 (S.D. Cal. Feb. 7, 2020) (internal
14 quotations marks omitted). To prevail on a theory that the court manifestly erred, a
15 moving party "must set forth facts or law of a strongly convincing nature to induce the
16 court to reverse its prior decision." Arteaga v. Asset Acceptance, LLC, 733 F. Supp. 2d
17 1218, 1236 (E.D. Cal. 2010).

18 **B. Discussion**

19 **1. Ground One**

20 Plaintiff argues the Court "omitted factual allegations that plaintiff will suffer
21 present and future harm absence [sic] of relief requested and erroneously found
22 prospective relief retroactive." [Dkt. No. 19, p. 12¹]. The Court may assume Plaintiff
23

24

¹ All page references shall refer to CM/ECF pagination.

1 refers to the finding in the last Order [Dkt. No. 16, p. 8] regarding Ground Six where the
2 Court found Plaintiff's almost verbatim objection meritless. The Court has already
3 explained the retroactive relief sought is only one of many reasons for dismissal. As
4 such, this ground remains meritless.

5 **2. Ground Two**

6 Plaintiff's second objection is her currently pending appeal in state court
7 "indicates that a prospective relief can be granted, even though a retroactive relief was
8 sought." [Dkt. No. 19, p. 16]. Not only does Plaintiff acknowledge she seeks retroactive
9 relief, but by informing the Court this issue is still on appeal in the state courts and that
10 "plaintiff is expecting more appeals in the future," these claims may be even further
11 barred by the Younger abstention doctrine. Under Younger and its progeny, equity,
12 comity, and federalism preclude the federal courts from interfering in state judicial
13 proceedings absent extraordinary circumstances. Younger v. Harris, 401 U.S. 37, 54
14 (1971); Steffel v. Thompson, 415 U.S. 452, 454 (1974); Middlesex Cty. Ethics Comm. v.
15 Garden State Bar Ass'n, 457 U.S. 423, 431-35 (1982). Since there are many deficiencies
16 with the complaints that cannot be remedied and provide numerous grounds for
17 dismissal, it is unnecessary to conduct a full analysis of whether Younger abstention
18 applies in this case. However, if Younger abstention is applicable, that is yet another
19 reason why all claims in this case must be dismissed. Plaintiff does not present clear
20 error by the Court.

21 **3. Ground Three**

22 Plaintiff, somewhat obliquely, asserts the Court "failed to take inference in favor
23 of plaintiff, term 'the conviction' in injunction refers to a second contempt conviction to
24 be entered against plaintiff, not the one plaintiff had appealed." [Dkt. No. 19, p. 17].

1 Plaintiff asserts the complaint refers to a “second misdemeanor conviction to be
2 entered,” therefore, she seeks prospective relief. [Id. at p. 18]. Plaintiff’s clarification
3 that she is actively seeking a federal court to interfere with state court proceedings only
4 further reinforces that claims in this case are barred. Further, this provides additional
5 support to the possibility that this case is likely barred by the Younger abstention
6 doctrine. Additionally, it is immaterial whether Plaintiff meant to refer to one
7 conviction or two. As this Court has already explained twice, Plaintiff’s claims are
8 barred primarily based on judicial immunity. The fact that there is a second conviction
9 does not change that.

10 **4. Ground Four**

11 Plaintiff next asserts the Court “omitted” Plaintiff’s request to remove the
12 retroactive relief and “erroneously found all requests for prospective relief retroactive,
13 also erroneously found that the suit is barred by the Rooker-Feldman doctrine.” [Dkt.
14 No. 19, p. 2]. As an initial matter, the Court did not “omit” Plaintiff’s request to remove
15 one of the requests for relief, as the entire case had already been dismissed at that time.
16 and Plaintiff was not granted leave to amend. Furthermore, removing one request for
17 relief would not have cured the deficiencies with the complaints.

18 Moreover, as the Court explained in its last Order, the issue of whether Plaintiff
19 seeks prospective or retroactive relief is not dispositive. It is just one of many
20 deficiencies. As already explained, the main problem is “that Plaintiff does not seek
21 injunctive relief against ordinary state employee defendants, but against California state
22 judges who are entitled to judicial immunity.. Judicial immunity is not limited to
23 claims for monetary damages and extends to claims for declaratory or injunctive relief.

24

1 Moore v. Brewster, 96 F.3d 1240, 1243-44 (9th Cir. 1996).” [Dkt. No. 16, p. 9]. The
2 California Court of Appeals judges remain immune. The Court did not err.

3 Plaintiff’s contention that the Rooker-Feldman doctrine was erroneously applied
4 because “plaintiff has requested to remove the retroactive relief request” is meritless.
5 Plaintiff does not dispute that she is seeking a “de facto appeal” of a state court decision.
6 Further, this case was not dismissed based on the Rooker-Feldman doctrine, but the
7 Court acknowledged that could be just one more of the many grounds for dismissal. The
8 Court did not err.

9 5. Ground Five

10 Ground Five asserts “Court [sic] II states a separate claim asserting
11 unconstitutionality of statute.” [Dkt. No. 19, p. 5]. This is incorrect. The FAC clearly
12 states “[t]his is an action brought under 42 U.S.C. § 1983” and Count II specifically
13 states “[v]iolations of rights secured by the Equal Protection Clause of the Fourteenth
14 Amendment.” [Dkt. No. 8, p. 9, 22]. This is reinforced by the fact that there is no
15 indication by Plaintiff that she complied with Federal Rule of Civil Procedure 5.1 to
16 properly file a notice of constitutional question. This is clearly a Section 1983 claim for
17 violations of Plaintiff’s Fourteenth Amendment rights.

18 However, even assuming Plaintiff meant to state a claim asserting a California
19 state statute is unconstitutional, this claim must still be dismissed. Judges are “not
20 proper party defendants in § 1983 actions challenging the constitutionality of state
21 statutes.” In re the Justices of the Supreme Court of Puerto Rico, 695 F.2d 17, 22 (1st
22 Cir. 1982); see also id. at 21 (noting that “ordinarily, no ‘case or controversy’ exists
23 between a judge who adjudicates claims under a statute and a litigant who attacks the
24 constitutionality of the statute,” because judges acting as neutral adjudicators do not

1 have legal interests adverse to the interests of litigants). The Ninth Circuit has made
2 clear when a judge acts as an “adjudicator” and applies a state statute, the judge is not a
3 proper defendant in a Section 1983 action challenging the constitutionality of a state
4 law. Wolfe v. Strankman, 392 F.3d 358, 365 (9th Cir. 2004) (citing Grant v. Johnson, 15
5 F.3d 146, 148 (9th Cir. 1994)); Cunningham v. Coombs, 667 F. App’x 912, 912-13 (9th
6 Cir. 2016) (affirming dismissal of claims against judges because they were not proper
7 parties in a Section 1983 action). Here, Plaintiff is suing the California Court of Appeals
8 judges solely as a result of those judges’ application of California state law. As such, they
9 are not proper defendants in such an action where Plaintiff intends to challenge the
10 constitutionality of California state law. See Rupert v. Jones, No. C 10-00721 SI, 2010
11 U.S. Dist. LEXIS 103108, at *15 (N.D. Cal. Sep. 29, 2010).

12 Additionally, to the extent Plaintiff intends to bring this action asserting
13 unconstitutionality of California state law against the only remaining defendant, clerk
14 Potter, this must also be dismissed. To assert a state official was upholding an
15 unconstitutional statute, the state official “must have some connection with the
16 enforcement of the act,” and that connection “must be fairly direct; a generalized duty to
17 enforce state law or general supervisory power over the persons responsible for
18 enforcing the challenged provision will not subject an official to suit.” Coal. to Defend
19 Affirmative Action v. Brown, 674 F.3d 1128, 1134 (9th Cir. 2012) (internal citations
20 omitted). There is no connection between clerk Potter and the allegedly
21 unconstitutional statute which “provides no right to appointed attorney to indigent
22 misdemeanor appellant.” [Dkt. No. 19, p. 20]. Plaintiff has not, and cannot, provide
23 facts showing that Potter, a clerk of the court, has the authority or ability to determine
24 when appointed counsel to an appellant is appropriate. At best, Potter’s involvement, as

1 clerk of the court, may be liberally construed to be a “generalized duty to enforce state
2 law.” Coal. To Defend Affirmative Action, 674 F.3d at 1134; see also L.A. Cnty. Bar Ass’n
3 v. Eu, 979 F.2d 697, 704 (9th Cir. 1992). As such, there is no direct connection between
4 clerk Potter and the allegedly unconstitutional state statute that does not provide a right
5 to appointed counsel when appealing misdemeanors. See Ass’n des Eleveurs de Canards
6 et d’Oies du Quebec v. Harris, 729 F.3d 937, 943 (9th Cir. 2013) (state official’s only
7 connection to allegedly unconstitutional statute was his general duty to enforce
8 California law).

9 Even assuming Plaintiff did assert a claim to argue a California state statute is
10 unconstitutional, she fails to state a claim against any of the named defendants, and it is
11 clear she cannot. The Court did not err.

12 **6. Ground Five**

13 Plaintiff asserts claims against the unknown officers of the Judicial Council of
14 California were improperly omitted. The Court has already addressed this objection in
15 its previous Order [Dkt. No. 16, p. 7]. The Court did not err.

16 **7. Ground Six**

17 Plaintiff asserts the Court “failed to order leave to amend while the Court did not
18 find the complaint is incurable.” [Dkt. No. 19, p. 2]. Although the Court construes the
19 Complaint liberally when the plaintiff is proceeding pro se, see Barrett v. Belleque, 544
20 F.3d 1060, 1061 62 (9th Cir. 2008) (per curiam), the Court must “dismiss the case at any
21 time if the court determines that . . . the action . . . (i) is frivolous or malicious; (ii) fails
22 to state a claim on which relief may be granted; or (iii) seeks monetary relief against a
23 defendant who is immune from such relief...” 28 U.S.C. § 1915(e)(2). In the Order
24 denying Plaintiff’s request to proceed in forma pauperis, the Court clearly determined

1 the complaint was legally and/or patently frivolous and involved defendants who were
2 immune from requested relief, and as such must be dismissed. [Dkt. No. 9]. The Court
3 denied Plaintiff's previous request to vacate judgment, finding the dismissal was
4 warranted. [Dkt. No. 16]. As the Court is required to dismiss an action that is frivolous
5 or involves immune defendants, leave to amend was not required. As such, the Court
6 did not err.

7 **8. Ground Seven**

8 The seventh ground asserted by Plaintiff argues that it was error to find that
9 judicial officers are immune from suit because Moore "does not apply to judicial officers
10 in state court." [Dkt. No. 19, p. 3]. This argument is simply incorrect. Although Moore
11 v. Brewster, 96 F.3d 1240 (9th Cir. 1996) involved a federal judge, there was no
12 indication in Moore that the doctrine of judicial immunity should not apply to state
13 court judges. To the contrary, there is a plethora of legal authority applying judicial
14 immunity to state court judges. See, e.g., Mireles v. Waco, 502 U.S. 9, 112 S. Ct. 286
15 (1991) (judicial immunity applied to California Superior Court judge); Stump v.
16 Sparkman, 435 U.S. 349, 359 (1978) (judicial immunity applied to state circuit court
17 judge); Ashelman v. Pope, 793 F.2d 1072, 1079 (9th Cir. 1986) (judicial immunity for
18 state court judge). As such, the Court did not err.

19 **9. Ground Eight**

20 Plaintiff argues that her allegation that the Judicial Defendants "fabricated a
21 lower court order" is a factual allegation that can be "reasonably inferred" and not a
22 conclusion, so the Court must accept it as true and judicial immunity should not apply.
23 [Dkt. No. 19, p. 3]. Although Plaintiff phrases this objection slightly differently, this is in
24 essence the same Objection Eight as in the previous Request. See [Dkt. No. 10, p. 15].

1 The crux of this argument is Plaintiff believes the Judicial Defendants making a judicial
2 determination that a lower court was nonappealable is necessarily a “fabrication.” The
3 Court has already addressed this objection in its previous order. [Dkt. No. 16, p. 10].
4 This Court did not err.

5 **10. Ground Nine**

6 The ninth ground raised by Plaintiff asserts the claim against defendant Potter is
7 based on supervisory liability, not vicarious liability. [Dkt. No. 19, p. 3]. Plaintiff asserts
8 defendant Potter is liable “because of his actions in adopting and maintaining a practice,
9 custom or policy of deliberate indifference to known or suspected denial of due process
10 hearing to self-represented appellant by court members.” [Id. at p. 30]. Even assuming
11 Potter, a clerk of the court, had decision making authority regarding judicial decisions,
12 which he does not, and even if Plaintiff had asserted this claim in the complaint, rather
13 than raising it here for the first time, this claim would still fail.

14 Government officials are not liable under Section 1983 simply because their
15 subordinates engaged in unconstitutional conduct. See Ashcroft v. Iqbal, 556 U.S. 662,
16 676 (2009). To hold a supervisor liable for a civil rights violation, Plaintiff must allege
17 facts showing the supervisor defendants either: (1) personally participated in the alleged
18 deprivation of constitutional rights; (2) knew of the violations and failed to act to
19 prevent them; or (3) promulgated or “implement[ed] a policy so deficient that the policy
20 itself is a repudiation of constitutional rights and is the moving force of the
21 constitutional violation.” Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989); Taylor v.
22 List, 880 F.2d 1040, 1045 (9th Cir. 1989). Plaintiff must allege facts that meet this
23 standard in order to hold a supervisor personally liable for the civil rights violations of
24 an employee.

1 Plaintiff's objections fall into the third category, so she must plead that defendant
2 Potter implemented "a policy so deficient that the policy itself is a repudiation of
3 constitutional rights." Hansen, 885 F.2d at 646. The policy Plaintiff specifies is that
4 Potter, a clerk, "could have requested court members to provide a hearing for plaintiff's
5 appeal, or could have established or suggested to establish quality control to secure a
6 due process hearing for appeals filed by self-represented appellant, however he failed to
7 take any action." [Dkt. No. 19, p. 30]. Plaintiff fails to provide a theory of liability
8 through detailed factual allegations that a clerk's inability to direct judges on the case
9 management of their own dockets is a policy "so deficient that [it] itself is a repudiation
10 of constitutional rights." See Hansen, 885 F.2d at 646. Further, Plaintiff's allegation is
11 not adequate to state a claim for supervisory liability. See Victoria v. City of San Diego,
12 No. 17-CV-1837-AJB-NLS, 2019 U.S. Dist. LEXIS 163531, 2019 WL 4643713, at *5 (S.D.
13 Cal. Sept. 23, 2019) (holding that allegations that the defendant supervisor knew of the
14 violations of constitutional rights and failed to act to prevent them were insufficient);
15 Rosales v. Cty. of San Diego, No. 19-CV-2303 JLS (LL), 2021 U.S. Dist. LEXIS 1306, at
16 *16 (S.D. Cal. Jan. 5, 2021) (holding that plaintiff's allegations that supervisor defendant
17 "did nothing to stop his Deputies from engaging in the wrongful conduct" was not
18 adequate to state a supervisory liability claim). Moreover, Plaintiff has not pled a
19 constitutional violation by any supposed subordinate. The Court did not err.

20 **11. Ground Ten**

21 Plaintiff next argues that defendant Potter is not entitled to quasi-judicial
22 immunity because that is not supported by material in the complaint. [Dkt. No. 19, p.
23 3]. As described by Plaintiff in the complaint and subsequent filings, actions taken by
24 defendant Potter were actions taken in support of the judicial process, so Potter is

1 entitled to quasi-judicial immunity for such actions. See Mireles v. Waco, 502 U.S. 9, 9
2 (1991); Mullis v. United States Bankr. Court, 828 F.2d 1385, 1390 (9th Cir. 1987)
3 (superseded by statute that extended judicial immunity beyond holding) (finding
4 actions of court clerks who refused to accept an amended petition were integral parts of
5 judicial process and qualify for quasi-judicial immunity); Demoran v. Witt, 781 F.2d 155,
6 156-57 (9th Cir. 1985) (finding that probation officers preparing presentencing reports
7 act as “an arm of the sentencing judge” and serve an integral function to the
8 independent judicial process). As such, the Court did not err.

9 **12. Leave to Amend is Not Appropriate and Would be Futile**

10 Plaintiff further requests leave to amend the complaint. This case has been
11 dismissed because it lists immune defendants and is patently factually and legally
12 frivolous. The Court has now twice more addressed each of Plaintiff's allegations in turn
13 to reach the same conclusion. The Court must “dismiss the case at any time if the court
14 determines that . . . the action . . . (i) is frivolous or malicious; (ii) fails to state a claim on
15 which relief may be granted; or (iii) seeks monetary relief against a defendant who is
16 immune from such relief...” 28 U.S.C. § 1915(e)(2). Leave to amend is not required
17 when it is clear the complaint cannot be cured. Cato v. United States, 70 F.3d 1103,
18 1105-06 (9th Cir. 1995). As Plaintiff has shown across her numerous filings in this and
19 state court, she is intent on relitigating claims stemming from her 2014 employment
20 action, and now seeks to use the federal courts to overturn decisions related to that case
21 by the state courts. This is not a cognizable federal action. Moreover, the Court has now
22 explained three times why the complaint cannot be cured.

23

24

1 Plaintiff fails to set forth any facts or law of a strongly convincing nature to show
2 the Court manifestly erred. As such, there is no cause to alter, amend, or vacate the
3 Court's previous Order.

4 **IV. MOTION FOR LEAVE TO APPEAL IN FORMA PAUPERIS**

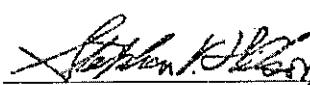
5 Plaintiff's second Motion for Leave to Appeal In Forma Pauperis presents the
6 same grounds as the basis for appeal as were presented in this Motion to Alter Order
7 Denying Motion to Vacate Judgment [Dkt. No. 19]. Each of those grounds, discussed
8 above, have been addressed and found to be meritless. As such, this motion must be
9 denied as not taken in good faith, frivolous and does not present a substantial question.

10 **V. CONCLUSION**

11 Plaintiff's second Motion to Alter Order Denying Motion to Vacate [Dkt. No. 19]
12 and second Motion for Leave to Appeal In Forma Pauperis [Dkt. No. 20] are denied.
13 Because Plaintiff has repeatedly filed plainly meritless, post-dismissal motions, no
14 further filings are permitted in this case without judicial approval.

15 **IT IS SO ORDERED.**

16
17 Dated: February 16, 2021

18 
19 THE HONORABLE STEPHEN V. WILSON
20 United States District Judge

21 Presented by:

22 /s/ Autumn D. Spaeth
23 THE HONORABLE AUTUMN D. SPAETH
24 United States Magistrate Judge

APPENDIX F

Case 2:20-cv-05707-SVW-ADS Document 17 Filed 11/10/20 Page 1 of 1 Page ID #:158

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LIN OUYANG, v. NORA M. MANELLA, ET AL.,	PLAINTIFF(S),	CASE NUMBER: 2:20-05707 SVW (ADS)
	DEFENDANT(S),	ORDER ON MOTION FOR LEAVE TO APPEAL IN FORMA PAUPERIS: <input type="checkbox"/> 28 U.S.C. 753(f) <input checked="" type="checkbox"/> 28 U.S.C. 1915

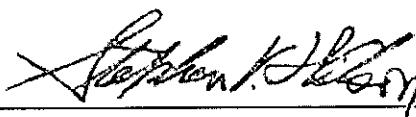
The Court, having reviewed the Motion for Leave to Appeal In Forma Pauperis and Affidavit thereto, hereby ORDERS: (*The check mark in the appropriate box indicates the Order made.*)

The court has considered the motion and the motion is DENIED. The Court certifies that the proposed appeal is not taken in good faith under 28 U.S.C. 1915(a) and is frivolous, without merit and does not present a substantial question within the meaning of 28 U.S.C. 753(f).

The Clerk is directed to serve copies of this Order, by United States mail, upon the parties appearing in this cause.

November 10, 2020

Date



United States District Judge

The Court has considered the motion and the motion is GRANTED. It appears to the Court that the proposed appeal is taken in good faith within the meaning of 28 U.S.C. 1915(a). The Court certifies that the proposed appeal is not frivolous, that it presents a substantial question. The within moving party is authorized to prosecute an appeal in forma pauperis to the United States Court of Appeals for the Ninth Circuit without pre-payment of any fees or costs and without giving security therefor.

A transcript is needed to decide the issue presented by the proposed appeal, all within the meaning of 28 U.S.C. 753 (f). The Court Reporter is directed to prepare and file with the Clerk of this Court an original and one copy of a transcript of all proceedings had in this Court in this cause; the attorney for the appellant is advised that a copy of the transcript will be made available. The expense of such transcript shall be paid by the United States pursuant to 28 U.S.C. 1915(c) and 753(f).

The Clerk is directed to serve copies of this Order upon the parties appearing in this cause.

Date

United States District Judge

APPENDIX G

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LIN OUYANG,

Plaintiff,

Case No. 2:20-05707 SVW (ADS)

v.

**ORDER DENYING MOTION TO
VACATE JUDGMENT**

NORA M. MANELLA, et al.,

Defendants.

I. INTRODUCTION

Before the Court is Plaintiff Lin Ouyang's ("Plaintiff") Motion to Vacate Order of Dismissal pursuant to Federal Rule of Civil Procedure 59(e) ("Rule 59(e)"). [Dkt. No. 10]. The Court construes this as a motion to amend, alter, or vacate judgment ("Motion"). The Motion is denied for the reasons set forth in more detail below.

II. RELEVANT PROCEDURAL HISTORY

On June 26, 2020, pro se Plaintiff Lin Ouyang filed a Complaint against Justices Nora M. Manella, Audrey B. Collins, Kim G. Dunning, and Norman L. Epstein, and the

1 Clerk/Executive Officer of the Court of Appeal, Daniel P. Potter. Plaintiff also filed a
2 Request to Proceed Without Prepayment of Fees ("IFP Request"). [Dkt. Nos. 1, 3].
3 Plaintiff asserted claims for due process and equal protection violations pursuant to the
4 Fourteenth Amendment, challenging the dismissal of her appeal from a Superior Court
5 misdemeanor conviction for contempt and an order denying rehearing. [Dkt. No. 1,
6 p. 7]. Plaintiff also challenged a decision denying Plaintiff's request for appointment of
7 appellate counsel to assist in appealing the misdemeanor conviction. [Id. at p. 6]. The
8 Judicial Defendants dismissed the appeal and denied Plaintiff's requests. Plaintiff
9 asserts Clerk/Executive Officer, Mr. Potter, "ratified the acts, omissions, and
10 misconduct of the court's agents and employees" and did not provide a "formal
11 response" to Plaintiff when she filed another claim with the Court of Appeal challenging
12 the panel's decision. [Id. at pp. 7, 16]. All defendants were listed in both their individual
13 and official capacities. On August 24, 2020, Plaintiff filed a First Amended Complaint.
14 [Dkt. No. 8]. The First Amended Complaint was largely the same as the original
15 Complaint, except it removed Norman L. Epstein as a defendant. The Court denied
16 Plaintiff's IFP request and dismissed the action on the basis that the action was brought
17 against immune defendants and for legally and/or factually patently frivolous claims.

18 A. **Plaintiff's Litigation History**

19 Plaintiff has an extensive history of litigation. This case stems from a 2014
20 employment action initially filed in Los Angeles Superior Court where Plaintiff sued her
21 employer, Achem Industry, for fraud, breach of contract, and wrongful termination. See
22 Ouyang v. Achem Industry America Inc., Los Angeles Superior Court Case
23 No. BC468795. Over the next six years, Plaintiff would go on to file copious appeals.
24

1 A review of the Second Circuit Court of Appeals' records shows Plaintiff has been
2 involved in at least fifteen appeals, with numerous appeals of individual orders filed in
3 each action. See Ouyang v. Achem Industry America, Inc., B290915; Ouyang v. Achem
4 Industry America, Inc., B282945; Achem Industry America, Inc. v. Superior Court of
5 Los Angeles County, B282801; Ouyang v. Achem Industry America Inc., B280724;
6 Ouyang v. Achem Industry America, Inc., B279172; Ouyang v. Achem Industry America
7 Inc., B271357; Ouyang v. Achem Industry America, Inc., B270026; Ouyang v. S.C.L.A. et
8 al., B269775; Ouyang v. S.C.L.A. et al., B269372; Ouyang v. Achem Industry America
9 Inc., B269209, Ouyang v. Superior Court of Los Angeles County, B268985; Ouyang v.
10 Achem Industry America, Inc., B268195; Ouyang v. Superior Court of Los Angeles
11 County et al., B267576; Ouyang v. Achem Industry America, Inc., B267617; Ouyang v.
12 Superior Court of Los Angeles County et al., B263444; Ouyang v. Achem Industry
13 America, Inc., B261929; Ouyang v. Workers Compensation Appeals Board et al.,
14 B256947. Plaintiff has appealed to the Supreme Court of California no less than six
15 times. See Achem Industry America v. S.C. (Ouyang), S244548; Ouyang v. Achem
16 Industry America, S241991; Ouyang v. Achem Industry America, S241977; Ouyang v.
17 Achem Industry America, S257338; Ouyang v. Achem Industry America, S257341;
18 Ouyang v. W.C.A.B. (Achem Industry America), S221187. A review of these dockets
19 reflects that in each appeal to the Supreme Court of California, the petition for review
20 was denied.

21 **B. Present Motion**

22 Plaintiff requests the judgment in this case be vacated to "prevent manifest
23 injustice." [Dkt. No. 10, p. 3]. Although Plaintiff does not explain how vacating the
24 judgment in this case is needed to prevent manifest injustice, she provides eleven

1 grounds to alter, amend, or vacate the judgment. The Court will consider each objection
2 in turn.

3 **III. ANALYSIS**

4 **A. Standard of Review Under Rule 59(e)**

5 The Motion relies on Rule 59(e) and specifically moves to prevent manifest
6 injustice. Under Rule 59(e), a party may move to alter or amend a judgment “no later
7 than 28 days after the entry of judgment.” Fed. R. Civ. P. 59(e). In general, there are
8 four grounds upon which a Rule 59(e) motion may be granted: (1) if such motion is
9 necessary to correct manifest errors of law or fact upon which the judgment rests; (2) if
10 such motion is necessary to present newly discovered or previously unavailable
11 evidence; (3) if such motion is necessary to prevent manifest injustice; or (4) if the
12 amendment is justified by an intervening change in controlling law. Allstate Ins. Co. v.
13 Herron, 634 F.3d 1101, 1111 (9th Cir. 2011). District courts have considerable discretion
14 in granting or denying such motions, and relief under Rule 59(e) is “extraordinary” and
15 “should be used sparingly.” McDowell v. Calderon, 197 F.3d 1253, 1255 n.1 (9th Cir.
16 1999); Weeks v. Bayer, 246 F.3d 1231, 1236 (9th Cir. 2001) (“[j]udgment is not properly
17 reopened ‘absent highly unusual circumstances, unless the district court is presented
18 with newly discovered evidence, committed clear error, or if there is an intervening
19 change in the controlling law.’”) (citing 389 Orange St. Partners v. Arnold, 179 F.3d 656,
20 665 (9th Cir. 1999)).

21 As relevant here, clear error occurs where the court “is left with the definite and
22 firm conviction that a mistake has been committed.” Smith v. Clark Cty. Sch. Dist., 727
23 F.3d 950, 955 (9th Cir. 2013). To find “clear error,” the error must be “manifestly
24 unjust.” Zimmerman v. City of Oakland, 255 F.3d 734, 740 (9th Cir. 2001). More

1 specifically, “[a] manifest injustice is defined as an error in the trial court that is direct,
2 obvious, and observable.” Brooks v. Tarsadia Hotels, No. 3:18-cv-2290-GPC-KSC, 2020
3 U.S. Dist. LEXIS 22035, 2020 WL 601643, at *5 (S.D. Cal. Feb. 7, 2020) (internal
4 quotations marks omitted). To prevail on a theory that the court manifestly erred, a
5 moving party “must set forth facts or law of a strongly convincing nature to induce the
6 court to reverse its prior decision.” Arteaga v. Asset Acceptance, LLC, 733 F. Supp. 2d
7 1218, 1236 (E.D. Cal. 2010).

8 B. Discussion

9 1. Ground One

10 Plaintiff argues the Court manifestly erred because “the Court omitted the claim
11 challenging the constitutionality of California Penal Code § 1466 upon which relief can
12 be granted.” [Dkt. No. 10, p. 8]. A review of the First Amended Complaint reflects that
13 Plaintiff asserts two claims for violations of the Equal Protection Clause of the
14 Fourteenth Amendment against all defendants (Count I and II) and two counts for
15 violation of the Due Process Clause of the Fourteenth Amendment by all defendants
16 (Count III and IV). Plaintiff does not assert a separate claim asserting the California
17 Penal Code is unconstitutional. Instead, Plaintiff asserts that by failing to “provide a
18 right to court appointed counsel for indigent misdemeanor appellant” the Judicial
19 Defendants, in applying the California Penal Code, are acting as “inconsistent with the
20 Equal Protection Clause of the Fourteenth Amendment.” [Dkt. No. 8, ¶46]. It is not
21 necessary to assess the merits of Plaintiff’s contention that the California Penal Code is
22 unconstitutional. Plaintiff asserts this claim against all defendants, who are sued in
23 both individual and official capacity. The three named judicial defendants are entitled
24 to judicial immunity, to be discussed in greater detail below. Regarding the fourth

1 defendant, defendant Potter, Eleventh Amendment immunity bars claims against him in
2 his official capacity, to be discussed in greater detail below, and there are no facts to
3 suggest that defendant Potter personally participated in a due process or equal
4 protection violation to support an individual capacity claim. Plaintiff's new assertion
5 that Potter was "in charge" and "took no action" in response to the Judicial Defendants'
6 conduct instead suggests that Plaintiff intends to assert vicarious liability. [Dkt. No. 10,
7 p. 10]. If these allegations were contained in the complaint, and even if they were
8 sufficient to state a civil rights violation, state officials are not vicariously liable for the
9 violations of constitutional rights by employees. See generally Monell v. Dep't of Soc.
10 Serv. of the City of New York, 436 U.S. 658 (1978). As such, the Court did not
11 manifestly err.

12 **2. Grounds Two and Three**

13 Similar to Ground One, Plaintiff argues in Grounds Two and Three that the Court
14 "omitted" additional claims, specifically those asserting that California Rules of the
15 Court 8.240-8.278 are unconstitutional and that the state appellate court's "custom" of
16 not providing appointed counsel to misdemeanor appeals is unconstitutional. [Dkt. No.
17 10, pp. 8-13]. Again, the four causes of action applicable to these allegations are
18 asserted against defendants who have judicial immunity, or, in the case of defendant
19 Potter, are barred by the Eleventh Amendment and there are no facts suggesting
20 personal participation in a constitutional violation. As such, the Court did not
21 manifestly err.

22 **3. Ground Four**

23 Plaintiff asserts Norman L. Epstein was erroneously removed and Plaintiff did
24 not "abate" her claim against him. [Dkt. No. 10, p. 12]. The First Amended Complaint

1 explicitly removed Norman L. Epstein from both the caption of the complaint and the
2 list of defendants under "parties to this complaint." Plaintiff explicitly noted "Hon.
3 Norman L. Epstein is substituted by his successor Defendant No. 1 Hon. Nora M.
4 Manella." [Dkt. No. 8, p. 4]. Regardless, the Honorable Norman L. Epstein is also
5 entitled to judicial immunity, as noted in the Attachment to the CV-73 ("[a]ny claims
6 against the Honorable Norman L. Epstein, who was removed as a defendant in the FAC,
7 must similarly be dismissed."). [Dkt. No. 9, p. 2]. The First Amended Complaint clearly
8 expresses Plaintiff intended to remove The Honorable Norman L. Epstein as a
9 defendant. Even if she did not, he is similarly entitled to judicial immunity for the acts
10 taken in his judicial capacity. The Court did not erroneously "remove" defendant
11 Epstein.

12 **4. Ground Five**

13 Plaintiff asserts claims against the unknown officers of the Judicial Council of
14 California were improperly omitted. The Judicial Council of California is not described
15 anywhere in the four causes of action. [Dkt. No. 8]. To the extent Plaintiff is referring
16 to the Doe defendants, although plaintiffs may allege Doe defendant liability, that
17 liability must be properly alleged. This means a plaintiff must be able to identify how
18 each defendant is liable for a constitutional violation. Dempsey v. Schwarzenegger, No.
19 C 09-2921 JSW (PR), 2010 U.S. Dist. LEXIS 144416, 2010 WL 1445460, *2 (N.D. Cal.
20 Apr. 9, 2010). Plaintiff has not done this as she has not identified specifically what each
21 of the over 100 Doe defendants did that constitutes a constitutional violation. The Court
22 did not err.

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1 5. Ground Six

2 Plaintiff asserts the Court erroneously applied Eleventh Amendment immunity
3 and absolute immunity. Plaintiff also asserts that qualified immunity does not apply.
4 Qualified immunity was never discussed by the Court and is not at issue. Plaintiff
5 contends that Eleventh Amendment immunity and absolute immunity do not apply
6 because a suit for injunctive relief against state employees in their official capacities is
7 appropriate. Such suit may be appropriate against state employees when it involves
8 prospective injunctive or declaratory relief. See Rounds v. Or. State Bd. of Higher Educ.,
9 166 F.3d 1032, 1036 (9th Cir. 1999) (recognizing a “narrow exception to Eleventh
10 Amendment immunity for certain suits seeking declaratory and injunctive relief against
11 unconstitutional actions taken by state officers in their official capacities”). Prospective
12 injunctive and declaratory relief serves the purpose of preventing present and future
13 harm to the plaintiff. Doe v. Lawrence Livermore Nat'l Lab., 131 F.3d 836, 840 (9th Cir.
14 1997) (“the Eleventh Amendment allows only prospective injunctive relief to prevent an
15 ongoing violation of federal law”). In contrast, although retroactive relief may include
16 monetary damages, injunctive or declaratory relief may also be retroactive when sought
17 solely to remedy past violations. Here, it is abundantly clear that Plaintiff only seeks to
18 remedy past alleged constitutional violations. For instance, Plaintiff explicitly asks this
19 federal Court to “direct defendants to vacate its judgment ... and rehear plaintiff's
20 appeal.” [Dkt. No. 8, p. 26]. Other remedies sought by Plaintiff are also meant to rectify
21 what she perceives as incorrect decisions by the California Court of Appeals panel,
22 including that Plaintiff be provided “appointed appellate counsel to assistant [sic]
23 indigent misdemeanant to appeal the conviction.” [Id.]. Plaintiff provides no
24 information how forcing a California state court to rehear her appeal and declaring

1 California state law invalid will prevent present or future harm to Plaintiff. The alleged
2 harm has already occurred. Plaintiff does not allege she is at risk of similar harm in the
3 future or how the requested injunctive relief is needed to prevent an ongoing or future
4 constitutional violation. Even assuming Plaintiff had sufficiently stated a constitutional
5 violation, it has already occurred and there is no suggestion of it occurring again in the
6 present or future. The Eleventh Amendment bars suits for retroactive injunctive or
7 declaratory relief against state employees in their official capacities. See Flint v.
8 Dennison, 488 F.3d 816, 825 (9th Cir. 2007) (injunctions sought were not merely
9 limited to past violations and could not be characterized as “solely retroactive”
10 injunctive relief barred by the Eleventh Amendment).

11 Further, the main issue is that Plaintiff does not seek injunctive relief against
12 ordinary state employee defendants, but against California state judges who are entitled
13 to judicial immunity. A judicial defendant is absolutely immune from federal civil rights
14 suits for acts performed in his or her judicial capacity. Judicial immunity is not limited
15 to claims for monetary damages and extends to claims for declaratory or injunctive
16 relief. Moore v. Brewster, 96 F.3d 1240, 1243-44 (9th Cir. 1996) (superseded by statute
17 on other grounds). Accordingly, Plaintiff’s contention that suit against the Judicial
18 Defendants is appropriate because she seeks declaratory and injunctive relief is
19 incorrect. As such, the Court did not err.

20 **6. Ground Seven**

21 The seventh ground asserted by Plaintiff is that it was erroneous to “ignore the
22 reliefs that this Court can grant and dismiss the entire complaint because of a remedy
23 that plaintiff is not entitled to.” [Dkt. No. 10, p. 2]. The case was dismissed because
24 Plaintiff sought to sue immune defendants and presented patently frivolous claims.

1 7. Ground Eight

2 Plaintiff argues that judicial immunity should not apply because the Judicial
3 Defendants were not acting in their judicial capacities when they “fabricated a lower
4 court conviction and presented it to themselves for an opinion.” [Dkt. No. 10, p. 15].
5 Plaintiff expands that Plaintiff’s appeal before the judicial defendants was dismissed
6 based on “a false statement that plaintiff’s conviction was civil contempt … a
7 nonappealable order.” [Id.]. Plaintiff further asserts that the Court must accept all
8 allegations as true.

9 Judicial immunity applies “however erroneous the act may have been and
10 however injurious in its consequences it may have proved to the plaintiff.” Moore, 96
11 F.3d at 1244. Judicial immunity is not lost even if a plaintiff alleges that an action was
12 erroneous, malicious, in bad faith, or in excess of jurisdiction. Mireles v. Waco, 502 U.S.
13 9, 11-12 (1991); Stump v. Sparkman, 435 U.S. 349, 356 (1978) (“[a] judge will not be
14 deprived of immunity because the action he took was in error, was done maliciously, or
15 was in excess of his authority”). Judicial immunity is only lost if an action was taken in
16 the “clear absence” of jurisdiction, such as when judicial officers “rule on matters
17 belonging to categories which the law has expressly placed beyond their purview.”
18 O’Neil v. City of Lake Oswego, 642 F.2d 367, 369-70 (9th Cir. 1981) (finding the judge
19 defendant’s action of convicting the plaintiff of contempt, “an offense within his court’s
20 jurisdiction, although without the requisite papers to confer jurisdiction over this
21 particular commission of the offense” was acting in excess of jurisdiction rather than a
22 clear absence).

23 Plaintiff asserts the judicial defendants acted without jurisdiction when they
24 “made up a lower court’s order, a nonappealable civil contempt conviction.” [Dkt. No.

1 10, p. 17]. This appears to be a disagreement with the California Court of Appeals judges
2 over whether an order was appealable or not. At best, this may be read as the Judicial
3 Defendants making a mistake as to the appealability of the order, as Plaintiff asserts it
4 was a “false statement that the charge convicted was a non-appealable civil contempt.”
5 [Id. at p. 7]. Or perhaps it might even be argued the Court of Appeals judges acted in
6 excess of their jurisdiction with regards to the contempt conviction. See, e.g., O’Neil,
7 642 F.2d at 369-70; Williams v. Sepe, 487 F.2d 913, 913 (5th Cir. 1973) (per curiam)
8 (judge who failed to comply with procedure for prosecuting an indirect contempt did not
9 act in clear absence of jurisdiction); McAlester v. Brown, 469 F.2d 1280, 1282 (5th Cir.
10 1972) (taking into consideration that the judge was not in his judge’s robes, not in the
11 courtroom, and “may well have violated state and/or federal procedural requirements
12 regarding contempt citations,” but was still acting within his jurisdiction and entitled to
13 immunity). Even assuming the Judicial Defendants were incorrect in their decision or
14 acted in excess of their jurisdiction, a judge is not deprived of judicial immunity if “the
15 action he took was in error” or in excess of jurisdiction. Stump, 435 U.S. at 356-57.
16 Plaintiff presents no facts to suggest the determination made by the Judicial
17 Defendants, even if in error or in excess or jurisdiction, was taken in the “clear absence”
18 of jurisdiction.

19 Plaintiff is correct that in determining whether Plaintiff has stated a claim, the
20 Court accepts as true the factual allegations contained in the Complaint and views all
21 inferences in the light most favorable to Plaintiff. See Hamilton v. Brown, 630 F.3d
22 889, 892-93 (9th Cir. 2011). However, courts “are not bound to accept as true a legal
23 conclusion couched as a factual allegation.” Bell Atlantic Corp. v. Twombly, 550 U.S.
24 544, 555 (2007). Nor does the Court need to accept “unwarranted deductions of fact, or

1 unreasonable inferences.” In re Gilead Scis. Sec. Litig., 536 F.3d 1049, 1055 (9th Cir.
2 2008). Plaintiff’s assertion that the judicial defendants making an incorrect
3 determination means they “fabricated” an order is a legal conclusion that the Court need
4 not accept as true. See Ashcroft v. Iqbal, 556 U.S. 662, 681 (2009) (the “conclusory
5 nature” of the allegations “disentitles them to the presumption of truth”); see also
6 Dettamanti v. Staffel, No. 19-1230-CBM-PLAx, 2019 U.S. Dist. LEXIS 65375 (C.D. Cal.
7 Feb. 28, 2019) (civil rights complaint against superior court judge for “illegal act” was
8 barred by Eleventh Amendment and judicial immunity); Ezor v. Duffy-Lewis, No. CV
9 19-9804-JVS (AGR), 2020 U.S. Dist. LEXIS 95596, at *9 (C.D. Cal. Apr. 21, 2020)
10 (allegations of “fraud” by superior court judge were conclusory and barred by judicial
11 immunity). Even if the Judicial Defendants made an error in determining that an order
12 was not appealable, that does not abrogate judicial immunity. This Court did not err.

13 **8. Ground Nine**

14 The ninth ground raised by Plaintiff is largely the same as ground eight.
15 Plaintiff’s conclusion that by making an error the judicial defendants “fabricated” a
16 lower court order does not contain sufficient factual matter, accepted as true, to state a
17 claim to relief that is plausible on its face. These allegations do not abrogate judicial
18 immunity.

19 **9. Ground Ten**

20 Plaintiff next argues that claims for “failure to act” were omitted against
21 defendant Potter. [Dkt. No. 10, p. 18]. Plaintiff also asserts deliberate indifference by
22 defendant Potter. Claims against defendant Potter were dismissed as legally and/or
23 factually patently frivolous, based on Eleventh Amendment immunity for claims in
24 official capacity, and, in individual capacity, for failure to state any facts suggesting

1 personal participation in a cognizable Section 1983 claim. As has been discussed above,
2 it was proper to find the Eleventh Amendment bars Plaintiff's claims against Potter in
3 his official capacity. As to the individual capacity claims, Plaintiff's contention seems to
4 argue that Potter, a clerk of the court, should have realized the judicial defendants were
5 applying unconstitutional provisions and intervened. In the present Motion, Plaintiff
6 clarifies this claim is based on Potter's failure to act as a supervisor to "stop the
7 violations" of the judicial defendants. [*Id.* at pp. 21-22].

8 Plaintiff cannot assert a claim against defendant Potter in his individual capacity
9 merely for his failure to act to correct judicial mistakes. Plaintiff has not alleged any
10 facts that, if taken as true, would establish Potter, as the Clerk of Court, has the
11 authority or the obligation to correct judicial mistakes. The Court did not err in finding
12 the claims against defendant Potter legally and/or factually patently frivolous.

13 **10. Ground Eleven**

14 Plaintiff's final argument is that absolute immunity cannot be extended to
15 defendant Potter. However, as the Clerk of Court, Potter's actions are performed as
16 quasi-judicial functions, as to which he is entitled to absolute immunity. *Moore*, 96 F.3d
17 at 1244.

18 **11. Additional Grounds**

19 Although Plaintiff attempts to frame this case as one about civil rights, it is clear
20 this is an attempt to appeal the judgment of a state court, and as such, is likely
21 additionally barred by the Rooker-Feldman doctrine. "A suit brought in federal district
22 court is a 'de facto appeal' forbidden by Rooker-Feldman when 'a federal plaintiff asserts
23 as a legal wrong an allegedly erroneous decision by a state court, and seeks relief from a
24 state court judgment based on that decision.'" *Carmona v. Carmona*, 603 F.3d 1041,

1 1050 (9th Cir. 2010) (quoting Noel v. Hall, 341 F.3d 1148, 1164 (9th Cir. 2003)). That is
2 precisely what Plaintiff seeks to do here, where Plaintiff asserts the judges of the
3 California Court of Appeals wrongfully applied California law when they did not find in
4 her favor. [Dkt. No. 8, pp. 7, 14-18].

5 Plaintiff asks this Court to order the California Court of Appeals to vacate its
6 judgment and rehear Plaintiff's case. As such, although Plaintiff might try to frame this
7 as a civil rights complaint, it is clear she is seeking relief from a state court decision, and
8 this is barred by the Rooker-Feldman doctrine. Carmona, 603 F.3d at 1050. See also
9 Doe v. Mann, 415 F.3d 1038, 1041 (9th Cir. 2005) (stating that the Rooker-Feldman
10 doctrine bars federal courts "from exercising subject-matter jurisdiction over a
11 proceeding in 'which a party losing in state court' seeks 'what in substance would be
12 appellate review of the state judgment in a United States district court, based on the
13 losing party's claim that the state judgment itself violates the loser's federal rights.'");
14 Exxon Mobil Corp. v. Saudi Basic Indust. Corp., 544 U.S. 280, 286 n.1 (2005) (noting
15 that "a district court [cannot] entertain constitutional claims attacking a state-court
16 judgment"). Accordingly, this case could also have been dismissed based on the Rooker-
17 Feldman doctrine.

18 Each of Plaintiff's eleven grounds hold no merit. Furthermore, it is likely this
19 action is barred by the Rooker-Feldman doctrine as Plaintiff seeks to use the federal
20 court to overturn a state court decision. Plaintiff fails to provide facts or law of a
21 strongly convincing nature to induce the Court to alter, amend, or vacate its judgment.

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1 **IV. CONCLUSION**

2 Plaintiff's Motion to Vacate Order of Dismissal [Dkt. No. 10] is denied.

3 **IT IS SO ORDERED.**

4 Dated: November 6, 2020


5 _____
6 THE HONORABLE STEPHEN V. WILSON
7 United States District Judge

8 Presented by:

9 _____/s/ Autumn D. Spaeth
10 THE HONORABLE AUTUMN D. SPAETH
11 United States Magistrate Judge
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APPENDIX H

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LIN OUYANG, v. NORA M. MANELLA, et al.,	PLAINTIFF(S)	CASE NUMBER
		2:20-05707 SVW(ADS)
	DEFENDANT(S)	ORDER RE REQUEST TO PROCEED <i>IN FORMA PAUPERIS</i>

IT IS ORDERED that the Request to Proceed *In Forma Pauperis* is hereby GRANTED.

Date

United States Magistrate Judge

IT IS RECOMMENDED that the Request to Proceed *In Forma Pauperis* be DENIED for the following reason(s):

<input type="checkbox"/> Inadequate showing of indigency	<input type="checkbox"/> District Court lacks jurisdiction
<input checked="" type="checkbox"/> Legally and/or factually patently frivolous	<input checked="" type="checkbox"/> Immunity as to <u>judicial defendants</u>
<input type="checkbox"/> Other: _____	

Comments:

Please see attachment.

September 4, 2020

Date

/s/ Autumn D. Spaeth

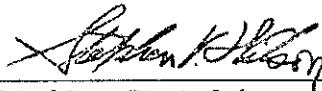
United States Magistrate Judge

IT IS ORDERED that the Request to Proceed *In Forma Pauperis* is hereby:

<input type="checkbox"/> GRANTED
<input checked="" type="checkbox"/> DENIED (see comments above). IT IS FURTHER ORDERED that:
<input type="checkbox"/> Plaintiff SHALL PAY THE FILING FEES IN FULL within 30 days or this case will be dismissed.
<input checked="" type="checkbox"/> This case is hereby DISMISSED immediately.
<input type="checkbox"/> This case is hereby REMANDED to state court.

September 15, 2020

Date



United States District Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIACase No.: 2:20-05707 SVW (ADS) Date: September 4, 2020
Title: *Lin Ouyang v. Nora M. Manella, et al.***ATTACHMENT TO CV-73**

On June 26, 2020, pro se Plaintiff Lin Ouyang filed a Complaint against Justices Nora M. Manella, Audrey B. Collins, Kim G. Dunning, and Norman L. Epstein, and the Clerk/Executive Officer of the Court of Appeal, Daniel P. Potter. Plaintiff also filed a Request to Proceed Without Prepayment of Fees (“IFP Request”). [Dkt. Nos. 1, 3]. Plaintiff asserts claims for due process and equal protection violations pursuant to the Fourteenth Amendment, and challenges the dismissal of her appeal from a Superior Court misdemeanor conviction for contempt and an order denying rehearing. [Dkt. No. 1, p. 7]. Plaintiff also challenges a decision denying Plaintiff’s request for appointment of appellate counsel to assist in appealing the misdemeanor conviction. [Id. at p. 6]. Plaintiff asserts Clerk/Executive Officer, Mr. Potter, “ratified the acts, omissions, and misconduct of the court’s agents and employees” and did not provide a “formal response” to Plaintiff when she filed another claim with the Court of Appeal challenging the panel’s decision. [Id. at pp. 7, 16]. All defendants are sued in both their individual and official capacities. Plaintiff seeks attorney’s fees and costs of suit, and declaratory and injunctive relief including “an order directing defendants to vacate its judgment.” [Id. at p. 22]. On August 24, 2020, Plaintiff filed a First Amended Complaint. [Dkt. No. 8]. The FAC is largely the same as the original Complaint, except removes Norman L. Epstein as a defendant. The FAC does not cure any of the identified deficiencies, discussed below.

The Court recommends that the IFP application be denied and the case dismissed without leave to amend for the following reasons:

- (1) The three named judicial defendants have absolute immunity. This Complaint is solely based on decisions made by judicial officers in their judicial capacity. Judges are entitled to absolute immunity for acts within their judicial capacity. Mireles v. Waco, 502 U.S. 9, 11 (1991) (per curiam) (superseded by statute on other grounds) (“judicial immunity is an immunity from suit, not just from ultimate assessment of damages”); Meek v. County of Riverside, 183 F.3d 962, 965 (9th Cir. 1999) (“It is well settled that judges are generally immune from civil liability under section 1983.”); Schucker v. Rockwood, 846 F.2d 1202, 1204 (9th Cir. 1988). There are only two circumstances where a judge is not immune from liability: (1) for nonjudicial actions; and (2) for actions, though judicial in nature,

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIACase No.: 2:20-05707 SVW (ADS) Date: September 4, 2020
Title: *Lin Ouyang v. Nora M. Manella, et al.*

taken in complete absence of all jurisdiction. Mireles, 502 U.S. at 11-12; Shucker, 846 F.2d at 1204. Here, the conduct in question by the three California Court of Appeals justices concern actions taken in their official capacity during judicial proceedings. There are no facts or evidence presented to suggest that the three justices engaged in any nonjudicial conduct or took any action in complete absence of all jurisdiction. To the contrary, the only conduct attributed to these defendants involves issuing legal decisions. The justices are entitled to absolute judicial immunity. See Ashelman v. Pope, 793 F.2d 1072, 1075 (9th Cir. 1986) (“Judges and those performing judge-like functions are absolutely immune from damage liability for acts performed in their official capacity.”). All claims against the three justices must be dismissed. Any claims against the Honorable Norman L. Epstein, who was removed as a defendant in the FAC, must similarly be dismissed. Clerk/executive officer Potter may also be entitled to quasi-judicial immunity. Adams v. Comm. on Judicial Conduct & Disability, 165 F. Supp. 3d 911, 923 (N.D. Cal. 2016) (citing Mullis v. United States Bankr. Court, 828 F.2d 1385 (9th Cir. 1987) (superseded by statute)) (“Court clerks have absolute quasi-judicial immunity from damages for civil rights violations when they perform tasks that are an integral part of the judicial process.”). However, there are too few facts alleged to determine whether Defendant Potter was engaged in tasks necessary to the judicial process, for which he would be entitled to quasi-judicial immunity, or purely administrative tasks.

(2) The allegations related to the only possible remaining defendant, clerk/executive officer Potter, are legally and patently frivolous. The complaint does not state a cognizable Section 1983 claim against Defendant Potter. Defendant Potter is sued in both his individual and official capacity for alleged violations of Plaintiff's due process and equal protection rights under the Fourteenth Amendment for the “authorization of, and acquiescence in, the unlawful conducts of [judicial defendants].” [Dkt. No. 1, p. 18]. Pursuant to the Eleventh Amendment, state agencies and officials are generally immune from liability under Section 1983. Will v. Michigan Dep't of State Police, 491 U.S. 58, 66 (1989) (Section 1983 does not permit suits against a state unless the state has waived its immunity); Flint v. Dennison, 488 F.3d 816, 825 (9th Cir. 2007) (state officials sued in their official capacities are not “persons” within the meaning of Section 1983 and are generally entitled to Eleventh Amendment immunity). Plaintiff does not assert, and there

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIACase No.: 2:20-05707 SVW (ADS) Date: September 4, 2020Title: *Lin Ouyang v. Nora M. Manella, et al.*

is nothing to suggest, that California has waived its immunity in this case. The official capacity claim against Defendant Potter is barred. Also, here it clear that Plaintiff is seeking to use the federal courts to overturn a state court decision and force the state court to rehear her case. That does not present a cognizable Section 1983 claim against Defendant Potter in his individual capacity. Moreover, Plaintiff does not provide any facts to show personal participation by Defendant Potter in a due process violation. As such, this claim is frivolous and must also be dismissed.

APPENDIX I

Case: 21-55252, 09/03/2021, ID: 12220275, DktEntry: 8, Page 1 of 232

No. 20-56071, 21-55252

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

LIN OUYANG,

Plaintiff and Appellant,

v.

NORA M. MANELLA, Hon., in her individual, and official capacity as Presiding Justice of California Court of Appeal-Second Appellate District, Div. Four; et al.,

Defendants-Appellees.

On Appeal from the United States District Court

for the Central District of California

No. 2:20-cv-05707-SVW-ADS

Hon. Stephen Victor Wilson, District Judge

**PETITION FOR PANEL REHEARING AND REHEARING EN
BANC**

LIN OUYANG

1124 WEST ADAMS BLVD.

LOS ANGELES, CA 90007

TEL: (213) 747-5296

APPELLANT IN PRO SE

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RULE 35(b) STATEMENT

Pursuant to Federal Rule of Appellate Procedure (“FRAP”) 35(a)(1), Plaintiff and Appellant Lin Ouyang (“Ouyang”) petitions for rehearing because the panel’s decision to dismiss Ouyang’s appeal as frivolous conflicts with the United States Supreme Court decision in *Boag v. MacDougall*, 454 U. S. 364 (1982) (per curiam) (“*Boag*”). *Boag* holds that when a dismissal is based on erroneous legal conclusions, it should be reversed, even though the court also has broad discretion to dismiss an *in forma pauperis* appeal as frivolous pursuant to 28 USC §1915(d), renumbered as 28 USC §1915(e)(2). *Id.* at 365. Here, the panel’s decision directly conflicts with *Boag*, instead of reversing District Court’s dismissal that is based on erroneous legal conclusions: judicial immunity barred claims for equitable relief against state judicial officers, the panel dismissed the appeals as frivolous under 28 USC §1915(e)(2). The Court should grant rehearing en banc to resolve the conflict. FRAP 35(a)(1).

Moreover, this Petition should be granted because, under FRAP 35(a)(2) the proceeding involves an issue of exceptional importance – protection of indigent litigants’ right to access to courts. Permitting discretionary dismissals of appeals as frivolous under §1915(e)(2) where appeals raise arguable claims denies indigent appellants the practical protections against unwarranted dismissal generally accorded paying appellants and is inconstant with Congress’ overarching goal in

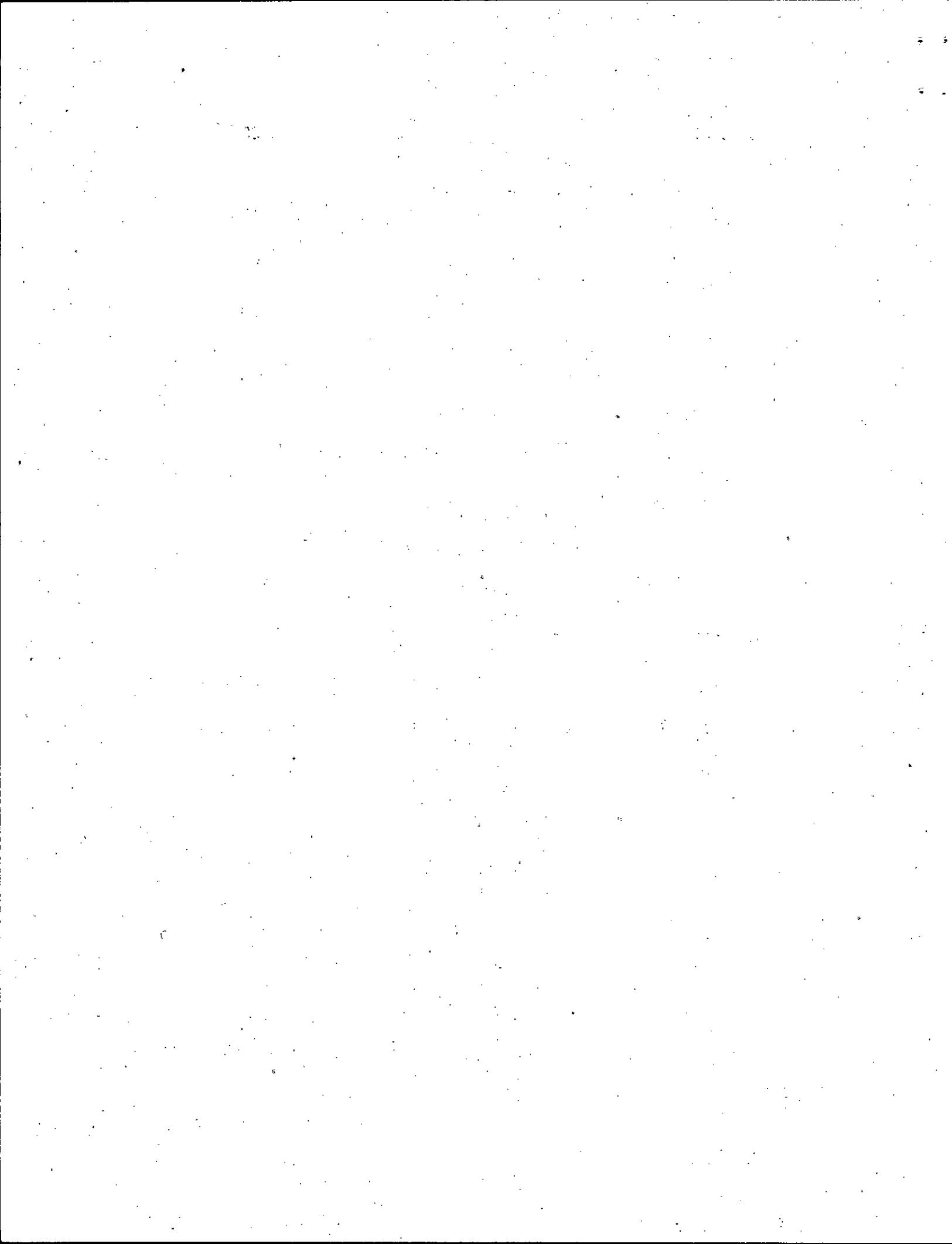
enacting the in forma pauperis statute: "to assure equality of consideration for all litigants". *Neitzke v. Williams*, 490 US 319, 329 (1989).

BACKGROUND

I. Complaint.

Ouyang appealed in California state appellate court her misdemeanor conviction entered by Los Angeles Superior Court with unlimited civil jurisdiction. State appellate court waived her filing fees but denied her request of a court appointed appellate counsel. Ouyang submitted arguments self-represented. State appellate court dismissed her misdemeanor appeal with a written opinion basing on a false statement that the charge convicted was a civil contempt that is non-appealable, at the same time the court dismissed all other appeals that could collaterally attack the misdemeanor conviction also basing on misrepresentations of the record, in addition the court fabricated arguments for two appeals that Ouyang did not contend in her briefs. Ouyang filed a complaint with state appellate court complaining that her appeals were disposed without a hearing while appeals with representations are treated differently. Clerk/Executive officer of the court took no action, and his decision was adopted by Judicial Council of California. Add. 42a-44a, 47a-55a.

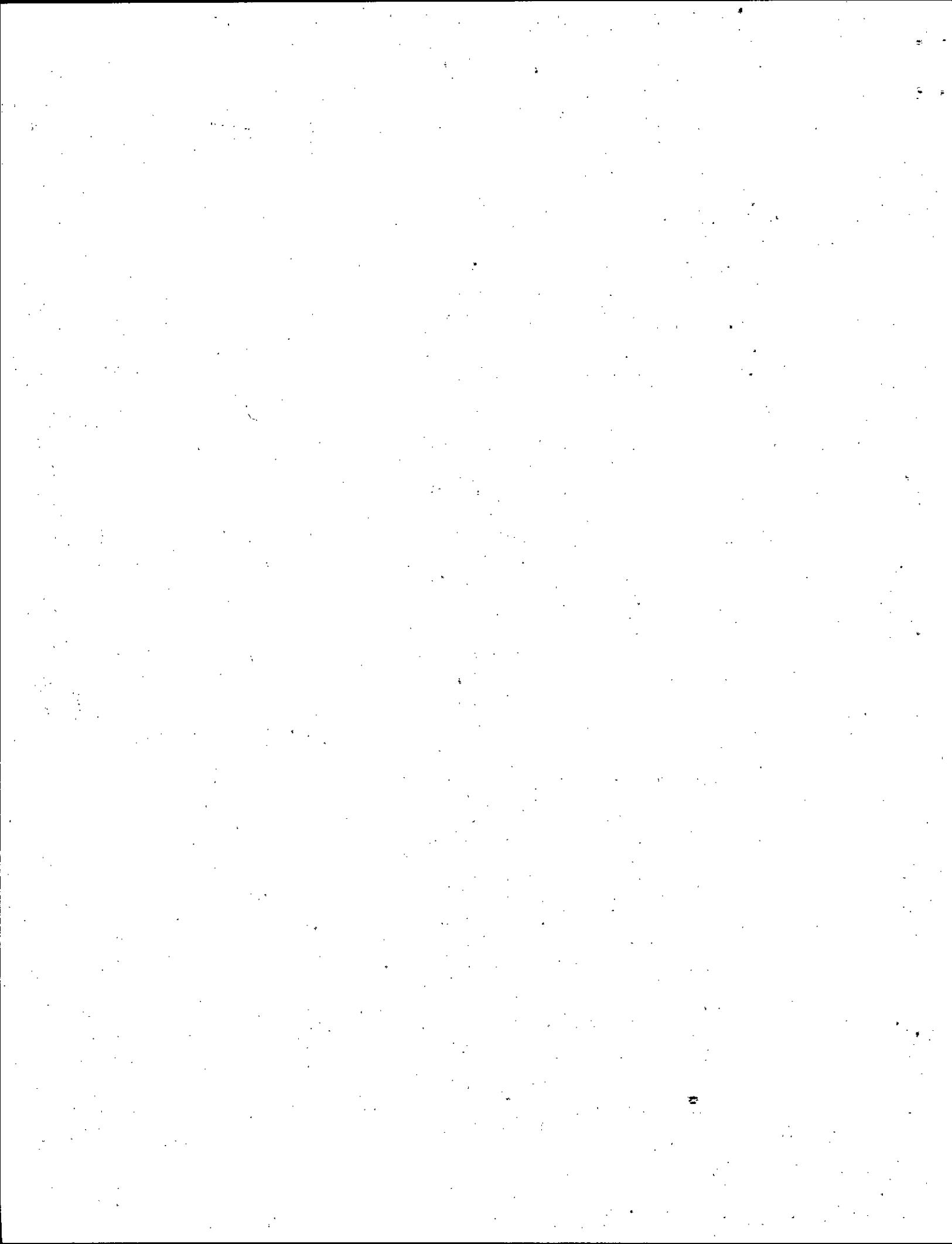
Ouyang filed this civil right suit in District Court of Central California. Exhibits attached to the complaint include a commitment order showing that



Ouyang was convicted of Cal. P.C. §166, misdemeanor contempt of the court. Add. 69a-71a. Besides stating facts how a civil trial court entered a misdemeanor conviction, the complaint also states facts that jail raised the question of charge convicted at the time of booking and requested trial court to clarify, trial court confirmed that Ouyang was convicted of a misdemeanor of P.C. §166. Add. 47a-48a. The complaint also states facts that Ouyang informed the court including the three justices who decided her appeal that she was convicted of misdemeanor showing that the justices knowingly made misstatements of trial court record to dismiss her appeal. Add. 50a, 53a.

The complaint includes claims:

1. California Penal Code §1466 that provides no right to court appointed counsel for indigent misdemeanant in their first appeal as a matter of right is in violation of the Equal Protection Clause of the Fourteenth Amendment to U.S. Constitution.
2. California Rules of Court Title 8, Division 1, Chapter 2, Article 4 "Hearing and Decision in the Court of Appeal" that contains no provision to secure a hearing before an appeal is disposed by a written opinion is in violation of the Due Process Clause of the Fourteenth Amendment to U.S.



3. A custom of California Court of Appeal that provides no hearing for appeals filed by self-represented appellants who generally are poor and unable to afford an attorney is in violation of the Equal Protection Clause and Due Process Clause of the Fourteenth Amendment to U.S. Constitution.
4. Judges of state appellate court are liable pursuant to the Civil Rights Act of 42 U.S.C. §1983 in their personal capacities for their acts of dismissing Ouyang's misdemeanor appeal without a hearing basing on a false statement that the charge convicted was a civil contempt that is non-appealable.
5. Clerk/Executive Officer of California Court of Appeal is liable pursuant to the Civil Rights Act of 42 U.S.C. §1983 in his personal capacity for his act of taking no action on complaint of constitutional violations.

The complaint requests declaratory relief, injunctive relief, and damages.

Add. 56a-63a.

II. Dismissal order of District Court.

District Court dismissed the complaint finding that “the main problem” is that judicial immunity barred equitable relief against state judicial officers relying on *Moore v. Brewster*, 96 F.3d 1240, 1243-44 (9th Cir. 1996). Add. 8a-9a.

District Court’s decision is erroneous as a matter of law. Judicial immunity does not bar declaratory and injunctive relief against state court judges. *Pulliam v. Allen*, 466 U.S. 522, 541-42, 104 S.Ct. 1970, 80 L.Ed.2d 565 (1984); *Lebbos v. Judges of Superior Court, Santa Clara Cty.*, 883 F.2d 810, 813 & n.5 (9th Cir. 1989) *Moore v. Brewster*, 96 F. 3d 1240, 1243-1244, relied upon by District Court similarly held that “state officials enjoy judicial or quasi-judicial immunity from damages only”.

In 1996, Congress amended §1983 to prohibit the grant of injunctive relief against any judicial officer acting in her or his official capacity “unless a declaratory decree was violated, or declaratory relief was unavailable.” 42 U.S.C. §1983. This Court in *Moore v. Urguhart*, 899 F.3d 1094 (9th Cir. 2018) distinguished statutory immunity from common law immunity finding that “Section 1983 (as amended by the FCIA) . . . provides judicial officers immunity from injunctive relief even when the common law would not” indicating that *Pulliam* was not overruled. *Id.* at 1104. The Eleventh Circuit held that *Pulliam* decision has been partially abrogated by statute. *Bolin v. Story*, 225 F. 3d 1234, 1242 (11th

Cir.2000). The Second and Third Circuits held that Congress intends to overrule *Pulliam* by amending the statute, and at the same time they held that the amended Section 1983 now implicitly recognizes that declaratory relief is available against judicial officers. *Brandon E. ex rel. Listenbee v. Reynolds*, 201 F.3d 194, 197-98 (3d Cir. 2000), *Mentero v. Travis*, 171 F.3d 757, 761 (2d Cir. 1999).

Providing that injunctive relief against judicial officers is only available when certain conditions are met, not absolutely unavailable, Congress still upholds *Pulliam* ruling that judicial immunity does not bar injunctive relief against judicial officers. Interpreting the amendment otherwise would conflict with the maxim that a statute in derogation of the common law "must be strictly construed, for no statute is to be construed as altering the common law, farther than its words import." *Robert C. Herd & Co. v. Krawill Machinery Corp.*, 359 U.S. 297, 304, 79 S.Ct. 766, 3 L.Ed.2d 820 (1959) (internal quotation marks omitted).

In other words, the amendment intends to say that both injunctive relief and declaratory relief are available, but declarative relief is more favorable than injunctive relief and judicial officers are to be given opportunities to decide what actions to take to correct violations before a rival court tells them what to do. 42 U.S.C. §1983. Since *Pulliam* conclusion that "judicial immunity is not a bar to prospective injunctive relief against a judicial officer" is based on the analysis "whether the common law recognized judicial immunity from prospective

collateral relief", *Pulliam v. Allen*, 466 U.S. 522, 542, 529, the conclusion of *Pulliam* similarly applies to other collateral relief, such as declaratory relief. Thus, the amendment requesting issuing declaratory relief prior to issuing injunctive relief provides guidance on how to apply *Pulliam* and is not necessarily relevant to the conclusion of *Pulliam* that is on the issue of judicial immunity. This Court and the Second Circuit held *Pulliam* a good law without discussing FCIA. *Buckwalter v. Nevada Bd. of Medical Examiners*, 678 F. 3d 737, 747 (9th Cir. 2012) ("Absolute immunity is not a bar to injunctive or declaratory relief. *Pulliam v. Allen*, 466 U.S. 522, 541-42, 104 S.Ct. 1970, 80 L.Ed.2d 565 (1984)."); *Shmueli v. City of New York*, 424 F. 3d 231, 239 (2nd Cir. 2005) ("[A]n official's entitlement to absolute immunity from a claim for damages," however, "does not bar the granting of injunctive relief," ...; see, e.g., *Pulliam v. Allen*, 466 U.S. 522, 536-37, 104 S.Ct. 1970, 80 L.Ed.2d 565 (1984), *Hili v. Sciarrotta*, 140 F.3d 210, 215 (2d Cir.1998); ..., or of other equitable relief.")

Therefore, *Pulliam* is a good law, and District Court's conclusion is erroneous as a matter of law.

District Court dismissed the complaint also on other grounds, Add. 4a-16a, those grounds are also erroneous. See Add. 85a-138a, 139a-201a.

III. Appeal and statements why appeal should go forward.

Ouyang filed with District Court timely notices of appeal and requested leave to appeal in *forma pauperis*. Trial court denied the request finding that proposed appeal is not taken in good faith and is frivolous. Add. 3a. Ouyang filed request for leave to appeal in *forma pauperis* with Court of Appeal. Court of Appeal ordered Ouyang to either dismiss the appeal or file a statement explaining why the appeal is not frivolous and should go forward. Add. 1a.

Ouyang filed a timely statement why the appeal is not frivolous and should go forward. Ouyang argued that dismissal order should be reversed because District Court did not meet its burden to establish the justification for judicial immunity proposed by the District Court. *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 432 (1993); *Garmon v. Cty. of Los Angeles*, 828 F.3d 837, 843 (9th Cir. 2016). Ouyang also argued that assuming the court is correct that the complaint fails to state a claim, leave to amend should be granted to cure the alleged deficiencies. *Lopez v. Smith*, 203 F.3d 1122, 1127-28 (9th Cir. 2000) (en banc); *Neitzke v. Williams*, 490 U.S. 319, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989). Ouyang informed the court that she no longer had any proceedings pending in state appellate court, thus the doctrine of *Younger* abstain does not bar the claims against state appellate court officers. Each of other grounds raised by District Court are erroneous as well and are argued in the statement. Add. 85a-138a, 139a-201a.

IV. Dismissal order of the panel.

The panel affirmed the dismissal of District Court finding that “these appeals are frivolous” pursuant to 28 U.S.C. §1915(e)(2). Add. 1a-2a. The panel did not dismiss the appeals on other grounds listed under 28 U.S.C. §1915(e)(2): the allegation of poverty is untrue, the appeal is malicious, the action fails to state a claim on which relief may be granted, or the action seeks monetary relief against a defendant who is immune from such relief. Add. 1a-2a. The panel did not explain why the appeals are frivolous. Add. 1a-2a.

The dismissal should be reversed even though the court has broad discretion to dismiss an *in forma pauperis* petition as frivolous, because District Court’s dismissal is erroneous as a matter of law on its face: District Court’s claim that judicial immunity barred equitable relief against state judicial officers conflicts with *Pulliam. Boag v. MacDougall*, 454 U. S. 364, 365 (1982) (per curiam). However, the panel failed to follow to *Boag*, and dismissed the appeals as frivolous. Add. 1a-2a.

REASONS FOR GRANTING REHEARING

I. The panel’s decision conflicts with *Boag*.

In *Boag*, the Court holds that when a dismissal is based on erroneous legal conclusions, it should be reversed, even though the court also has broad discretion to dismiss an *in forma pauperis* appeal as frivolous pursuant to 28 USC §1915(d),

renumbered as 28 USC §1915(e)(2). *Boag v. MacDougall*, 454 U. S. 364, 365 (1982) (per curiam).

§1915(e)(2) permits court to dismiss an appeal if court determines it is frivolous and §1915 (a)(3) provides that an appeal may not be taken in *forma pauperis* if the trial court certifies in writing that it is not taken in good faith. Unlike criminal appeals, in which, the good faith standard is an objective one and the test under 28 U.S.C. §1915(a) for whether an appeal is taken in good faith is whether the litigant seeks appellate review of any issue that is not frivolous, *Coppedge v. United States*, 369 U.S. 438, 445 (1962), in civil suits lower federal courts has held that, “a court should be more willing to entertain an application of this nature in a criminal proceeding, or a Title VII proceeding, than, say, in a civil action for money damages” and court has discretion to find an appeal not taken in good faith if a trial judge finds that “it is a case proceeding capriciously, or viciously, or with prejudice, or from any other improper motive”. *Schweitzer v. Scott*, 469 F. Supp. 1017, 1020.

Generally, it would be inconsistent for a district court to determine that a complaint should be dismissed prior to service on the defendants, but has sufficient merit to support an appeal in *forma pauperis*. *Williams v. Kullman*, 722 F.2d 1048, 1050 n.1 (2d Cir. 1983). Due to the weakness of human nature, a judge, as a human being, tends to confuse the state of mind of unwillingness to have its own decision

challenged with the state of mind of finding an appeal filed from improper motive. In other words, a district court generally does not certificate that an appeal is taken in good faith even if the appeal has merit.

Supreme Court in *Boag*, a case involving civil appeals, stated, "We need not address the permissible contours of the Court of Appeals' first conclusion [that district courts have "especially broad" discretion to dismiss frivolous actions against prison officials under 28 U. S. C. § 1915(d)], for its second conclusion [that petitioner's action is frivolous because it does not state a claim upon which relief can be granted] is erroneous as a matter of law." *Boag v. MacDougall*, 454 U. S. 364, 365 (1982) (per curiam). However, in practice, lower court ignores Supreme Court's ruling, such as this case.¹ According to a study by U.S. Department of Justice, the percentage of civil rights cases dismissed from U.S. district courts increased from 66% in 1990 to 75% in 2003 and decreased slightly to 72% in 2006. Add. 202a - 213a. This case indicates that those dismissed cases very likely have merit, and the amount of such cases may be significant. It is necessary to grant rehearing en banc to solve the conflict. FRAP 35(a)(1).

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¹ The complaint provides citations to court records that the facts in the complaint are based on, no question of the truth of the factual allegations was raised, Add. 4a-16a, 18a-32a, 33a-36a, thus *Denton v. Hernandez*, 504 US 25 (1992) and its offspring are not discussed in this case. *Nietzke v. Williams*, 490 U.S. 319 (1989) is not discussed in this argument because the panel did not dismiss the appeal on the grounds that the action fails to state a claim on which relief may be granted or the action seeks monetary relief against a defendant who is immune from such relief. Add. 1a-2a.

II. This case presents a question of exceptional importance.

This case also presents a question of exceptional importance. "[T]o assure equality of consideration for all litigants" is Congress' overarching goal in enacting the in forma pauperis statute. *Neitzke v. Williams*, 490 US 319, 329. However, permitting dismissals of appeals as frivolous under §1915(e)(2) where an appeal raises arguable claims denies indigent appellants the practical protections against unwarranted dismissal generally accorded paying appellants. If Ouyang were a paying appellant, dismissal of her appeals as frivolous under § 1915(e) (2) will be avoided and her appeals will very likely benefit from adversary proceedings that are designed to minimize decisional error.

The courts should strive to treat paying and non-paying litigants alike.

Neitzke v. Williams, 490 U.S. 319, 329, 109 S.Ct. 1827, 1833, 104 L.Ed.2d 338 (1989). The Court should grant rehearing en banc to protect indigents' right to access to courts. FRAP 35(a)(2).

CONCLUSION

The petition for rehearing should be granted.

Dated: September 3, 2021

Respectfully submitted,

/s/Lin Ouyang

Appellant in Pro Se

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 11. Certificate of Compliance for Petitions for Rehearing or Answers

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form11instructions.pdf>

9th Cir. Case Number(s) 20-56071, 21-55252

I am the attorney or self-represented party.

I certify that pursuant to Circuit Rule 35-4 or 40-1, the attached petition for panel rehearing/petition for rehearing en banc/answer to petition is (*select one*):

Prepared in a format, typeface, and type style that complies with Fed. R. App.

P. 32(a)(4)-(6) and **contains the following number of words:** 2,693

(Petitions and answers must not exceed 4,200 words)

OR

In compliance with Fed. R. App. P. 32(a)(4)-(6) and does not exceed 15 pages.

Signature s/Lin Ouyang

Date 9/3/2021

(use "s/[typed name]" to sign electronically-filed documents)

CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on September 3, 2021. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Lin Ouyang

Lin Ouyang

Case: 21-55252, 11/02/2021, ID: 12276181, DktEntry: 9, Page 1 of 3

Lin Ouyang
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T (213) 747 - 5296 • linouyang@gmail.com

November 2, 2021

VIA E-FILING

United States Court of Appeals for the Ninth Circuit

*Re: 20-56071, 21-55251 & 21-55252, Lin Ouyang v. Nora Manella, et al,
"Motion for Reconsideration from Dispositive Order"*

TO HONORABLE CIRCUIT JUDGES SILVERMAN, CHRISTEN, LEE AND/OR
OTHER MEMBERS OF THE PANEL:

This Court ordered Aug. 20, 2021 in cases 20-56071, 21-55251 & 21-55252 that
"[n]o further filings will be entertained in these closed cases". Will this Court issue an
order on the motion for reconsideration from dispositive order filed Sep. 3, 2021 in these
cases?

If this Court does not issue an order on the motion for reconsideration, no court
rules would apply to decide when this Court's Aug. 20, 2021 order becomes final, as the
timely filed motion for reconsideration in these cases stays the finality of the court's final
judgment pursuant to Supreme Court Rule 13.3 ("if a petition for rehearing is timely filed
in the lower court by any party, ..., the time to file the petition for a writ of certiorari for
all parties (whether or not they requested rehearing or joined in the petition for rehearing)
runs from the date of the denial of rehearing ...")

I would really appreciate it if the Court could update the status of the motion.
Please see a discussion between the Clerk's office and me attached hereto.

Respectively submitted,

/s/ Lin Ouyang

Appellant in *pro se*



Lin Ouyang <lin.ouyang@gmail.com>

Re: 20-56071, 21-55251 & 21-55252, Lin Ouyang v. Nora Manella, et al, "Motion for Reconsideration from Dispositive Order"

6 messages

Lin Ouyang <lin.ouyang@gmail.com>
To: questions@ca9.uscourts.gov

Mon, Nov 1, 2021 at 3:28 AM

Dear Clerk of United States Courts for the Ninth Circuit:

Because the court ordered Aug. 20, 2021 in cases 20-56071, 21-55251 & 21-55252 that "No further filings will be entertained in these closed cases", I am wondering whether my motion for reconsideration from dispositive order filed Sep. 3, 2021 in these cases will be ruled by the court.

If the court won't consider the motion, will the court issue an order?

Respectfully Submitted,
Lin Ouyang
Appellant in pro se

Questions CA09Operation <questions@ca9.uscourts.gov>
To: Lin Ouyang <lin.ouyang@gmail.com>

Mon, Nov 1, 2021 at 8:32 AM

I do not think the issue a decision or order on the motion because no further filings will be entertained in the closed cases.

From: Lin Ouyang <lin.ouyang@gmail.com>
Sent: Monday, November 1, 2021 3:28 AM
To: Questions CA09Operation <questions@ca9.uscourts.gov>
Subject: Re: 20-56071, 21-55251 & 21-55252, Lin Ouyang v. Nora Manella, et al, "Motion for Reconsideration from Dispositive Order"

CAUTION - EXTERNAL:

[Quoted text hidden]

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Lin Ouyang <lin.ouyang@gmail.com>
To: Questions CA09Operation <questions@ca9.uscourts.gov>

Mon, Nov 1, 2021 at 11:07 AM

Dear Clerk of United States Courts for the Ninth Circuit:

According to my conversation with the office of the Supreme Court, I need to wait for the court's order on the motion for reconsideration before I can file a petition for writ of certiorari with the Supreme Court.
Could you please bring this matter to the court's attention?

Respectfully Submitted,

Case: 21-55252, 11/02/2021, ID: 12276181, DktEntry: 9, Page 3 of 3

Lin Ouyang
Appellant in pro se
[Quoted text hidden]

Questions CA09Operation <questions@ca9.uscourts.gov> Mon, Nov 1, 2021 at 11:43 AM
To: Lin Ouyang <lin.ouyang@gmail.com>, Questions CA09Operation <questions@ca9.uscourts.gov>

Hello,

Per this Court's previous orders, no further filings will be entertained in these closed cases.

[Quoted text hidden]

Lin Ouyang <lin.ouyang@gmail.com> Tue, Nov 2, 2021 at 11:18 AM
To: Questions CA09Operation <questions@ca9.uscourts.gov>

Dear Clerk of United States Courts for the Ninth Circuit:

Pursuant to Supreme Court Rule 13.3, "if a petition for rehearing is timely filed in the lower court by any party, ..., the time to file the petition for a writ of certiorari for all parties (whether or not they requested rehearing or joined in the petition for rehearing) runs from the date of the denial of rehearing ...", the timely filed motion for reconsideration in these cases stays the finality of the court's final judgment.

An order on the motion for reconsideration still should be issued when the court would not entertain the filing, so that I am notified of the date the judgment becomes final.

Respectfully submitted,
Lin Ouyang
Appellant in pro se

[Quoted text hidden]

Questions CA09Operation <questions@ca9.uscourts.gov> Tue, Nov 2, 2021 at 11:38 AM
To: Lin Ouyang <lin.ouyang@gmail.com>, Questions CA09Operation <questions@ca9.uscourts.gov>

The clerk's office is not given advance notice as to when a disposition or order/judgement will be delivered or filed and, therefore, cannot supply such information to the parties. If you are requesting the status of a motion, please file correspondence to the Court. The clerk's office does not have additional information on pending motions.

[Quoted text hidden]

No. 20-56071, 21-55252

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LIN OUYANG,

Plaintiff and Appellant,

v.

NORA M. MANELLA, Hon., in her individual, and official capacity as Presiding Justice
of California Court of Appeal-Second Appellate District, Div. Four; et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Central District of California

No. 2:20-cv-05707-SVW-ADS

**PLAINTIFFS-APPELLANTS' MOTION TO RECALL
MANDATE THAT WAS ISSUED WHILE A TIMELY MOTION
FOR RECONSIDERATION WAS PENDING**

LIN OUYANG
1124 WEST ADAMS BLVD.
LOS ANGELES, CA 90007
TEL: (213) 747-5296
APPELLANT IN PRO SE

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INTRODUCTION

Pursuant to FRAP 41, Plaintiff-Appellant Lin Ouyang respectfully requests an order recalling the mandate issued by this Court on January 10, 2022.

This Court issued a mandate before the judgment of this case reaches its finality. Specifically, the timely motion for reconsideration in this case is pending for this Court's decision and the motion stays the issuance of mandate until its disposition. FRAP 41 (b).

Recall of the mandate is appropriate to protect the integrity of the court's processes and to prevent injustice.

FACTUAL AND PROCEDURAL BACKGROUND

I. A timely motion for reconsideration is pending for this Court's decision.

On Sep. 3, 2021, Appellant filed a timely motion to reconsider this Court's dismissal order and the motion is pending for this Court's decision. Case 20-56071, Dkt. 15; Case 21-55252, Dkt. 8.

II. The timely filing of motion for reconsideration automatically stays the issuance of mandate. FRAP 41 (b).

The timely filing of motion for reconsideration in this appeal automatically postpones the issuance of mandate until disposition of the motion. FRAP 41 (b) ("The court's mandate must issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for

panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. The court may shorten or extend the time by order.”)

III. This Court issued mandate prior to entry of an order on the timely motion for reconsideration.

On Jan. 10, 2022, this Court issued a mandate while the motion for reconsideration was pending. Case 20-56071, Dkt. 17; Case 21-55252, Dkt. 10.

IV. As a result, this Court lost the power to enter an order on the motion for reconsideration, a substantive decision in this case.

Upon issuance of the mandate, this case has been returned to the district court's jurisdiction, and this Court lost the power to enter an order on the motion for reconsideration, a substantive decision in this case. *Sgaraglino v. State Farm Fire and Cas. Co.*, 896 F. 2d 420, 421 (1990).

ARGUMENTS

I. This court has clear authority to recall a mandate to protect the integrity of its own processes.

This Court has recognized that it has inherent authority to recall its mandate and thereby assume jurisdiction over an appeal to protect the integrity of its own processes. *Abreu-Reyes v. INS*, 350 F. 3d 966, 967 (2003); see also *Calderon v. Thompson*, 523 U.S. 538, 549-550 (1998) (recognizing that courts of appeals “have the inherent power to recall their mandates”).

In this case, this Court's judgment is not final when no ruling has been made on the motion for reconsideration. FRAP 41 (b); see also Supreme Court Rule 13.3 ("if a petition for rehearing is timely filed in the lower court by any party, ..., the time to file the petition for a writ of certiorari ... runs from the date of the denial of rehearing or, if rehearing is granted, the subsequent entry of judgment.")

In such circumstance, recall of the mandate is necessary for this Court to assume the jurisdiction over this appeal to enter its final disposition order. 350 F. 3d 966, 967; 523 U.S. 538, 549-550.

II. Recalling this Court's mandate is necessary to prevent injustice.

Recall of mandate is not to be done except in extraordinary circumstances. *Zipfel v. Halliburton Co.*, 861 F. 2d 565, 567 (1988); *Calderon v. Thompson*, 523 U.S. 538, 549, 118 S.Ct. 1489, 140 L.Ed.2d 728 (1998). The rule is meant to protect interests in repose. *Id.* at 550. Here, those interests are minimal. This Court is to issue an order on the motion for reconsideration and so the judgment is not actually final. In other words, the judgment of this case is not in the state of repose. The defendants, who have not appeared, can have little interest, based on reliance or other grounds, in preserving a mandate not in accordance with the actual final decision rendered by the court. Appellant, the only party appeared in this, has a compelling interest to obtain this Court's order on her motion for reconsideration. Supreme Court Rule 13.3. Therefore, exercise of the court's authority to recall

mandate is needed to prevent injustice in this case. *Zipfel v. Halliburton Co.*, 861 F. 2d 565, 567 (1988).

CONCLUSION

The motion to recall mandate should be granted.

/s/Lin Ouyang

Appellant in Pro Se

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 27 (d), I certify that the attached additional statement is proportionately spaced, has a typeface of 14 points or more, and contains 736 words.

Dated: Jan. 11, 2022

/s/Lin Ouyang

Lin Ouyang

Appellant in Pro Se

CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on Jan 11, 2022. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Lin Ouyang

Lin Ouyang

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Lin Ouyang
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T (213) 747 - 5296 • linouyang@gmail.com

March 4, 2022

VIA E-FILING

Ms. Molly C. Dwyer
Clerk of the Court
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Re: *Lin Ouyang v. Nora Manella, et al*, Nos. 20-50671, 21-55252

Dear Ms. Dwyer:

I am really concerned about the status of the pending motion for reconsideration due to the issuance of mandate prior to a ruling of the motion and the length of time (over six months) the motion has been pending.

Please be kindly reminded that the court did not order its mandate to be issued forthwith and the court retained jurisdiction to rule subsequent filings, even though the court stated "No further filing will be entertained in this closed case" in its dismissal order. Ninth Circuit General Order 4.6.b & 4.6.a; *Mariscal-Sandoval v. Ashcroft*, 370 F. 3d 851, 856 (9th Cir. 2004). Thus, the timely motion for reconsideration in this case automatically postpones the issuance of mandate until disposition of the motion. FRAP 41 (b); *Bell v. Thompson*, 545 US 794, 802 (2005); Committee Notes - 2018 Amendment to FRAP 41.

If the court intends to deny the motion for reconsideration without considering its merit, an order on the motion still needs to be issued to make the court's judgment final, and to allow me to seek review with the Supreme Court. *Department of Banking of Nebraska v. Pink*, 317 U. S. 264, 266 (1942) (While the petition for rehearing is pending,

(2 of 3)

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March 4, 2022

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there is no "judgment" to be reviewed by the Supreme Court); also see a letter regarding the status of the motion filed with the court on November 2, 2021.

If the court has determined that the usual appellate procedure will not be followed, the court is required to prescribe method of submission and disposition.

Groendyke Transport, Inc. v. Davis, C.A.5 (5th Cir. 1969) 406 F.2d 1158, 1161. The Court has not made such prescription.

In sum, I would really appreciate it if the court can let me know the status of the case.

Respectively submitted,
/s/ Lin Ouyang
Appellant in *pro se*

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 26. Notice of Delay

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form26instructions.pdf>

9th Cir. Case Number(s) **21-55252**

Case Name **Lin Ouyang v. Nora Manella, et al.**

Name(s) of party or parties filing this notice:

Lin Ouyang

I am notifying the court that this appeal or petition has been pending before the court for a period in excess of that set forth below:

- A motion has been pending for longer than 4 months.
- The parties have not received notice of oral argument or submission on the briefs within 15 months after the completion of briefing.
- A decision on the merits has not been issued within 9 months after submission.
- The mandate has not issued within 28 days after the time to file a petition for rehearing has expired.
- A petition for rehearing has been pending for longer than 6 months.
- Other (*describe the nature of the delay*):

Signature **s/Lin Ouyang**

Date **Mar 4, 2022**

(use "s/[typed name]" to sign electronically-filed documents)

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov