APPENDIX

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Appendix A

U.S. Court of Appeals
for the Ninth Circuit

No. 20-56256

Peter Kleidman,
Plaintiff-Appellant,
v.

California Court of Appeal for the Second Appellate District, et al.,
Defendants-Appellees.

Filed April 19, 2022

Before McKeown, Christen, Bress, Circuit Judges

MEMORANDUM

Peter Kleidman appeals pro se from the district court's judgment dismissing his action alleging violations of federal and state law in connection with his state court proceedings. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1). *Bianchi v. Rylaarsdam*, 334 F.3d 895, 898 (9th Cir. 2003) (*Rooker-Feldman* doctrine); *Canatella v. California*, 304 F.3d 843, 852 (9th Cir. 2002) (dismissal for lack of standing). We affirm.

The district court properly dismissed for lack of subject matter jurisdiction Kleidman's claims seeking to reopen or set aside rulings in the Cali-

fornia state courts because these claims constitute forbidden "de facto appeal[s]" of prior state court judgments or are "inextricably intertwined" with those judgments. *Noel v. Hall*, 341 F.3d 1148, 1163 (9th Cir. 2003) ("It is a forbidden de facto appeal under *Rooker-Feldman* when the plaintiff in fed-eral district court complains of a legal wrong allegedly committed by the state court, and seeks relief from the judgment of that court."); *Bianchi*, 334 F.3d at 898 (holding that a claim was barred by *Rooker-Feldman* because the court "cannot grant the relief [plaintiff] seeks without `undoing' the decision of the state court").

The district court properly dismissed for lack of standing Kleidman's claims concerning the original jurisdiction of the Supreme Court of California and rules governing the citation of unpublished decisions in state and federal courts because Kleidman failed to allege facts sufficient to establish an injury in fact as required for Article III standing. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992) (constitutional standing requires an "injury in fact," causation, and redressability; "injury in fact" refers to "an invasion of a legally protected interest which is (a) concrete and particularized ... and (b) actual or imminent, not conjectural or hypothetical" (citation and internal quotation marks omitted)); *see also Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013) ("[T]hreatened injury must be certainly impending to constitute injury in fact, and ... allegations of possible future injury are not sufficient." (citation and internal quotation marks omitted)).

A dismissal for lack of subject matter jurisdiction should be without prejudice to the claims

being realleged in a competent court. *See Kelly v. Fleetwood Enters., Inc.*, 377 F.3d 1034, 1036 (9th Cir. 2004); *see also Fleck & Assocs., Inc. v. City of Phoenix*, 471 F.3d 1100, 1102 (9th Cir. 2006) (dismissal for lack of standing is a dismissal for lack of subject matter jurisdiction); *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1139 (9th Cir. 2004) (dismissal under *Rooker-Feldman* is a dismissal for lack of subject matter jurisdiction). We instruct the district court to amend the judgment to reflect that the dismissal of the federal claims is without prejudice.

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED with instructions

Appendix B

U.S. District Court
for the Ninth Circuit

No. 20-56256

Peter Kleidman,
Plaintiff-Appellant,
v.

California Court of Appeal for the Second Appellate District, et al.,
Defendants-Appellees.

Filed August 31, 2022

McKeown, Christen, Bress, Circuit Judges

ORDER

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. See Fed. R. App. P. 35.

Kleidman's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 40) are denied.

No further filings will be entertained in this closed case.

Appendix C

United States District Court
for the Central District of California

No. 2:20-cv-02365-PSG-JDE

Peter Kleidman,
Plaintiff,
v.

Hon. Thomas L. Willhite, Jr., et al.,
Defendants

Filed August 20, 2020

Before, Gutierrez, Chief Judge,
Early, Magistrate Judge

REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE

This Report and Recommendation is submitted to the Honorable Philip S. Gutierrez, Chief United States District Judge, pursuant to the provisions of 28 U.S.C. § 636 and General Order 05-07 of the United States District Court for the Central District of California

I. PROCEEDINGS

On March 12, 2020, Plaintiff Peter Kleidman ("Plaintiff") filed a complaint (Dkt. 1, "Complaint") against the California Court of Appeal, Second Appellate District, Division Four of the California Court of Appeal, Second Appellate District, the Supreme Court of California, and the Judicial

Council of California, which Plaintiff alleges is part of the "judicial branch," (collectively, the "California Courts"), several current and former Judges and Justices of the California Courts (collectively, "Judicial Officers"), and Doe defendants, arising out of several adverse rulings against him in state court. Plaintiff filed the operative Second Amended Complaint ("SAC") on May 11, 2020, alleging violations of various provisions of the United States Constitution and the California Constitution, as well as 28 U.S.C. § 2201, Fed. R. App. P. 47, and Cal. Gov. Code § 68081. Dkt. 12.

On June 19, 2020, the California Courts and Judicial Officers (collectively, "Defendants") filed a Motion to Dismiss the SAC pursuant to Fed. R. Civ. P. 12(b)(1) and (6), arguing that the Court lacks subject matter jurisdiction under the Rooker-Feldman doctrine, the Eleventh Amendment, and the *Younger* abstention doctrine; the SAC fails to allege sufficient facts to state a cognizable legal theory; Plaintiff lacks Article III standing; and the lack of subject matter jurisdiction authorizes dismissal of Plaintiff's pendent state law claims. Dkt. 14 ("Motion"). Defendants also filed a Request for Judicial Notice in support of the Motion. Dkt. 16 ("RJN"). Plaintiff filed Oppositions to the Motion (Dkt. 21, "Opp.") and Request for Judicial Notice (Dkt. 22) on July 23, 2020. Defendants filed a Reply on July 30, 2020. Dkt. 25. The Court made a tentative ruling available at noon on August 12, 2020, and held a hearing on the Motion on August 13, 2020, at which all parties had an opportunity to address the Motion, the tentative ruling, the propriety of leave to amend, and any other issues related to the matters before the Court. For the

reasons discussed hereafter, the Court recommends that the District Court grant Defendants' Motion and dismiss this action.

II. SUMMARY OF PLAINTIFF'S ALLEGATIONS

Plaintiff alleges in September 2013 he filed a lawsuit in Los Angeles County Superior Court, alleging that RFF Family Partnership, LP ("RFF") loaned money to Plaintiff and overcharged him when RFF "demanded repayment and received from Plaintiff all it demanded." SAC ¶ 7. According to Plaintiff, in February 2014, the court set a trial date of April 20, 2015 on "the litigable (not arbitrable) causes of action." *Id.* ¶ 8. Plaintiff claims that in 2014, "the clerks" advised him that the trial was no longer set for April 20, 2015, and in December 2014, he was sent a document showing the case was dismissed. *Id.* ¶ 9. However, "the clerks erred" and the April 2015 trial remained on calendar. *Id.* ¶ 10. Unaware, Plaintiff did not appear for the trial and an "interlocutory judgment" was entered against him as to "the litigable causes of action." *Id.* Plaintiff claims an arbitrable cause of action against RFF remains pending. *Id.*[1]

Plaintiff alleges that, in August 2015, the superior court awarded RFF $41,200 in attorney's fees. SAC ¶ 11. Plaintiff's subsequent attempts to set aside the judgment and fee award were unsuccessful. *Id.* ¶¶ 12-13. Plaintiff sought relief in the California Courts, but was unsuccessful. *Id.* ¶¶ 14-18, Exh. 2. Plaintiff previously had been unsuccessful in the California Courts in the same

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[1] The nature of the remaining "arbitrable cause of action" against RFF is unclear given that a final judgment was entered on June 29, 2015 against Plaintiff and in favor of RFF. See SAC, Exh. 2; RJN, Exh. E.

underlying state court action. *Id.* ¶ 19.

Plaintiff thereafter alleges misconduct by Defendants, claiming that the California Court of Appeal and Justices Collins and Willhite, Jr. "were motivated solely by their own personal sensitivities (independent and irrespective of the law) to decide what they wanted the ultimate outcome to be, and then proceeded with a results-oriented, ends-justify-the-means, ad hoc approach, contriving and concocting specious legal arguments which supposedly lead to the result they desired at the outset," even though those arguments were "ill-conceived, meritless, invalid and unreasoned, the product solely of the judicial will, not judicial integrity." SAC ¶ 27. Plaintiff claims these defendants ruled against him "not because they used their best efforts to earnestly apply the law, but because they wanted Plaintiff to lose, so they ruled by judicial fiat, not based on evidence or reasoning," denying him an opportunity to be heard to rebut new arguments and placing the burden of proof on the wrong party. *Id.* ¶¶ 33-37, 46. Based on these actions and the failure to correct the trial court's errors, these defendants allegedly violated Plaintiff's due process rights as well as various provisions of California law.

Plaintiff further claims the summary denial of his petitions for writ relief in the California Supreme Court reflected the court's refusal to exercise original jurisdiction, denying him an opportunity seek review of the "legal wrongs allegedly committed by" the California Court of Appeal and violating his First and Fourteenth Amendment rights. SAC ¶¶ 108, 110-114. Plaintiff alleges the California Supreme Court's rule, which he refers to as the "Great Public Importance Rule"

("GPIR"), exercising original jurisdiction "only in cases in which 'the issues presented are of great public importance and must be resolved promptly'" violates the Equal Protection Clause by discriminating against "unimportant" writ petitions, the Due Process Clause, and the First Amendment right of access to the courts. *Id.* ¶¶ 106, 109–114, 117.

Finally, Plaintiff challenges Ninth Circuit and California rules regarding citation to unpublished decisions, arguing that, "[u]nder the No-citation Rule," "unpublished opinions have no precedential or persuasive value with respect to any case other than the one from which [it] arises," violating the Fourteenth Amendment by creating "unequal protection under the common law" and allowing appellate justices "to dodge scrutiny from the public and the legal community." SAC ¶¶ 137–38, 141, 146, 153. Plaintiff maintains that the California Court of Appeal's decision in his case denied him equal protection as "this incorrect rule pertains only to Plaintiff, no one else" because of Cal. R.Ct. 8.1115(a). *Id.* ¶ 149. He also speculates "there is a high likelihood this case will ultimately be decided by an unpublished, [Ninth Circuit] opinion." *Id.* ¶ 170. Plaintiff avers that Ninth Circuit Rule 36-3 stating that unpublished opinions have no precedential effect violates the Fifth Amendment and Fed. R. App. P. 47. *Id.* ¶¶ 171, 173. He asserts that this rule disincentivizes Ninth Circuit judges to work as diligently, collaboratively, and intensely on unpublished opinions, thereby making them more error prone. *Id.* ¶ 170.

In the SAC, Plaintiff seeks declaratory relief, costs, and injunctions "commanding" that

proceedings before the California Courts be "reopened" and continue "in a manner which preserves Plaintiff's Constitutional right to due process," complies with California law, results in an opinion "with full, precedential and persuasive value on par with all published, court of appeals opinions," and in particular, "commanding the California Supreme Court [to] hear and determine [the proceedings at issue] on the merits." SAC at 65-66. Plaintiff clarified at the hearing on the Motion that he was not seeking monetary damages.

III. STANDARD OF REVIEW

Federal Rule of Civil Procedure 12(b)(6) provides for dismissal of a complaint for "failure to state a claim upon which relief can be granted." Dismissal for failure to state a claim may be granted where a claim: (1) lacks a cognizable legal theory; or (2) alleges insufficient facts under a cognizable legal theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990) (as amended). Federal Rule of Civil Procedure Rule 12(b)(1) provides a separate ground to dismiss a complaint for lack of subject matter jurisdiction.

To survive a Rule 12(b)(6) dismissal, a complaint must allege enough specific facts to provide both "fair notice" of the particular claim being asserted and "the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 & n.3 (2007) (citation omitted); *see also* Fed. R. Civ. P. 8(a). While detailed factual allegations are not required, a complaint with "unadorned, the-defendant-unlawfully-harmed-me accusation[s]" and "'naked assertion[s]' devoid of 'further factual enhancement'" would not suffice. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted).

Instead, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (internal citation omitted).

In determining whether a complaint states a claim, courts must accept allegations of material fact as true and construe such them in the light most favorable to the plaintiff. See *Lazy Y Ranch Ltd. v. Behrens*, 546 F.3d 580, 588 (9th Cir. 2008). However, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." *Iqbal*, 556 U.S. at 678. Courts need not accept as true unreasonable inferences or conclusory legal allegations cast in the form of factual allegations. *See Ileto v. Glock Inc.*, 349 F.3d 1191, 1200 (9th Cir. 2003).

Pro se complaints are "to be liberally construed" and are held to a less stringent standard than those drafted by a lawyer. See *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam) (citation omitted); *Jackson v. Carey*, 353 F.3d 750, 757 (9th Cir. 2003). But even "a liberal interpretation of a civil rights complaint may not supply essential elements of the claim that were not initially pled." *Bruns v. Nat'l Credit Union Admin.*, 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting *Ivey v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982)). The Court "need not accept as true allegations contradicting documents that are referenced in the complaint or that are properly subject to

judicial notice." *Lazy Y Ranch Ltd.*, 546 F.3d at 588. "When ruling on a motion to dismiss, [the court] may generally consider only allegations contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice." *Colony Cove Props., LLC, v. City of Carson*, 640 F.3d 948, 955 (9th Cir. 2011) (citations, footnote, and internal quotation marks omitted).

IV. REQUEST FOR JUDICIAL NOTICE

Defendants request judicial notice of various state court records in Kleidman v. RFF Family Partnership, L.P., et al. Plaintiff objects to Defendants' characterization of these documents, but does not dispute that these court records are subject to judicial notice. Pursuant to Rule 201 of the Federal Rules of Evidence, the Court finds these matters properly subject to judicial notice and grants Defendants' RJN. Fed. R. Evid. 201; see also *Harris v. Cty. of Orange*, 682 F.3d 1126, 1132 (9th Cir. 2012) (court may take judicial notice of court records as undisputed matters of public record); *Holder v. Holder*, 305 F.3d 854, 866 (9th Cir. 2002); *United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992).

V. DISCUSSION

Defendants raise a number of arguments as to why the Court should dismiss this action. First, Defendants argue the Court lacks subject matter jurisdiction under the *Rooker-Feldman* doctrine, the Eleventh Amendment, and *Younger* Abstention, which, in turn, authorizes dismissal of Plaintiff's state law claims. Additionally, Defendants argue that Plaintiff lacks Article III standing to sue Defendants. Finally, Defendants

argue that the SAC fails to allege sufficient facts to state a cognizable legal theory against Defendants. As explained below, the Court finds that dismissal is warranted based on the *Rooker-Feldman* doctrine, lack of standing, and immunity grounds.

A. Applicable Legal Standard

As an initial matter, Plaintiff expressed concern at the hearing that the tentative ruling cited several cases that were not cited by Defendants in their Motion and stated he did not have a chance to fully research all the cases as he only received notice of them the day before the hearing. Plaintiff has not cited any authority, and the Court is not aware of any, holding that the Court is limited to the legal authority cited by the parties in their briefing. The fact that a party has not cited a particular case does not relieve the district court of its duty to apply the correct legal standard. See *Bateman v. U.S. Postal Serv.*, 231 F.3d 1220, 1224 (9th Cir. 2000) (as amended); cf. *Koon v. United States*, 518 U.S. 81, 100 (1996) ("A district court by definition abuses its discretion when it makes an error of law."), superseded by statute on other grounds as stated in *United States v. Alfaro*, 336 F.3d 876, 880 (9th Cir. 2003). While the parties frame the issues, there is no rule that the Court cannot go beyond cases cited by the parties. At the hearing, Plaintiff was provided a full and fair opportunity to be heard on any legal authority he wished. He also was provided the tentative ruling almost twenty-four hours prior to the hearing and represented at the hearing that he had an opportunity to review it prior to the hearing. In the almost two-hour hearing, Plaintiff was provided the opportunity to raise any issues he desired regarding the Motion and to address every

case that he was concerned about. Upon the filing of the Report and Recommendation, he will have another opportunity to object and address any cases cited in the recommendation. At the hearing, the Court granted Plaintiff's request for a thirty-page limit on Objections, if any, to this Report and Recommendation.

B. The *Rooker-Feldman* Doctrine

Federal courts are courts of limited jurisdiction. See, e.g., *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978). "A federal court is presumed to lack jurisdiction in a particular case unless the contrary affirmatively appears." *Stock W., Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989). Plaintiff bears the burden of proving that his case is within federal jurisdiction. See, e.g., *In re Ford Motor Co. / Citibank (S.D.), N.A.*, 264 F.3d 952, 957 (9th Cir. 2001) (citing *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936)). Under the Rooker-Feldman doctrine, a federal district court may not exercise subject-matter jurisdiction over a de facto appeal from a state court judgment. *Noel v. Hall*, 341 F.3d 1148, 1154, 1156 (9th Cir. 2003) (citing *Rooker v. Fid. Trust Co.*, 263 U.S. 413 (1923); *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983)). Congress, in 28 U.S.C. § 1257, vests the United States Supreme Court, not the lower federal courts, with appellate jurisdiction over state court judgments. *Lance v. Dennis*, 546 U.S. 459, 463 (2006) (per curiam). "Review of such judgments may be had only in [the Supreme] Court." *Feldman*, 460 U.S. at 482.

The *Rooker-Feldman* doctrine governs "cases brought by state-court losers complaining of injuries caused by state-court judgments

rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005).

In determining whether an action functions as a de facto appeal, courts "pay close attention to the relief sought by the federal court plaintiff." *Bianchi v. Rylaarsdam*, 334 F.3d 895, 900 (9th Cir. 2003) (citation omitted).

"Rooker-Feldman bars any suit that seeks to disrupt or 'undo' a prior state-court judgment, regardless of whether the state-court proceeding afforded the federal-court plaintiff a full and fair opportunity to litigate her claims." *Id.* at 901 (citation and footnote omitted).

"It is a forbidden de facto appeal under Rooker-Feldman when the plaintiff in federal district court complains of a legal wrong allegedly committed by the state court, and seeks relief from the judgment of that court." *Noel*, 341 F.3d at 1163; *Reusser v. Wachovia Bank, N.A.*, 525 F.3d 855, 859 (9th Cir. 2008) ("[t]he clearest case for dismissal based on the *Rooker-Feldman* doctrine occurs when a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and seeks relief from a state court judgment based on that decision." (alteration in original) (citation omitted)).

District courts do not have jurisdiction "over challenges to state court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional." *Feldman*, 460 U.S. at 486.

Further, although *Rooker-Feldman* "applies

only when the federal plaintiff asserts as her injury legal error or errors by the state court and seeks as her remedy relief from the state court judgment" (*Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1140 (9th Cir. 2004)), allegations that are inextricably intertwined with the state courts' judgment are subject to dismissal under the Rooker-Feldman doctrine. See *Noel*, 341 F.3d at 1158; *Bianchi*, 334 F.3d at 898, 901.

By contrast, the Rooker-Feldman doctrine does not preclude a federal district court from asserting subject matter jurisdiction over general constitutional challenges to state rules or regulations. See *Feldman*, 460 U.S. at 483-86. In such case, where "the proceedings giving rise to the rule are nonjudicial," 28 U.S.C. § 1257 does not bar the district court's consideration of the case since the policies prohibiting a district court's review of a final state court judgment are not implicated. *Id.* at 486. Thus, in Feldman, for instance, the Supreme Court found that district courts have subject matter jurisdiction over general challenges to state bar rules, as such rules were promulgated by state courts in non-judicial proceedings and did not require review of a final state court judgment in a particular case. *Id.*

Here, Defendants argue that Plaintiff seeks to have this Court issue orders reversing the rulings, orders, and judgments in the state court action, which is barred by the *Rooker-Feldman* doctrine. Motion at 12-13. Based upon the state court records submitted by Defendants in the RJN and the allegations in the SAC, the Court agrees that Plaintiff's claims seeking to reverse or reopen the state court decisions are barred by the *Rooker-Feldman* doctrine. The relief Plaintiff seeks for all

of his purported claims—injunctions "compelling" the California Courts and the Judicial Officers to reopen cases, issue new orders, and decide matters "on the merits" that were not previously so decided—constitutes a de facto appeal of the rulings of the California Courts.

Plaintiff also seeks a declaratory judgment, finding that the California Courts' decisions violated his constitutional rights and the decisions are void. The SAC seeks precisely the type of relief that the Supreme Court and the Ninth Circuit have instructed is outside the subject-matter jurisdiction of district courts. Thus, Plaintiff's claims seeking to reopen or set aside rulings in the California Courts are barred by the Rooker-Feldman doctrine.

Nothing in Plaintiff's Opposition compels or counsels any other outcome as to these claims. Plaintiff repeatedly asserts that the SAC alleges the defendants committed constitutional violations, "not mere legal errors," or words to that effect, and asserts that distinction removes this case from the ambit of *Rooker-Feldman.* He claims that his injuries were the violations of the Constitution in the course of adjudicating his case, not the "rulings themselves." Opp. at 29-34. First, as explained, the *Rooker-Feldman* doctrine applies regardless of whether the plaintiff is asserting constitutional violations. See *Feldman*, 460 U.S. at 486. Second, Plaintiff's contention that he does not rely upon "mere errors" runs contrary to the actual allegations in the SAC, in which Plaintiff alleges Defendants issued decisions: "replete with errors" (SAC at 15); containing "egregious" error (*id.* at 29); "saturated with errors and false logic" (*id.* at 32); and "saturated with

errors and omissions" (*id.* at 62). Thus, the SAC is based on repeated claims of "errors" by Defendants.

Further, although the *Rooker-Feldman* doctrine does not bar a federal plaintiff from asserting as a legal wrong that an adverse party engaged in an illegal act that prevented the plaintiff from pursuing a claim in state court (see, e.g., *Reusser*, 525 F.3d at 859; *Noel*, 341 F.3d at 1164), Plaintiff does not allege any claim against any adverse party from the underlying state case. Rather, the SAC names only the California Judicial Officers and California Courts as defendants, and seeks no money damages, only declaratory and injunctive relief, the effect of which would be a de facto appeal. The Ninth Circuit drew the clear distinction:

If a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and seeks relief from a state court judgment based on that decision, *Rooker-Feldman* bars subject matter jurisdiction in federal district court. If, on the other hand, a federal plaintiff asserts as a legal wrong an allegedly illegal act or omission by an adverse party, *Rooker-Feldman* does not bar jurisdiction. *Noel*, 341 at 1164.

Thus, in *Bianchi*,[2] the Ninth Circuit affirmed the

[2] Plaintiff asserts that the decision in *Bianchi* is "wrong," noting that the decision was issued prior to *Exxon Mobile Corp.*, 544 U.S. 280, and citing to out-of circuit Court of Appeals decisions. Opp. at 36. Under the "law of the circuit doctrine," a published decision of the Ninth Circuit "constitutes binding authority 'which "must be followed unless and until overruled by a body competent to do so."'" *In re Zermeno-Gomez*, 868 F.3d 1048, 1052 (9th Cir. 2017) (quoting *Gonzalez v. Arizona*, 677 F.3d 383, 389 n.4 (9th Cir. 2012) (en banc)); *Yong v. INS*, 208 F.3d 1116, 1119 n.2 (9th

dismissal of a complaint against, among others, three California Court of Appeal Justices, seeking "an injunction vacating a decision by the California Court of Appeal and reassigning [the] case to a different division or district because of the alleged bias of one of the justices" under *Rooker–Feldman*, concluding "[t]he integrity of the judicial process depends on federal courts respecting final state court judgments and rebuffing de facto appeals of those judgments to federal court," noting "the practical consequences of adopting [the plaintiff's] view would open Pandora's box and undermine the essence of the *Rooker– Feldman* doctrine." 334 F.3d at 902.

As explained in *Bianchi*, "[i]f claims raised in the federal court action are 'inextricably intertwined' with the state court's decision such that the adjudication of the federal claims would undercut the state ruling or require the district court to interpret the application of state laws or procedural rules, then the federal complaint must be dismissed for lack of subject matter jurisdiction," regardless of whether the plaintiff asserts that the state court action was unconstitutional. *Id.* at 898. "If the injury alleged resulted from the state court judgment itself, Rooker–Feldman directs that the lower federal courts lack jurisdiction." *Id.* at 901 (citation omitted).

At the hearing, Plaintiff argued that the *Rooker–Feldman* doctrine does not apply to the California Supreme Court's denial of his writ petitions because the state supreme court "did not

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Cir. 2000). Because *Bianchi* has not been overruled by Supreme Court, this Court is bound by the Ninth Circuit's decision

adjudicate a dispute"; they acted in an "enforcement capacity." According to Plaintiff, the Supreme Court's analysis in *Feldman* compels the conclusion that the denial orders were not judicial decisions and therefore, they are not subject to *Rooker-Feldman*.

Plaintiff is mistaken. The Supreme Court in *Feldman* acknowledged the distinction between judicial and administrative or ministerial proceedings, explaining that the federal district courts are without authority to review final determinations in judicial proceedings. See *Feldman*, 460 U.S. at 476–79. Thus, the crucial question was whether the proceedings at issue were "judicial in nature." *Id.* at 476. In making this determination, "the form of the proceeding is not significant. It is the nature and effect which is controlling." *Id.* at 478, 482 (citation omitted). The Supreme Court found that the petitions for waivers of a bar admission rule at issue in Feldman "were not legislative, ministerial, or administrative," explaining: The District of Columbia Court of Appeals did not "loo[k] to the future and chang[e] existing conditions by making a new rule to be applied thereafter to all or some part of those subject to its power." Nor did it engage in rulemaking or specify "the requirements of eligibility or the course of study for applicants for admission to the bar ...." Nor did the District of Columbia Court of Appeals simply engage in ministerial action. Instead, the proceedings before the District of Columbia Court of Appeals involved a "judicial inquiry" in which the court was called upon to investigate, declare, and enforce "liabilities as they [stood] on present or past facts and under laws supposed already to exist." *Id.* at

479 (internal citations omitted). In both of the plaintiffs' cases, a determination was made as a "legal matter" that they were not entitled to be admitted to the bar without examination or to sit for the bar examination. These determinations were "essentially judicial inquiries" in which their contentions were rejected. *Id.* at 480–81.

Here, as in *Feldman*, Plaintiff sought review of the court of appeal's decisions based on existing law. In denying his petitions for writ, the California Supreme Court made legal determinations that Plaintiff was not entitled to relief. Plaintiff does not claim that these decisions were legislative, ministerial, or administrative; rather, he claims the defendants were acting in an "enforcement capacity." This is exactly the type of judicial inquiry federal district courts are barred from reviewing. See *Feldman*, 460 U.S. at 479 (explaining that the proceedings before the District of Columbia Court of Appeals involved a "'judicial inquiry' in which the court was called upon to investigate, declare, and enforce 'liabilities as they [stood] on present or past facts and under laws supposed already to exist" (citation omitted)).

Further, Plaintiff ignores that the plaintiff in Bianchi sought similar relief in the California Supreme Court, which the district court was barred from reviewing. At the heart of that case was "a disappointed litigant's attempt to obtain in federal court the very relief denied him in state court...." After the plaintiff's petition for review was denied in the California Supreme Court as untimely, he filed a remittitur in the court of appeal, followed by a petition for writ of mandate from the California Supreme Court, asserting that his due process rights were violated and seeking

to have the appellate court's opinion vacated. Like in this case, the California Supreme Court denied the petition, at which point, the plaintiff filed suit in federal court against the three appellate justices who denied his appeal, claiming that his due process rights were violated and once again seeking to have the appellate court's opinion vacated and his appeal reassigned to a different panel. *Bianchi*, 334 F.3d at 896–97.

As explained, the Ninth Circuit concluded that the district court lacked jurisdiction to consider the plaintiff's claims under the Rooker–Feldman doctrine. *Id.* at 898.

Because the Ninth Circuit could not grant the relief sought without "undoing" the decision of the state court, it was immaterial that the California courts did not specify the grounds on which they denied plaintiff's claims. The Ninth Circuit explained that "[t]he silence of the California courts does not indicate that they failed to consider the constitutional claims presented to them" and even if the state court did not actually decide the constitutional claims, the Rooker–Feldman doctrine did not require the court to determine whether the state court fully and fairly adjudicate the claim: "unlike res judicata, the *Rooker–Feldman* doctrine is not limited to claims that were actually decided by the state courts, but rather it precludes review of all 'state court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional.'" *Id.* at 900–01 (citation omitted).

As explained, "*Rooker–Feldman* bars any suit that seeks to disrupt or 'undo' a prior state–court judgment, regardless of whether the state–court

proceeding afforded the federal-court plaintiff a full and fair opportunity to litigate her claims.'" *Id.* at 901 (citation omitted).

By the SAC, Plaintiff, a state court loser, seeks a de facto appeal by seeking only non-monetary relief from state judicial officers, state courts, and a state judicial council, including seeking to "set aside" and "reopen[]" the state court judgments and "undo" state court decisions. See SAC at 65; Opp. at 35- 37. Regardless of Plaintiff's after-the-fact claims about the "motives" behind the claimed errors, the net result of the SAC is an effort to overturn the judgments of the California Courts and the Judicial Officers—a de facto appeal. Plaintiff's claims challenging the state court decisions and seeking to reopen these actions are barred by the *Rooker-Feldman* doctrine. See *Grayton v. Cal., Comm. of Bar Examiners*, 2018 WL 1083469, at *2 (S.D. Cal. Feb. 27, 2018) (concluding that the court lacked jurisdiction under the *Rooker-Feldman* doctrine to review the California Supreme Court's denial of a petition for writ of mandate because it was a de facto appeal).

However, the remaining claims in the SAC involve general constitutional challenges. Plaintiff alleges that Cal. R. Ct. 8.1115, the GPIR, and Ninth Circuit Rule 36-3 violate the First, Fifth, and/or Fourteenth Amendments. Plaintiff seeks, among other things, a declaratory judgment finding these rules violate the Due Process Clause, the Equal Protection Clause, the Privileges and Immunities Clause, the First Amendment and/or Fed. R. App. P. 47. See SAC ¶¶ 118, 121, 124, 127, 156, 158, 171, 174 & p. 65. These claims do not require review of a judicial decision in a particular case.

Therefore, as to these claims, the *Rooker-Feldman* doctrine does not apply, at least facially.

C. Article III Standing

Article III of the United States Constitution limits the jurisdiction of federal courts to actual cases and controversies. "[T]he core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III" and contains three elements: (1) the plaintiff must have suffered an injury in fact that is concrete and particularized and actual or imminent, not conjectural or hypothetical; (2) the injury must be fairly traceable to the challenged conduct; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992); see also *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 (2006). In the context of injunctive and declaratory relief, the plaintiff must show that he has suffered or is threatened with a "'concrete and particularized' legal harm, coupled with "a sufficient likelihood that he will again be wronged in a similar way." *Canatella v. California*, 304 F.3d 843, 852 (9th Cir. 2002) (as amended) (citation omitted). A plaintiff must do more than show a past injury (*San Diego Cty. Gun Rights Comm. v. Reno*, 98 F.3d 1121, 1126 (9th Cir. 1996) ("Because plaintiffs seek declaratory and injunctive relief only, there is a further requirement that they show a very significant possibility of future harm; it is insufficient for them to demonstrate only a past injury"); *Scannell v. Wash. State Bar Ass'n*, 2014 WL 12907843, at *4 (W.D. Wash. Mar. 10, 2014) ("because Plaintiff can achieve only prospective relief under *Rooker-Feldman*, '[p]ast deprivation by itself is not enough

to demonstrate the likelihood of future deprivations" (alteration in original) (citation omitted)); *Hild v. Cal. Supreme Court*, 2008 WL 544469, at *6 (N.D. Cal. Feb. 26, 2008)), and a mere claim that he "suffers in some indefinite way in common with people generally" does not state an Article III case or controversy. *Lujan*, 504 U.S. at 574 (citation omitted); *Schmier v. U.S. Court of Appeals for the Ninth Circuit*, 279 F.3d 817, 821 (9th Cir. 2002) (explaining that "the injury that a plaintiff alleges must be unique to that plaintiff, one in which he has a 'personal stake' in the outcome of a litigation seeking to remedy that harm"). The plaintiff must demonstrate standing separately for each form of relief sought. *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 185 (2000). "Thus, a plaintiff who has standing to seek damages for a past injury, or injunctive relief for an ongoing injury, does not necessarily have standing to seek prospective relief such as a declaratory judgment." Mayfield v. United States, 599 F.3d 964, 969 (9th Cir. 2010); *Menna v. Radmanesh*, 2014 WL 6892724, at *11 (C.D. Cal. Oct. 7, 2014) (while plaintiff had standing to seek declaratory relief voiding the judgments in state actions, but was barred from doing so by the *Rooker-Feldman* doctrine, he did not have standing to seek a declaratory judgment declaring statutes unconstitutional), report and recommendation accepted by 2014 WL 6606504 (C.D. Cal. Nov. 5, 2014). To the extent a plaintiff separately seeks to declare a statute unconstitutional, he must establish standing to do so.

Defendants contend that Plaintiff lacks standing to bring suit against them, arguing that

there is no direct, "real and immediate" injury upon which Plaintiff brings this action and there is no "legal controversy" between Plaintiff and Defendants. Motion at 23–24. As to the remaining general constitutional challenges, the Court agrees.

With respect to the constitutional challenges to the GPIR and Cal. R. Ct. 8.1115, even if the Court were to conclude that Plaintiff suffered an injury in fact by virtue of the decisions issued in his state court cases, Plaintiff cannot demonstrate that a potentially favorable determination is likely to redress any injury in fact. The California Courts' decisions are final, and review of those decisions is barred by the *Rooker–Feldman* doctrine. See Feldman, 460 U.S. at 486.

Plaintiff has not otherwise shown a "sufficient likelihood" that he will be subject to or affected by the California rules in the future. See *Menna*, 2014 WL 6892724, at *11 (plaintiff's allegation that he was a tenant was insufficient to show that he was likely to be subjected to unlawful detainer proceedings again based on allegedly unconstitutional statutes); *Grundstein v. Washington State*, 2012 WL 2514915, at *3 (W.D. Wash. June 28, 2012) ("Plaintiff must show a 'significant likelihood' that the rule will be applied to him again in the future." (citation omitted)).

Plaintiff claimed in both his Opposition and at the hearing that he has an ongoing interest in having the California rules declared unconstitutional because of potential future proceedings in his underlying state court action. As to the GPIR (identified by Plaintiff as claims five through eight), he clarified at the hearing that he was solely seeking declaratory relief against the

Judicial Officers in their "enforcement capacity." He argued he has standing to challenge the constitutionality of the GPIR because if this Court concluded it was unconstitutional, then he could return to the California Supreme Court and file new petitions challenging the underlying court of appeal decisions, which the state supreme court then would be compelled to consider on the merits. He claims that this intention to file new petitions in the California Supreme Court - again challenging the same underlying state court proceedings, presumably on the same grounds previously rejected - is sufficient to establish standing. See Opp. at 15–16.

Plaintiff further claims he has standing to challenge Cal. R. Ct. 8.1115(a) because if hypothetically, the GPIR is declared unconstitutional, he then could return to the California Supreme Court, and then hypothetically if he prevails on his renewed petitions for writ in the California Supreme Court, then his underlying state court actions will be reopened and the court of appeal decisions would be vacated. Under Plaintiff's reasoning, he has an ongoing interest in having Cal. R. Ct. 8.1115(a) dismantled because if his underlying state court action is reopened, "as requested," future decisions would not be subject to this rule. Opp. at 17.

These contentions are all premised on invalidating the underlying state court judgments. As explained, if the claims raised in federal court are "inextricably intertwined" with the state court's decision "such that the adjudication of the federal claims would undercut the state ruling or require the district court to interpret the application of state laws or procedural rules," then

the district court lacks subject matter jurisdiction over these claims. See *Bianchi*, 334 F.3d at 898.

Any contention that *Rooker-Feldman* is inapplicable because the Court has Article III standing (Opp. at 26) is meritless. See *Exxon Mobil Corp.*, 544 U.S. at 291 (explaining that the decisions in Rooker and Feldman "exhibit the limited circumstances in which [the Supreme] Court's appellate jurisdiction over state-court judgments, 28 U.S.C. § 1257, precludes a United States district court from exercising subject-matter jurisdiction in an action it would otherwise be empowered to adjudicate under a congressional grant of authority"); *Lopez v. Trendacosta*, 2014 WL 6883945, at *10 (C.D. Cal. Dec. 4, 2014) (plaintiffs cannot establish the third element of standing because the court lacks jurisdiction to order the relief sought in accordance with *Rooker-Feldman*).

Plaintiff's claims seeking a declaratory judgment invalidating the GPIR and Cal. R. Ct. 8.1115(a) are inextricably intertwined with his request to vacate and set aside the state court judgments. Though framed in the SAC as general constitutional challenges, only if his state court judgments are set aside will he have standing to assert these constitutional challenges.

The decision in *Facio v. Jones*, 929 F.2d 541 (10th Cir. 1991) is illustrative on this point. In *Facio*, the plaintiff sought to have a default judgment set aside and a declaratory judgment finding Utah's default judgment rules unconstitutional as applied by the Utah courts. As to plaintiff's second form of relief, the Court explained that *Feldman* not only prohibited direct review of state judgments by lower federal courts,

it also prohibited those federal courts from issuing any declaratory relief that is "inextricably intertwined" with the state court judgment. *Id.* at 543. In that case, the Tenth Circuit found that plaintiff's two forms of relief were inextricably intertwined in that if he was unable to set aside the default judgment against him, he would lack standing to assert the second claim, requesting that the federal court declare the default judgment procedures unconstitutional. Stated differently, unless the default judgment was vacated, plaintiff's only interest in Utah's default judgment procedures was prospective and hypothetical in nature. *Id.* at 543–44 ("Because [plaintiff's] threshold ability to establish standing with regard to his claim for declaratory relief is dependent upon his ability to upset the default judgment against him, that presents a classic case of an inextricably intertwined relationship between the two requested types of relief."). Looking at the request for declaratory relief in isolation, the Tenth Circuit found that plaintiff lacked standing to assert this claim because in such circumstances, after separating out the impermissible request to overturn the state court judgment against him, "his situation [was] indistinguishable from that of any other citizen of Utah who, without any palpable chance of being subjected to those procedures in the future, might desire to challenge that state's default judgment rule." *Id.* at 544. It explained, if [plaintiff's] default judgment stands—and it must because it is final under state law and under 28 U.S.C. § 1257 the federal district court has no jurisdiction to review it—he cannot demonstrate any continuing interest in having Utah's default judgment rules set aside.

The default against him is final, whether or not the default judgment rules may later be held unconstitutional. Any ruling now that Utah's procedures to vacate default judgments are unconstitutional could not undo the judgment against [plaintiff] anymore than it would undo the countless other default judgments that presumably have been entered in Utah pursuant to this rule and have long since become final. *Id.* at 545.

Similarly, the state court judgments in this action are final. Indeed, Plaintiff admitted at the hearing that he previously filed petitions for review in both underlying state court cases. Even if the California rules are later declared unconstitutional, that decision would have no impact on Plaintiff's final state court judgments. It would not vacate the underlying state court decisions, which is ultimately what Plaintiff seeks.

Isolating his general constitutional challenges, Plaintiff lacks standing - his situation is indistinguishable from anyone else, without any palpable chance of being subjected to the state rules in the future, who might desire to challenge the GPIR and Cal. R. Ct. 8.1115(a). As in *Facio*, any ruling now declaring the California rules unconstitutional could not undo the judgments against Plaintiff any more than it would undo the countless other denials of writ relief or unpublished opinions that presumably have been entered in California over the years and have long since become final.

Any speculation that Plaintiff may potentially be subject to the same rules in the future is insufficient to demonstrate a likelihood that the purported injury will be redressed by a favorable

decision. See *Lujan*, 504 U.S. at 561. Plaintiff lacks standing to assert these general constitutional challenges.

As to the Ninth Circuit rule, the SAC does not allege a cognizable injury as required by the standing doctrine. Plaintiff claims that his intent to appeal is sufficient to confer standing. Opp. at 17. The Court disagrees. The mere existence of this rule, which may or may not be applied to Plaintiff in the future, is not sufficient to create a case or controversy within the meaning of Article III. See *Stoianoff v. Montana*, 695 F.2d 1214, 1223 (9th Cir. 1983) (finding that plaintiff failed to show "any real or threatened injury at the hands of persons acting under the authority granted by the statute" and as such, he lacked standing to challenge advertising prohibition of statute (citation omitted)); see also *Schmier*, 279 F.3d at 821–822 (alleged "speculative loss of some alleged right in citing and relying on an unpublished decision someday" did not establish a legally cognizable injury). "A plaintiff may allege a future injury in order to comply with [the injury-in-fact] requirement, but only if he or she 'is immediately in danger of sustaining some direct injury as the result of the challenged official conduct and the injury or threat of injury is both real and immediate, not conjectural or hypothetical.'" *Scott v. Pasadena Unified Sch. Dist.*, 306 F.3d 646, 656 (9th Cir. 2002) (citation omitted); *Stoianoff*, 695 F.2d at 1223 (explaining that the "plaintiff must demonstrate a genuine threat that the allegedly unconstitutional law is about to be enforced against him").

Here, Plaintiff's alleged injury is entirely speculative, based on multiple levels of conjecture

and hypothetical future events. Plaintiff claims that if he loses in this Court, he intends to appeal, which, he claims, will result in a high probability that his case ultimately will be decided by an unpublished decision of the Ninth Circuit. He asserts that most decisions from the Ninth Circuit are unpublished, which he claims, without support, results in more erroneous decisions. However, only if he hypothetically lost in the district court, then hypothetically lost substantively in the Ninth Circuit, then hypothetically lost on a request for a published opinion, then hypothetically lost a request for en banc review, and finally, hypothetically was denied certiorari by the Supreme Court, would an unpublished decision harm him based on a hypothetical belief, not supported by any data, that the decision is more likely to be wrong even though under the Ninth Circuit and general rules of appellate procedure the opinion is available and can be referenced but does not have precedential value. Plaintiff has failed to allege an imminent threat of future harm based on such a hypothetical situation. As such, Plaintiff lacks standing to pursue his challenges to Ninth Circuit Rule 36-3. See *Cent. for Biological Diversity v. Bernhardt*, 946 F.3d 553, 560 (9th Cir. 2019) (alleged injury based on "speculative chain of future possibilities" did not satisfy Article III standing).

D. Immunity

Although the SAC can be dismissed against all Defendants based on Rooker-Feldman and lack of standing, the Court also notes that Defendants are largely immune from liability.

1. California Courts

"The Eleventh Amendment prohibits federal courts from hearing suits brought against an unconsenting state." *Brooks v. Sulphur Springs Valley Elec. Coop.*, 951 F.2d 1050, 1053 (9th Cir. 1991) (citing *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984)). This jurisdictional bar includes "suits naming state agencies and departments as defendants, and applies whether the relief sought is legal or equitable in nature." *Id.*; *Pennhurst State Sch. & Hosp.*, 465 U.S. at 100 ("This jurisdictional bar applies regardless of the nature of the relief sought."); *Yakama Indian Nation v. State of Wash. Dep't of Revenue*, 176 F.3d 1241, 1245 (9th Cir. 1999). California has not consented to suit against it in federal court. See *Dittman v. California*, 191 F.3d 1020, 1025–26 (9th Cir. 1999) ("California has not waived its Eleventh Amendment immunity with respect to claims brought under § 1983 in federal court"); *BV Eng'g v. Univ. of Cal., L.A.*, 858 F.2d 1394, 1396 (9th Cir. 1988). Furthermore, Congress has not abrogated State sovereign immunity for civil rights actions. See Dittman, 191 F.3d at 1026; *L.A. Branch NAACP v. L.A. Unified Sch. Dist.*, 714 F.2d 946, 950 (9th Cir. 1983). Although Plaintiff also seeks relief under the Declaratory Judgment Act, 28 U.S.C. § 2201 does not itself confer jurisdiction on a federal court where none otherwise exists. *Wyoming v. United States*, 279 F.3d 1214, 1225 (10th Cir. 2002); *Wells v. United States*, 280 F.2d 275, 277 (9th Cir. 1960) ("It is well settled . . . that [the Declaratory Judgment Act] does not of itself create jurisdiction; it merely adds an additional remedy where the district court already has jurisdiction to entertain the suit."). Accordingly, Plaintiff's claims

against the California Courts are barred by the Eleventh Amendment. See *Wolfe v. Strankman*, 392 F.3d 358, 364 (9th Cir. 2004) (finding that the judicial council is a state agency); *Simmons v. Sacramento Cty. Superior Court*, 318 F.3d 1156, 1161 (9th Cir. 2003) (Eleventh Amendment barred claims against superior court); *Pemstein v. California*, 2012 WL 1144615, 3 n.1 (C.D. Cal. Mar. 7, 2012) (Eleventh Amendment barred claims against California courts), report and recommendation accepted by 2012 WL 1144612 (C.D. Cal. Apr. 3, 2012).

2. Judicial Officers

The Eleventh Amendment also "bars action against state officers sued in their official capacities for past alleged misconduct involving a complainant's federally protected rights, where the nature of the relief sought is retroactive, i.e., money damages . . . ." *Bair v. Krug*, 853 F.2d 672, 675 (9th Cir. 1988); see also *Romano v. Bible*, 169 F.3d 1182, 1185 (9th Cir. 1999). An "official capacity suit is, in all respects other than name, to be treated as a suit against the entity." *Kentucky v. Graham*, 473 U.S. 159, 166 (1985). Such a suit "is not a suit against the official personally, for the real party in interest is the entity." *Id.*

Plaintiff claimed at the hearing that he was not seeking monetary damages against the Judicial Officers and as such, the Ex Parte Young exception to Eleventh Amendment immunity applies. The doctrine set forth in *Ex Parte Young*, 209 U.S. 123 (1908) provides a narrow exception to Eleventh Amendment immunity for prospective declaratory or injunctive relief against state officers in their official capacity for their alleged violations of federal law. See P*ennhurst State Sch. & Hosp.*, 465

U.S. at 102–06; *Coal. to Defendant Affirmative Action v. Brown*, 674 F.3d 1128, 1133–34 (9th Cir. 2012).

Thus, the Ex Parte Young exception is inapplicable to Plaintiff's claims seeking to reverse or reopen the state court decisions, i.e., seeking retroactive relief. See Pennhurst State Sch. & Hosp., 465 U.S. at 105–06.

The Court agrees with Plaintiff, however, that the *Ex Parte Young* exception would apply to his general constitutional challenges seeking prospective relief. To the extent Defendants contend otherwise, the cases cited by Defendants, *Pennhurst State Sch. & Hosp.*, 465 U.S. at 106 and Voight v. Savell, 70 F.3d 1552, 1563 (9th Cir. 1995), do not support their position. See Motion at 15. In *Pennhurst*, 465 U.S. at 106, the Supreme Court recognized that *Ex Parte Young* was inapplicable in a suit against state officials on the basis of state law. In Voight, 70 F.3d at 1563, the Ninth Circuit found that claims that state officials failed to follow state law must be presented to the state court.

Here, Plaintiff's claims are not merely based on violations of state law. He alleges that the GPIR, Cal. R. Ct. 8.1115, and Ninth Circuit Rule 36–3 violate the federal Constitution. Thus, the Eleventh Amendment would not bar Plaintiff's claims for prospective relief against the Judicial Officers in their official capacity; however, as noted, he lacks standing to pursue these claims. In addition, Plaintiff's requests for injunctive relief against the Judicial Officers are barred by Section 1983. Section 1983 on its face bars injunctive relief against any judicial officer acting in a judicial capacity "unless a declaratory decree was violated

or declaratory relief was unavailable." 42 U.S.C. § 1983; see also *Wolfe*, 392 F.3d at 366. The phrase "declaratory relief" refers to the ability of a litigant to "appeal the judge's order." *Hill v. Ponner*, 2019 WL 1643235, at *2 (E.D. Cal. Apr. 16, 2019) (citation omitted); *Weldon v. Kapetan*, 2018 WL 2127060, at *4 (E.D. Cal. May 9, 2018); Krupp v. Todd, 2014 WL 4165634, at *4 (N.D.N.Y. Aug. 19, 2014). As such, requests for injunctive relief under Section 1983 against the Judicial Officers are barred by the plain language of Section 1983 as Plaintiff had appellate remedies available, both in the California Courts and by a writ of certiorari.3

E. Leave to Amend Should Be Denied

A pro se litigant must ordinarily be given leave to amend unless it is absolutely clear that deficiencies in a complaint cannot be cured by further amendment. *Lucas v. Dep't of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995) (per curiam). However, if, after careful consideration, it is clear that a complaint cannot be cured by amendment, the Court may dismiss without leave to amend. Cato v. United States, 70 F.3d 1103, 1105–06 (9th Cir. 1995); see also, e.g., *Chaset v. Fleer/Skybox Int'l, LP*, 300 F.3d 1083, 1088 (9th Cir. 2002) (holding that "there is no need to prolong the litigation by permitting further amendment" where an amendment would not cure the "basic flaw" in the pleading); *Lipton v. Pathogenesis*

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[3] The Court notes that the Judicial Officers also would be immune from claims for damages for acts performed in their judicial capacity. *Mireles v. Waco*, 502 U.S. 9, 9–11 (1991) (per curiam); *Miller v. Davis*, 521 F.3d 1142, 1145 (9th Cir. 2008). However, as Plaintiff has confirmed he does not seek monetary damages in the SAC, such immunity is not at issue.

Corp., 284 F.3d 1027, 1039 (9th Cir. 2002) (holding that "[b]ecause any amendment would be futile, there was no need to prolong the litigation by permitting further amendment"). Here, the defects in the SAC are not the result of inartful pleading. Rather, they are the result of legal flaws that cannot be remedied by amendment. The Court notes that Plaintiff has voluntarily amended his pleading twice already, each time after the Court expressed concerns about the applicability of the Rooker-Feldman doctrine to Plaintiff's claims. The Court has also considered Plaintiff's proposed Third Amended Complaint, lodged with the Court more than two weeks after Defendants filed the Motion, for the purposes of the propriety of leave to amend and finds the proposed Third Amended Complaint does not cure any of the legal defects identified herein. Plaintiff was provided an opportunity at the hearing on the Motion to identify any additional allegations that would support his federal claims for relief.

Plaintiff requested that if leave to amend be granted that he be permitted to name the Ninth Circuit Court of Appeals as a defendant for purposes of his challenge to Ninth Circuit Rule 36-3. However, even if the Court were to allow leave in order to name this additional defendant, this would not alter the analysis on standing. Plaintiff was unable to identify any additional facts beyond those already identified and considered that would be sufficient to state a federal claim for relief. The Court finds that the deficiencies of the SAC cannot be cured by further amendment. As such, the Court recommends that the SAC be dismissed without further leave to amend. See *Leadsinger, Inc. v. BMG Music Publ'g*,

512 F.3d 522, 532 (9th Cir. 2008) (leave to amend appropriately denied when amendment would be futile).

Further, although the Doe Defendants have not been identified or served in this action, the basis for the Court's findings applies equally to them. *Silverton v. Dep't of the Treasury*, 644 F.2d 1341, 1345 (9th Cir. 1981) ("A District Court may properly on its own motion dismiss an action as to defendants who have not moved to dismiss where such defendants are in a position similar to that of moving defendants or where claims against such defendants are integrally related."); accord *Abagninin v. AMVAC Chem. Corp.*, 545 F.3d 733, 742 (9th Cir. 2008) ("As a legal matter, we have upheld dismissal with prejudice in favor of a party which had not appeared, on the basis of facts presented by other defendants which had appeared."). As such, **Plaintiff is placed on notice that the Court recommends dismissing Does 1-100 as well; if Plaintiff disagrees and believe he can state a claim as to these defendants, he should make that showing in Objections to the Report and Recommendation.**

F. The Court Should Decline Supplemental Jurisdiction Over Plaintiff's State Law Claims

When a federal court has dismissed all claims over which it has original jurisdiction, it may, at its discretion, decline to exercise supplemental jurisdiction over the remaining state law claims. 28 U.S.C. § 1367(c)(3); *Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 639-40 (2009). As the Court concludes that none of Plaintiff's federal claims survive Defendants' motion to dismiss, as a matter of comity, the Court should decline to hear the remaining exclusively state law claims in the

SAC.4

VI. RECOMMENDATION

IT IS THEREFORE RECOMMENDED that the District Court issue an Order: (1) approving and accepting this Report and Recommendation; (2) granting Defendants' Motion to Dismiss without leave to amend; (3) dismissing Plaintiff's federal claims with prejudice; (4) dismissing Plaintiff's state law claims without prejudice; and (5) directing that Judgment be entered dismissing this action accordingly.

Appendix D

U.S. District Court
for the Central District of California

No. 2:20-cv-02365-PSG-JDE

Peter Kleidman,
Plaintiff,
v.

Hon. Thomas L. Willhite, Jr., et al.,
Defendants.

Filed September 29, 2020

Before, Gutierrez, Chief Judge,
Early, Magistrate Judge

JUDGMENT

Pursuant to the Order Accepting Findings and Recommendations of the United States Magistrate Judge,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Plaintiff shall take nothing by this action;

2. Plaintiff's federal law claims asserted in the operative Second Amended Complaint (Counts 1, 5-8, 11, 12, 16-18) are dismissed with prejudice; and

3. The remainder of the claims asserted operative Second Amended Complaint (Counts 2-4, 9, 10, 13-15) are dismissed without prejudice to being asserted in state court.

Appendix E

U.S. District Court
for the Central District of California

No. 2:20-cv-02365-PSG-JDE

Peter Kleidman,
Plaintiff,
v.

Hon. Thomas L. Willhite, Jr., et al.,
Defendants.

Filed March 30, 2020

Before, Gutierrez, Chief Judge,
Early, Magistrate Judge

Excerpts from Plaintiff's
Memorandum in Opposition to OSC
(some ellipses omitted)

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§II. The *Rooker-Feldman* (so-called) "doctrine" is much ado about nothing, because *Rooker* and *Feldman* add nothing to the unremarkable principle that a litigant has no legal right to a correct, state-court decision - i.e., a state court's mere error, without more, is not a justiciable legal wrong

[T]here is no law requiring a state court to ultimately decide correctly. While a court has a Constitutional duty to earnestly try to rule correctly according to the law of the land, it has no legal duty (under federal law) to actually rule

correctly. A state court's issuance of an erroneous judgment, without more, violates no federal law, and is neither illegal conduct nor a breach of duty under federal law. *Wood v. Conneaut Lake Park, Inc.*, 386 F.2d 121, 125 (3rd Cir.1967); *Worcester County Trust Co. v. Riley*, 302 US 292, 299 (1937); *Bonner v. Gorman*, 213 US 86, 91 (1909); *Voorhees v. Jackson ex dem. the Pres., Directors & Co. of The Bank of The US*, 35 US 449, 474 (1836) ("The errors of the court do not impair their validity"). Therefore, when a state-court litigant merely suffers an erroneous, state-court decision, it has not "suffered ... an invasion of a legally protected interest," and so it has no Article III standing to commence an original action in federal court. *Lujan*, at 560.

The contribution of *Rooker v. Fidelity Trust Co.*, 263 US 413 (1923) (*Rooker*) to the *Rooker-Feldman* doctrine was merely to reiterate the foregoing, time-honored principle in the special case where the state court decision "gave effect to a state statute alleged to be in conflict with [the due process and equal protection] clauses." *Id.*, at 415, 416.

[T]he *Rooker-Feldman* doctrine is nothing more than "the rule that a federal district court cannot entertain an original action alleging that a state court violated the Constitution by giving effect to an unconstitutional state statute," *Howlett v. Rose*, 496 US 356, 369-370, n. 16 (1990), which is but an instance of the fundamental, elemental principle that a state court's mere error is not a justiciable wrong. The lower federal courts' innumerate attempts to expand the *Rooker-Feldman* doctrine to anything more are all groundless.

Here, this action is not founded on mere error,

but on Constitutional violations in the manner and course of the appellate proceedings, depriving Plaintiff of his Constitutional rights in the appellate proceedings. Thus this action is not barred by *Rooker–Feldman.*

A federal district court has original, equity jurisdiction to provide a remedy when a judgment in a prior action was obtained through illegal conduct which prevented the aggrieved party from having a fair trial.[4] A common application of the foregoing principle occurs in cases of extrinsic fraud. E.g., *Johnson v. Waters*, 111 US 640, 667–668 (1884). In such actions alleging extrinsic fraud, the district court does not act in an appellate capacity (i.e., correcting and reviewing errors in the prior judgment), but rather exercises original jurisdiction to provide a remedy for violations of the law and illegal conduct "in the obtaining of" the prior judgment. *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1141 (9th Cir. 2004). Thus "a plaintiff in federal court can seek to set aside a state court judgment obtained through extrinsic fraud." *Ibid.* "'[I]f the proceedings are tantamount to a bill in equity to set aside a decree for fraud in the obtaining thereof, then they constitute an original and independent proceeding, and ... the case might be within the cognizance of the Federal courts.'" *Marshall v. Holmes*, 141 US 589, 597 (1891) (*Marshall*).

Marshall drew the distinction between, on the one hand, "'a mere revision of errors and irregularities, or of the legality and correctness of the judgments and decrees of the state courts'" (appellate capacity), and on the other hand, "'the

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[4] Subject, of course, to Article III and 28 USC §§ 1330–1369.

investigation of a new case, arising upon new facts, ... having relation to the validity of an actual judgment or decree...'" (original capacity). *Id.*, at 597–598. In the spirit of *Marshall*, the instant action does not request this Court to act in an appellate capacity over B268541, but rather Plaintiff here seeks a remedy because it was the courts themselves which violated the law and engaged in illegal conduct in the manner and course of adjudicating B268541, depriving Plaintiff of a fair trial in the state, appellate proceedings. This action is an "'investigation of a new case, arising upon new facts, ... having relation to the validity of ... actual judgment[s] [and] decree[s]....'" *Id.*, at 598.

Assume A sues B in connection with a wrong allegedly committed by B and allegedly injuring A. This lawsuit becomes the Initial Action. The courts (original and appellate) then decide the Initial Action. There are two types of problems that can arise in connection with the courts' determination of the Initial Action. The first type of problem is that the courts can make an erroneous decision. But there is another, more sinister problem that can arise, namely, the second type of problem is that the courts can violate the law in the manner and course of determining the Initial Action. For instance, the courts might deprive a party of its due process right to be heard; they might decide a particular way because they flipped a coin (thereby acting arbitrarily); they might decide a particular way because they took a bribe; they might decide a particular way because they intentionally discriminated against a certain gender, religion, ethnicity or race; they might decide in a particular way because their personal

interests were aligned with one of the parties and were therefore biased and partial.

The distinction between the two types of problems should be clear: one is mere *error*, but the other is a *violation* of the law. Merely making an error is perfectly *legal*, whereas by definition, violating a law is *illegal*.

Continuing with the aforementioned example, assume the judgment in the Initial Action is decided adversely to A. If A wants to attack the judgment based merely on *error*, then it cannot invoke the original jurisdiction of the federal courts - the reason being that there is no Article III standing to do so. *supra*, 8-9.

However, if A seeks to attack the judgment because the courts *violated federal laws* in the manner and course of determining the Initial Action, then A can sue the courts in federal court for this violation.

[A]n attack on a judgment can be for mere error, or an attack based on extrinsic factors, alleging the court issuing the judgment acted illegally and violated the law in the manner and course of the proceedings and determinations leading up to the judgment (whereby the court hearing the attack is asked to act in an original capacity). The distinction is "'nice,'" *Marshall*, at 597-598, which is to say, "subtle" and "requiring ... sensitive discernment." www.ahdictionary.com. ... The instant action is not asking this Court to vacate the appellate judgments because of mere error, but because [Respondents] violated the law and conducted themselves illegally in the manner and course of determining B268541...

"[R]eview" in 28 USC § 1257 means review for *error*. [I]f a state-court litigant sought to attack

the state's highest court's decision on the grounds that the judicial officers rendering the decision ruled the way they did because they took a bribe, then such an attack would not be a review in the sense of 28 USC § 1257. That litigant must be permitted to attack the decision in an original proceeding on the grounds that its due process rights were violated. Since the litigant has a constitutional right to due process, it must have the right to prosecute the action based on the alleged bribery (which allegedly violated the litigant's right to due process). The litigant should not be required to first petition for certiorari to the Supreme Court to obtain a forum in which to prosecute his claims of bribery. As before, the OSC fails to draw the nice distinction between a attacks for mere error, and collateral attacks based on extrinsic factors.

Plaintiff has a *right* to a remedy since Constitutional rights are not an empty promise. 367 US 643, 660. Filing a petition for certiorari in the US Supreme Court is not pursuing a *right* to a remedy, for there is no right to be heard on the merits by the US Supreme Court. 28 USC § 1257 states only that the US Supreme Court *may* review such decisions, and it is common knowledge that the chances of getting a petition for certiorari granted is remote. Thus Plaintiff's only way to exercise his right to a remedy is to be heard on the merits in a court of original jurisdiction.

Furthermore, Plaintiff's injuries were not *caused* by the state-court judgment; rather, the cause of the injury was [Respondents] alleged violations of the law and illegal conduct in the manner and course of presiding over and adjudicating B268541.... And Plaintiff is not

"inviting" this Court to "review" these judgments, since "review," as used by *Exxon*, means review for error. This action is not akin to a writ of error.

Lower federal courts can exert original jurisdiction over collateral attacks on state court judgments based on extrinsic factors.

A de facto appeal is an attack for mere error. The Complaint alleges violations of the law and illegal conduct, which is a collateral attack based on extrinsic factors.

The Complaint alleges (inter alia) that there was illegal conduct and violations of the law perpetrated by the justices in the course of presiding over the appellate proceedings, and hence it is not barred by *Rooker-Feldman. supra*, 6-11; *Brokaw v. Weaver*, 305 F.3d 660, 666 (7th Cir. 2002) ("'that the plaintiff's pursuit of ... federal claims could ultimately show that the state court judgment was erroneous [does] not automatically make *Rooker-Feldman* applicable'"). *Rooker-Feldman* applies when the plaintiff had a reasonable opportunity to raise his federal claims in state court, *Wood v. Orange County*, 715 F. 2d 1543, 1547 (11th Cir.1983), and Plaintiff had no such opportunity. It should make no difference whether the illegal act was perpetrated by an adverse party or the court itself. Here, the alleged legal wrong is not the erroneous decision, but the illegal conduct and violations of the law perpetrated by defendants. A party can maintain a collateral attack against a state court judgment whereby the judgment was procured or obtained by illegal conduct. E.g., *Griffith v. Bank of New York*, 147 F.2d 899, 901, 904 (2nd Cir. 1945) (federal district court has diversity jurisdiction to hear claims that state court judgment was

obtained by duress). It should not matter whether the illegal conduct and violations of the law were perpetrated by a party's adversary or the court itself. Either way, it is the illegal conduct which forms the basis for the collateral attack. *Rooker-Feldman* bars attacks only for mere error, which is not the basis for the instant action. This action is based on violations of Plaintiff's Constitutional rights, and this a suit to vindicate those rights, so it is not barred by *Rooker-Feldman. Nesses v. Shepard*, 68 F.3d 1003, 1005 (7th Cir. 1995).

Rooker-Feldman applies only when the "*source*" of the alleged injury is the state court judgment itself. *McCormick v. Braverman*, 451 F.3d 382, 394-395 (6th Cir. 2006); *Great Western Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159, 169-170 (3rd Cir. 2010) emphasis added. Here, the source of the alleged injury is Defendants' illegal conduct. The decisions in B268541 are the result, not the source.

Here, the basis for the relief is Defendants' illegal conduct and violations of the law, not the erroneous decisions per se.

Appendix F

U.S. District Court
for the Central District of California

No. 2:20-cv-02365-PSG-JDE

Peter Kleidman,
Plaintiff,
v.

Hon. Thomas L. Willhite, Jr., et al.,
Defendants.

Filed May 11, 2020

Before, Gutierrez, Chief Judge,
Early, Magistrate Judge

Excerpts from Plaintiff's
Second Amended Complaint
(some ellipses omitted)

Plaintiff appealed the Fee Order and §473(b) Order, giving rise to Appeal B268541 ("B268541"), assigned to DCA2 Defendants.

On July 10, 2018, DCA2 Defendant[s] issued their opinion in B268541 ("7/10/18 Opinion").

DCA2 Defendants violated Plaintiff's due process rights by imposing their judicial will, instead of making an earnest, sincere attempt to apply the law with rationality and reason. [¶] DCA2 Defendants relied on, and were motivated solely by their own personal sensitivities (independent and irrespective of the law) to decide

what they wanted the ultimate outcome to be. [¶] They put so little thought into this ... that their ruling amounts to judicial negligence, violating Plaintiff's due process rights.

DCA2 Defendants ... ruled against Plaintiff to impose their judicial will, i.e., the rule of men and women, not the rule of law. [¶] DCA2 Defendants ruled this way not because they used their best efforts to earnestly apply the law, but because they wanted Plaintiff to lose, so they ruled by judicial fiat, not based on evidence or reasoning.

[Defendants] ... concocted new arguments, issues and points for the first time in the 7/10/18 Opinion, never raised before.... [T]hey refused to allow Plaintiff to be heard on, and rebut, this new matter. [¶] By raising new matter for the first time in the 7/10/18 Opinion, DCA2 Defendants deprived Plaintiff of his due process right to rebut the new matter. Plaintiff's due process rights were violated because he was never given a chance to rebut critical, dispositive arguments made for the first time in the 7/10/18 Opinion. DCA2 Defendants thereby violated Plaintiff's due process rights. [¶] [Defendants] never gave Plaintiff the opportunity to be heard on this formal-practical distinction, thereby violating Plaintiff's due process rights. [¶] Defendants drummed up a ... brand new issue, which Plaintiff never had the opportunity to address.

[Respondents], sua sponte, for the first time in the 7/10/18 Opinion, rejected Plaintiff's position, basing their theory on 'mutuality,' even though ... it was never raised earlier. [¶] The question ... was never raised in the proceedings before the 7/10/18 Opinion, ... Thus DCA2 Defendants violated Plaintiff's due process rights by raising

mutuality for the first time in the 7/10/18 Opinion, [¶] DCA2 Defendants violated Plaintiff's due process rights because they never gave him the opportunity to brief the issue

This ... holding, ... was never raised by the parties. Defendants never gave Plaintiff the opportunity to rebut this ruling, thereby violating Plaintiff's due process rights.

DCA2 Defendants did not devote their time, resources and energy to seriously consider all of Plaintiff's arguments on appeal, ignoring some arguments altogether. It is a violation of a party's rights to due process whenever the court fails to duly consider the party's arguments. If a judge rejects an argument without making a sincere, earnest, best-efforts attempt to use reasoning and ratiocination to determine the argument fails, the litigant is denied due process.

DCA2 Defendants unconstitutionally ignored all of the following arguments.

Plaintiff argued the range of fees in the community is the wrong standard.

LASC purportedly "considered" "the attorney's expertise and experience." Plaintiff argued this is the wrong standard;. Plaintiff argued nothing evidences the attorney's expertise or experience in the particular type of work demanded.

The trial court allegedly "considered" the "reasonableness of ... time allotted to ... tasks specified in the ... billing records." Plaintiff argued nothing evidences such reasonableness. Plaintiff argued this standard is incorrect.

The trial court supposedly "considered" the "extent of discovery required." Plaintiff argued nothing in the record evidences the extent of discovery required.

Plaintiff argued LASC abused its discretion by relieving RFF of its burden of proof. [¶] Plaintiff argued RFF inappropriately double-counted certain fees. [¶] Plaintiff argued he should not have to pay fees for RFF's paralegal.[¶] Plaintiff argued LASC erroneously struck his motion for new trial as to the Fee Motion and Fee Order. [¶] Plaintiff argued the trial court abused its discretion because it did not exercise its discretion subject to the limitations of legal principles governing the subject of its action when adjudging the §473(b) Motion. [¶] Plaintiff argued under *Elston v. City of Turlock*, 38 Cal.3d 227, 235 (1985), "Unless inexcusable neglect is clear, the policy favoring trial on the merits prevails" over the "rule ... defer[ring] to ... trial court[s'] exercise of discretion." [¶] Plaintiff argued the Fee Motion and Fee Order should be determined solely on the contents of RFF's Fee Motion, and that LASC violated Plaintiff's right to due process by raising, sua sponte, new arguments in its tentative ruling just before the hearing. [¶] Plaintiff argued less deference should be given to Judge Stone's (ret.) Fee Order because he did not preside over the 4/20/15 Trial and because its discussion of the so-called, "relevant" factors was conclusory. [¶] Plaintiff argued there was no evidence of an agreement with an attorney fee provision. [¶] Plaintiff argued LASC never ruled that service of RFF's Lists was grounds to deny the §473(b) Motion, but was grounds to deny a different motion, so service of RFF's Lists should not be used as grounds to affirm the §473(b) Order. [¶] Plaintiff argued there was no evidence he received RFF's Lists before the 4/20/15 Trial, and that the only possible statutory presumption is that he

received them within ten days after service, which would have been April 23, 2015, three days after the 4/20/15 Trial. [¶] Plaintiff argued that RFF suffered no prejudice, in which case reversal is particularly appropriate under *Elston*, 38 Cal.3d, at 235. [¶] Plaintiff argued orders denying relief under CCP §473(b) had to be scrutinized more carefully than those granting relief; very slight evidence is required to justify relief; any doubts must be resolved in favor of granting relief, even when the showing is not strong; proceeding to judgment in the absence of a party is an extraordinary, disfavored practice; the law looks with disfavor upon a party, who, regardless of the merits attempts to take advantage of the mistake, inadvertence, or neglect of his adversary.

DCA2 Defendants ignored other arguments, which can be seen from examination of Plaintiff's appellate briefs and the 7/10/18 Opinion.

Since the manner and conduct of these proceedings were unconstitutional, the resulting 7/10/18 Opinion and 10/9/18 Remittitur are void. The appropriate remedies are declaratory judgments that DCA2 Defendants violated Plaintiff's Constitutional rights and the 7/10/18 Opinion and 10/9/18 Remittitur are void; an injunction commanding the appellate proceedings to continue in a manner which preserves Plaintiff's right to due process.

WHEREFORE, Plaintiff prays for Declarations that: DCA2 Defendants, in the manner and course of adjudicating B268541, violated the US Constitution's due process clause, the 7/10/18 Opinion and 10/9/18 Remittitur are void; Injunctions commanding: that the appellate proceedings in B268541 be re-opened and:

continue in a manner which preserves Plaintiff's Constitutional right to due process.

Appendix G

U.S. District Court
for the Central District of California

No. 2:20-cv-02365-PSG-JDE

Peter Kleidman,
Plaintiff,
v.

Hon. Thomas L. Willhite, Jr., et al.,
Defendants.

Filed July 23, 2020

Before, Gutierrez, Chief Judge,
Early, Magistrate Judge

Excerpts from
Opposition to Motion to Dismiss
(some ellipses omitted)

Rooker-Feldman jurisprudence is deeply flawed, as the Supreme Court has not given clear guidance on how to distinguish between original and appellate jurisdiction. This failure is due to its failure to frame the issue in terms of case-or-controversy jurisprudence. When a court determines its jurisdiction under Article III with a case-or-controversy analysis, as it should, the so-called *Rooker-Feldman* doctrine becomes a superfluous distraction, causing unnecessary confusion.

Therefore, if the district court has Article III

subject matter jurisdiction under Article III and 28 USC §§ 1330-1369, *Rooker-Feldman* is inapplicable. Therefore, *Rooker-Feldman* adds nothing to Article III case-or-controversy jurisprudence, save distraction and confusion.

Despite *Exxon*, inconsistent formulations and applications of *Rooker-Feldman* persist among the circuits. If Plaintiff loses under *Rooker-Feldman*, perhaps the Supreme Court will grant certiorari to dismantle *Rooker-Feldman* and to properly frame actions which relate to prior judgments under case-or-controversy jurisprudence. In neither *Rooker* nor *Feldman* was it alleged that the injury was caused by the *judgment*.

To prove *Rooker-Feldman* inapplicable, Plaintiff need only show this Court's jurisdiction under Article III. 28 USC §1331, §1367 are satisfied as the SAC raises federal questions.

There mere act of ruling incorrectly violates no federal law, and is neither illegal conduct nor a breach of duty under federal law (provided the error was an honest misjudgment made in good faith and in accordance with due process). *Wood v. Conneaut Lake Park, Inc.*, 386 F.2d 121, 125 (3rd Cir.1967); *Worcester Cnty. Tr. Co. v. Riley*, 302 US 292, 299 (1937); *Bonner v. Gorman*, 213 US 86, 91 (1909); *Voorhees v. Jackson ex dem. the Pres., Directors & Co. of The Bank of The US*, 35 US 449, 474 (1836). Therefore, when a litigant merely suffers an erroneous decision, it has not "suffered ... an invasion of a legally protected interest," so it has no Article III standing to sue on the grounds that the court ruled erroneously. *Lujan*, 560.

Here, the alleged legal wrongs which are the basis for relief are not mere legal errors on the merits, but rather [Respondents] violations of

Plaintiff's due process rights.

[T]hese allegations invoke original (not appellate) jurisdiction, since they involve "'the investigation of a new case, arising upon new facts, ... having relation to the validity of an actual judgment or decree...'". *Marshall v. Holmes*, 141 US 589, 597–598 (1891). The 'new case' and 'new facts' concern the manner in which DCA2 Justice Defendants presided over and adjudicated B268541, and the conduct and course of those proceedings.

While a party has no legally-protected right to a correct decision, it does have a legally-protected right to a fair trial, held in accordance with due process of law. Thus a district court has original jurisdiction when the plaintiff alleges the defendant engaged in misconduct preventing a fair trial. *Marshall*, 597 (district court has jurisdiction over "an original and independent proceeding" "tantamount to a bill in equity to set aside a decree for fraud in the obtaining thereof"); *Nesses v. Shepard*, 68 F.3d 1003, 1005, 1006 (7th Cir. 1995) (plaintiff alleged violations of his purported "right ... to be judged by a tribunal that is uncontaminated by politics"); *Great Western Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159, 171–173 (3rd Cir. 2010) (plaintiff alleged conspiracy among judges and attorneys to engineer its defeat, forcing it to litigate in a rigged system without a fair trial); *Parker v. Lyons*, 757 F.3d 701, 706 (7th Cir. 2014) (similar); *McCormick v. Braverman*, 451 F.3d 382, 392–394 (6th Cir. 2006) (plaintiff alleged "state court judgments were procured by fraud, misrepresentation") (*McCormick*); *Loubser v. Thacker*, 440 F.3d 439, 440–441 (7th Cir. 2006) (plaintiff alleged

conspiracy, which included judges, manipulating divorce proceedings, denying plaintiff due process, resulting in judgment depriving her of property to which she was entitled). It is the misconduct which is the cause of the injury, not the erroneous decision. *Brokaw v. Weaver*, 305 F.3d 660, 662, 667 (7th Cir. 2002) (plaintiff alleged conspiracy to "report[] false claims" which "caused the adverse state court decision"). Thus a plaintiff has standing if it is the defendant's misconduct which leads to the plaintiff being deprived of a fair trial. *Doe v. Holcomb*, 883 F.3d 971, 978 (7th Cir. 2018) ("Standing is not always lost when the causal connection is weak, ... and a defendant's actions need not be 'the very last step in the chain of causation'").

Likewise here, the cause of Plaintiff's injuries is (inter alia) the misconduct of [Respondents] in violation of the constitution, not the B268541 rulings themselves. The B268541 affirmances ... are not the causes of Plaintiff's injuries, the cause being [Respondents'] unconstitutional conduct, causing the proceedings to be unfair and unjust.

That Plaintiff seeks to set aside the B268541 Decisions is consistent with the SAC's invocation of this Court's original jurisdiction. Here, the *basis* for the relief is the DCA Justice Defendants' unconstitutional conduct, not the erroneousness of the B268541 rulings per se. "[J]udgments may ... be set aside ... for fraud. ... In such cases the court does not act as a court of review. ... '[I]f the proceedings are tantamount to a bill in equity to set aside a decree for fraud in the obtaining thereof, then they constitute an original and independent proceeding; ... a new case arising upon new facts, although having relation to the

validity of an actual judgment or decree.'" *Johnson v. Waters*, 111 US 640, 667–668 (1884). *In re Diet Drugs*, 282 F.3d 220, 242 (3rd Cir. 2002) (district court can effectively void a state court determination, without violating *Rooker–Feldman*); *Davis v. Page*, 640 F.2d 599, 605 (5th Cir. 1981) ("The relief we affirm is declaratory and renders null and void the state decree").

By analogy, when a district court sets aside a judgment under Rule 60(b)(3), it does not exert *appellate* jurisdiction to review for mere error, but exerts *original* jurisdiction based on new facts. *Leber–Krebs, Inc. v. Capitol Records*, 779 F.2d 895, 899 (2nd Cir. 1985); *Page v. Schweiker*, 786 F.2d 150, 154 (3rd Cir. 1986) (Rule 60(b) "not a substitute for an appeal"). Under Rule 60(b)(3), the district court can exert original jurisdiction over a claim that the aggrieved party was the victim of misconduct which prevented it "from fully and fairly presenting [its] case or defense." *Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1339 (5th Cir. 1978); *Bell v. Eastman Kodak Co.*, 214 F.3d 798, 800–801 (7th Cir. 2000). Rule 60(b)(3) invokes original, not appellate, jurisdiction because the issue under consideration is not whether there was error in the context of a fair trial, but whether there was a fair trial in the first place. Thus a district court can set aside a prior judgment while exerting original (not appellate) jurisdiction.

Rooker–Feldman applies only when the *source* of the alleged injury is the state court judgment itself. "If the source of the injury is the state court decision, then the *Rooker–Feldman* doctrine would prevent the district court from asserting jurisdiction. If there is some other source of injury, such as a third party's actions, then the plaintiff

asserts an independent claim" not barred by *Rooker-Feldman*. *McCormick*, 394; *Great Western*, 169-170; *Hoblock v. Albany Cnty. Bd. of Elec.*, 422 F.3d 77, 87-88 (2nd Cir. 2005). Here, the source of Plaintiff's injury is DCA2 Justice Defendants' violations of due process in the course of adjudicating B268541 (e.g., inter alia, depriving Plaintiff of the opportunity to be heard, SAC ¶¶34-49), not the B268541 rulings themselves.

[T]he SAC alleges that the wrong was defendants illegal conduct. Therefore this case is distinguishable from *Rooker*. Since *Rooker-Feldman* is "confined to cases of the kind from which the doctrine acquired its name," *Exxon*, 284, and this case is distinguishable from *Rooker*, it follows that *Rooker-Feldman* does not apply.

What matters is not the erroneousness of the state-court rulings, but the *reason* for the errors. [I]f the judge made the exact same ruling because, say, he/she willfully imposed racial prejudice, then the judge acted criminally. 18 USC § 242. For instance, if the judge's rulings are expressly based on his/her own application of racial prejudice, then the US could attack the propriety of those rulings in a criminal prosecution. Therefore, if mere error, without more, is the basis for the grievance, only appellate jurisdiction is invoked. But if the alleged wrong is illegal conduct pertaining to the manner in which the rulings were procured, then original jurisdiction is invoked. If the federal plaintiff alleges that the state-court rulings are erroneous and they resulted form the judge's violation of federal law, the district court has original jurisdiction to adjudicate the alleged violations - that the plaintiff also attacks the rulings themselves does not deprive the district

court of original jurisdiction, since the erroneous rulings are not the injury's cause, but represent the injury itself, the cause being the alleged violations perpetrated by the judge.

Plaintiff is not requesting that this court overturn these affirmances and transform them into reversals. Rather, Plaintiff requests that these affirmances be set aside, and that B268541 be reopened so that the B268541 proceedings can proceed in a constitutionally-compliant manner. If this court grants this relief, it is still possible that Plaintiff may lose, i.e., that B268541 will result in affirmances. That is, Plaintiff seeks not an order that the affirmances should become reversals, but rather a reopening of B268541 so that the proceedings occur with due process of law.

Since *Exxon*, several circuits concluded that the "inextricably intertwined" test does not expand *Rooker-Feldman*. *Bolden v. City of Topeka, Kan.*, 441 F.3d 1129, 1141 (10th Cir. 2006); *Davani v. Va. Dept. of Transp.*, 434 F.3d 712, 719 (4th Cir. 2006); *Great Western*, 169-170; *McCormick*, 394-395; *Truong v. Bank of Am., NA*, 717 F.3d 377, 385 (5th Cir. 2013); *Hoblock*, 86-87.

Plaintiff seeks to set aside the B268541 Decisions because they were procured by illegal conduct preventing Plaintiff from having a fair trial, not because they are erroneous. Thus Plaintiff is not seeking "review," in the sense of appellate review. *Johnson*, 667-668 ("[J]udgments may ... be set aside ... for fraud. ... In such cases the court does not act as a court of review").

Bianchi, a pre-*Exxon* case, is wrong. Relitigating in federal court to obtain relief when the same request failed in state court is not barred by *Rooker-Feldman*. *In re Miller*, 666 F.3d 1255,

1261–1262 (10th Cir. 2012); *Nesses*, 1004. *Hoblock*, 87–88 (correctly framing the relitigation issue with case-or-controversy analysis); *Berry v. Schmitt*, 688 F.3d 290, 298 (6th Cir. 2012) (*Rooker-Feldman* "does not bar federal jurisdiction 'simply because a party attempts to litigate in federal court a matter previously litigated in state court'").

Appendix H

U.S. District Court
for the Central District of California

No. 2:20-cv-02365-PSG-JDE

Peter Kleidman,
Plaintiff,
v.

Hon. Thomas L. Willhite, Jr., et al.,
Defendants.

Filed September 10, 2020

Before, Gutierrez, Chief Judge,
Early, Magistrate Judge

Excerpts from Plaintiff's Amended
Objections to Report and Recommendation
(some ellipses omitted)

[A]n action will lie when the aggrieved party was prevented from having a fair trial in the state-court proceeding due to adverse, 'extrinsic' factors beyond its control. As to the *Lujan* factors, the injuries are the lack of a fair trial and the adverse judgment; the causes are the adverse, extrinsic factors; and the remedy is to set aside and reopen the judgment so as to restore the party to the position held before the extrinsic factors occurred, thereby allowing the party to have a fair trial. The party need not show it would have prevailed but for the extrinsic factors. *Peralta v. Hts. Med. Ctr.,*

Inc., 485 US 80, 86–87 (1988); *Fuentes v. Shevin*, 407 US 67, 87 (1972).

Rooker–Feldman, should be discarded as a confusing distraction, and jurisdiction should be determined by traditional Article III case-or-controversy jurisprudence, along with analysis under 28 USC § 1330, et seq.. Using such case-or-controversy jurisprudence, this court clearly has subject matter jurisdiction, since SAC alleges that defendants committed constitutional torts preventing Plaintiff from having a fair trial, which can be redressed by setting aside the B268541 Decisions and reopening the proceedings in B268541.

Merely deciding incorrectly is not itself a tort, as a party has no right to a correct decision. *Worcester Cnty. Tr. Co. v. Riley*, 302 US 292, 299 (1937); *Bonner v. Gorman*, 213 US 86, 91 (1909). Here, Plaintiff alleges [Respondents] committed constitutional torts in the adjudicatory process, thereby preventing him from having a fair trial.

DC Ct. of App. v. Feldman, 460 US 462 (1983)) is unclear. Did plaintiffs Feldman/Hickey allege DC Ct. of App. committed constitutional torts in the adjudicatory process, or that it decided constitutional questions incorrectly?

However, assume J ... flipped a coin, took a bribe, had a bitter personal relationship with A, or imposed racial discrimination. Then J *did* commit a constitutional tort in the adjudicatory process, and A has a cause of action against J under 42 USC § 1983. A's injury is the violation of its due process rights in *A v. B*, the cause is J's tort, and the remedy is to restore A to the position held before the tort was committed. Note, even if A succeeds in *A v. J* and is restored to its pre-tort

position, a new judge K might still, in good faith, erroneously overrule A's Fifth Amendment objection. But the correctness of J's overrule is not the issue in *A v. J*, but rather the issue is A's constitutional rights to a fair trial in *A v. B.* ... [T]he real Article III case or controversy in *A v. J* was that A's injury was the deprivation of its right to due process, the cause was J's tort, the remedy is restoring A to its pre-tort position.

Assume A sues B in court C and A loses. If A's grievance is only that C decided incorrectly, A's only avenue of relief is to seek *appellate* jurisdiction to review C's errors. C did not invade any of A's legally-protected rights (in the sense of *Lujan v. Defenders of Wildlife*, 504 US 555, 560-561 (1992). However, if A alleges that C did not conduct a fair trial (e.g., denied A the opportunity to be heard), then a new chose in action arises giving rise to the *original* proceeding *A v. C.* Party A *does* have the legally-protected right to a fair trial, and if C violates that right, then there is a bona fide case or controversy between A and C, distinct from and in addition to *A v. B.*

Erroneously deciding a constitutional question is lawful, whereas it is unlawful (by definition) to commit constitutional torts during the adjudicatory process and/or the legal proceedings leading up to the decision.

[T]he alleged legal wrong is not that the ruling is incorrect, but that Plaintiff was denied due process because he was not given an opportunity to be heard on the issue. Thus Plaintiff is not here requesting that this Court review for error whether [Respondents] ruled correctly on this issue. Rather, Plaintiff requests that B268541 be reopened so that the aforementioned torts can be

remedied, i.e. that he can be heard on this issue, As long as Plaintiff has a fair trial on this issue, his grievances will be remedied, even if the Justices incorrectly rule against Plaintiff. Plaintiff's only goal is to get fair trials in the state appellate proceedings - if he loses through erroneous rulings made with a fair trial, so be it.

Here, the alleged legal wrongs which are the basis for relief are not mere legal errors, but rather [Respondents'] tortious violations of Plaintiff's due process rights during the adjudicatory process, thereby depriving him of his constitutional right to a fair trial.

Bianchi was overturned by *Exxon*. ... Thus *Bianchi* should not be followed herein.

"[E]ven when a federal plaintiff ... seek[s] to set aside a state court judgment, *Rooker-Feldman* may not apply." *Maldonado*, 950; *Kougasian*, 1141 (federal plaintiff "can seek to set aside a state court judgment obtained through extrinsic fraud"); *Marshall v. Holmes*, 141 US 589, 597 (1891)[;] *In re Diet Drugs*, 282 F.3d 220, 242 (3rd Cir. 2002); *Davis v. Page*, 640 F.2d 599, 605 (5th Cir. 1981); Doc. 21 at 31:4-16 (drawing analogy with Rule 60(b), whereby district court acts in an original (not appellate) capacity even though it sets aside a prior judgment).

]I]f a state-court judge adjudicates with intentional, racial discrimination, a crime is committed, 18 USC § 242, and presumably the judgment can be overturned. Surely the US's prosecution of the judge would "disrupt" or "undo" the judge's criminally-rendered judgment, but *Rooker-Feldman* would not bar such prosecution. Doc. 21 at 34-35.

Thus if a state-court judge violates the

constitution in the adjudicatory process, it does not deserve a federal court's respect. Respect for the constitution outweighs respect for state-court judgments.

Motives matter. [A] judgment can be vacated if it was discovered the judge flipped a coin, took a bribe, or racially discriminated, 18 USC § 242.

There is no jurisdictional bar to identical relitigation.

Appendix I

U.S. Court of Appeals
for the Ninth Circuit

No. 20-56256

Peter Kleidman,
Plaintiff-Appellant,
v.

California Court of Appeal for the Second Appellate District, et al.,
Defendants-Appellees.

Filed June 18, 2021

Before McKeown, Christen, Bress, Circuit Judges

Excerpts from Appellant's Opening Brief
(some ellipses omitted)

[42 USC] § 1983 provides for *original* federal jurisdiction when state judicial officers trample on litigants' constitutional rights to fair, judicial proceedings. Therefore, if state-court judicial officers trample on litigants' due process rights to fair judicial proceedings, § 1983 provides *original*, federal-court remedies to redress such constitutional torts. [¶]

What remedies are available?

[F]ederal district courts have *original* jurisdiction to set aside prior, final judgments in certain circumstances. FRCP 60(b), 60(d)(1); *U.S. v. Beggerly*, 524 US 38, 46 (1998); *W. Va. Oil & Gas*

Co. v. George E. Breece Lbr. Co., 213 F.2d 702, 706, 707 (5th Cir. 1954). Thus a federal district court can set aside a state-court's judgment without necessarily exerting appellate jurisdiction. "'[I]f the proceedings are tantamount to a bill in equity to set aside a decree for fraud in the obtaining thereof, then they constitute an original and independent proceeding, and ... the case might be within the cognizance of the Federal courts.'"

The foregoing principles establish that litigants deserve *original*, federal remedies under § 1983 when state-court judicial officers trample on constitutional rights to due process. Federal district courts have *original* jurisdiction to set aside prior, state-court judgments. Therefore, federal district courts, when exercising original jurisdiction, have authority to set aside state-court judgments when state-court judicial officers, in the course of judicial proceedings, trample on litigants' constitutional rights

Here, Kleidman alleges that [Respondents] trampled on his due process rights in B268541's proceedings. Therefore Kleidman deserves an original, federal remedy to redress that injury.

In *Catz v. Chalker*, 142 F.3d 279 (6th Cir. 1998), Chalker obtained favorable rulings in state-court divorce proceedings. *Id.*, 281. "Catz alleges that many of these rulings were procured by ... due process violations, including failure to serve him, failure to give him [adequate] notice..., and improper collusion and *ex parte* contacts between Chalker's lawyers and the [state-court] judiciary." *Id.*, 281. Catz alleged: "'The manner in which the ... state[-]court proceeding was conducted ... deprived [Catz] of a full and fair opportunity to be heard.....'" *Id.*, 294. [¶] In the federal action,

"Catz[] ... [sought] a declaratory judgment that the ... state[-]court judgment was entered in violation of the due process clause...." *Id.*. 289-290

Catz held:

> Catz's due process allegation does not implicate the merits of the [state-court] decree, only the procedures leading up to it. [The] federal relief [sought] ... need not be "predicated upon a conviction that the state court was wrong" on the merits. ... [R]elief for Catz's due-process claim would not consist of a conflicting judgment on the merits; if the [federal] court were to declare the [state-court] decision void as having been secured in violation of due process, that would not ... prevent Chalker from resuming or refiling her divorce action, nor prevent the [state] [c]ourt from coming to the same conclusion under constitutional procedures. [¶¶]
>
> [Catz] attacks as unconstitutional "the *manner* in which the ... state court proceeding was conducted." ... [T]he claims ... are directed to the *procedures* used by the [state] court.... Thus, permitting jurisdiction in this case does not contravene ... *Rooker-Feldman* ..., the prohibition of reviewing the substance of state[-]court judgments. [¶¶]
>
> "[A] federal court 'may entertain a collateral attack on a state[-]court judgment which is alleged to have been procured through fraud, deception, accident, or mistake....'"
>
> [D]ue process challenge[s] to state proceedings [are] not barred by [*Rooker-*]*Feldman*....
>
> [T]he claims of ... procedural violations of Catz's constitutional rights do not rest on any

> substantive wrongness of the rulings of the [state] courts, and ... *Rooker-Feldman* ... does not bar ... this action.

Id. 294, 295, footnote omitted, underline added.

Catz is directly on point. Kleidman alleges that Hons. Willhite's, Collins' *procedures* and *manner* of adjudicating B268541 violated Kleidman's due process rights, and therefore he deserves an original, federal remedy to redress those torts. Kleidman's attack on Hons. Willhite's, Collins' constitutional torts is *not* an attack on the *substance*, i.e., *merits*, of B268541's Judgment.

For instance, Hons. Willhite, Collins made an argument based on a distinction between formal vis-à-vis practical notice ("Formal-Practical Argument"). Kleidman alleges this issue was raised sua sponte by Hons. Willhite, Collins, without allowing Kleidman to be heard to rebut this newly-raised argument, thereby violating Kleidman's due process rights. Just like Catz, Kleidman is not herein requesting a *review* of the Formal-Practical Argument on the *merits*, but seeks reopening of B268541's proceedings so that he may be heard to rebut this argument. This Court cannot let Hons. Willhite, Collins get off scot-free with trampling on Kleidman's due process rights. Kleidman attacks the *procedure* and *manner* that [Respondents] adjudicated that issue. Just like Catz, Kleidman deserves a federal remedy, so *Rooker-Feldman* is inapplicable. The appropriate remedy is B268541's reopening, so that this Formal-Practical issue can be adjudicated in a constitutionally-compliant manner, so that Kleidman may be heard on the issue.

In *McCormick*, state-court receivership proceedings occurred regarding certain real property,

resulting in an order of receivership. *McCormick*, 387. "Plaintiff claims that Defendants ... intentionally did not make Plaintiff a party to the [receivership] litigation ..., so that she did not have an opportunity to assert her property right[s]." *Id.*, 392. "Plaintiff seeks a declaratory judgment that the ... order of receivership is void." *Id.*, 388. [¶] *McCormick* held: "

> Plaintiff claims that certain Defendants acted illegally. ... Plaintiff claims that Defendants ... did not make Plaintiff a party to the [receivership] litigation ..., so that she did not have an opportunity to assert her property right[s].... [¶] ... Plaintiff does not claim that the state[-]court judgments [itself is] unconstitutional or in violation of federal law. Instead, Plaintiff asserts [an] *independent claim*[] that th[e] state[-]court judgment[] [was] procured by ... Defendants through ... improper means.... [¶] The inquiry ... is the source of the injury.... If the source of the injury is the state[-]court decision, then ... *Rooker-Feldman* ... would prevent the district court from asserting jurisdiction. If there is some other source of injury, ... then the plaintiff asserts an independent claim. [¶] The key point is that the source of the injury must be from the state[-]court judgment itself; a claim alleging another source of injury is an independent claim. ... Count[] [II] ... assert[s] injury from a source other than the state[-]court judgment[]; [it is] therefore independent claims outside the scope of ... *Rooker-Feldman*....

Id., 392-394.

In *Loubser*, the plaintiff alleged a conspiracy, including state judges, which denied her due process in divorce proceedings. *Loubser*, 441. *Loubser* held: ["]The claim that a defendant in a civil rights suit "so far succeeded in corrupting the state judicial process as to obtain a favorable judgment" is not barred by ... *Rooker–Feldman* .... Otherwise there would be no federal remedy other than an appeal to the U.S. Supreme Court, and that remedy would be ineffectual because the plaintiff could not present evidence showing that the judicial proceeding had been a farce.["] *Loubser*, 441–442.

See also *Parker v. Lyons*, 757 F.3d 701, 706 (7th Cir. 2014) (*Rooker–Feldman* inapplicable to allegations that state judicial process was corrupted); *Davit v. Davit*, 173 Fed.Appx. 515, 517 (7th Cir. 2006) (*Rooker–Feldman* inapplicable to claims of "judicial corruption" in state court); *Alexander v. Rosen*, 804 F.3d 1203, 1206–1207 (6th Cir. 2015) (*Rooker–Feldman* inapplicable to claims of a conspiracy, including state–court judge, "because ... alleged injury did not emerge from ... state[–]court *judgment*...; [plaintiff] challenges the conduct of ... individuals who ... participate[d] in ... decision").

Rooker–Feldman is inapplicable when parties had no reasonable opportunities in state court to obtain adjudications of their federal claims. *Target*, 1288. [¶] Kleidman had no reasonable opportunity to litigate his claims against [Respondents] in the state–court appellate chain:

Superior Court –→DCA2 –→CSC.

Kleidman could not present his claims against Hons. Willhite, Collins in the Superior Court,

because those claims arose after the Superior Court proceedings ended.

Kleidman could not litigate his claims against Hons. Willhite, Collins in DCA2, since DCA2 was exercising purely *appellate* jurisdiction over the Superior Court, per California Const. Art. VI, §11. Thus DCA2 never had subject matter jurisdiction to adjudicate whether Hons. Willhite, Collins committed constitutional torts, since adjudicating such issues is not conducting appellate review of Superior Court proceedings. Thus DCA2 had no subject matter jurisdiction to adjudicate claims of tortious conduct allegedly perpetrated by its own, judicial officers.

Kleidman had no viable grounds to prosecute his claims against Hons. Willhite, Collins in CSC in its discretionary, appellate capacity under Cal. Constitution, Art. VI, §12(b).

CSC's appellate jurisdiction is to "review the *decision* of a court of appeal." Cal. Const., Art. VI, §12(b), emphasis added. Kleidman is not challenging the *decision*, but rather [Respondents'] *conduct* in rendering the decision. *McCormick*, 392 (drawing distinction between judgment itself and means by which judgment was procured).

Second, the grounds for requesting appellate review in CSC are:

- securing uniformity of decision;
- settling important questions of law;
- when the Court of Appeal lacked jurisdiction;
- when the Court of Appeal decision lacked concurrence of sufficient qualified justices;
- transferring the matter.

Cal. Rule 8.500(b). Kleidman's claims against [Respondents] fall under none of these categories. Kleidman alleges that [Respondents] violated well-

established aspects of due process. There is no lack of "uniformity" among California Court of Appeal decisions, nor do any important questions of law need settling. Thus Kleidman could not in good conscience request discretionary appellate review to prosecute these claims, which are mostly fact-based allegations of violations of well-established principles of due process.

For instance, Kleidman alleges he was denied the opportunity to be heard on the Formal-Practical Argument. This elemental violation of due process is not worthy of the CSC's attention in its discretionary appellate capacity.

[T]he CSC, when exerting *appellate* jurisdiction, is not designed to try new issues of fact in the first instance. The "role [of] an appellate court is not that of factfinder; that is the role of the trial court." *In re Marriage of Smith*, 225 Cal.App.3d 469, 493-494 (1990). CSC, in its appellate capacity, is not intended to be trier of fact in the first instance. Here, Kleidman's claims against [Respondents] are fact-intensive. *supra*, 20-21, a)-h), and CSC, in its appellate capacity, cannot try these facts in the first instance.

[F]orcing a party to bring forth its claims for the first time to a court acting in an appellate capacity offends due process. *Gonzales v. U.S.*, 348 US 407, 417 (1955); *Armstrong*, 552.

Thus Kleidman had no legitimate opportunity to prosecute his claims against [Respondents] in *Kleidman v. RFF*, and the resultant appellate chain, so *Rooker-Feldman* is inapplicable.

Catz's injury was the lack of due process leading to judgment, not the judgment itself. Catz could prevail in his federal action, *without regard to whether the ultimate outcome would be the*

same: ["][I]f the [federal] court were to declare the [state-court] decision void as having been secured in violation of due process, that would not ... *prevent the* [*state*] [*c*]*ourt from coming to the same conclusion under constitutional procedures.*["] [*Catz*], 294, emphasis added.

As in *Catz*, Kleidman's injury is not the adverse rulings, but [Respondents'] constitutionally-tortious conduct leading [thereto]. To provide Kleidman with relief herein, the district court need not decide that B268541's rulings are erroneous. [I]t can rule that [Respondents] acted tortiously and reopen B268541, *without determining whether B268541's rulings are correct or erroneous.*

Federal courts may exert *original* jurisdiction to set aside a decree, when the action involves "'the investigation of a new case, arising upon new facts, ... having relation to the validity of an actual judgment or decree...'" *Kougasian*, 1141. Here, the instant action alleges new facts, not appearing anywhere in *Kleidman v. RFF* and the resultant, state-court appellant chain. Therefore, the instant action invokes original (not appellate) jurisdiction.

Appendix J

U.S. Court of Appeals
for the Ninth Circuit

No. 20-56256

Peter Kleidman,
Plaintiff-Appellant,
v.

California Court of Appeal for the Second Appellate District, et al.,
Defendants-Appellees.

Filed November 15, 2021

Before McKeown, Christen, Bress, Circuit Judges

Excerpts from Appellant's Reply Brief
(some ellipses omitted)

Other circuits correctly hold that suing in federal court for relief that was denied in state court *isn't* appealing the state-court decision denying the relief, i.e., *re-litigating isn't appealing. Hoblock*, 87-88; *McCormick*, 394; *Davani*, 719; *Philadelphia Entertainment*, 503; *Brokaw*, 664, n. 4; *Miller*, 1261; *Sharma*, 819. See also *Noel*, 1166 (relitigation governed by 28 USC §1738 and preclusion principles, not *Rooker-Feldman*).

Rooker-Feldman "'merely recognizes that 28 USC § 1331'" grants original, not appellate, jurisdiction to federal district courts. *Exxon*, 292.. Federal district courts can set aside federal

judgments, under FRCP 60(b) and through independent actions, without exerting appellate jurisdiction. Parties may obtain relief from judgments under FRCP 60(b)(6) if they suffer injuries beyond their control preventing them from having fair trials. *Community Dental Services v. Tani*, 282 F.3d 1164, 1168 (9th Cir. 2002). The relief available is the action's "reinstatement." *Id.*, 1172..[¶] ["][FRCP 60(b)(6)] ... enable[s] [courts] to vacate judgments ... to accomplish justice. [¶]. ... Fair hearings are in accord with elemental concepts of justice... [Rule 60(b)(6)] is broad enough to ... set aside the ... judgment and grant petitioner a fair hearing.["] *Klapprott v. US*, 335 US 601, 614-615 (1949); *Turner v. Pleasant*, 663 F.3d 770, 772-773, 777-778 (5th Cir. 2011); *Bouret-Echevarría v. Caribbean Aviation Maint.*, 784 F.3d 37, 39, 49-50 (1st Cir. 2015).

Thus federal district courts can set aside judgments and reopen actions in the exercise of *original* (not appellate) jurisdiction.

Kleidman herein doesn't challenge the correctness of the Formal-Practical Ruling, but challenges the manner it was adjudicated. This action doesn't seek a different outcome on the Formal-Practical issue, but seeks to reopen B268541's proceedings so that Kleidman can have a fair trial thereon. If, after such fair trial, the resulting ruling on the Federal-Practical is identical to the current version, Kleidman will have his grievance redressed and injury remedied. Kleidman's injury is not the ruling itself, but the deprivation of his due process rights during the adjudication of the Formal-Practical issue.

Kleidman herein doesn't seek that the judgment in B268541 be altered, but only that

B268541's proceedings be reopened to afford Kleidman a fair trial. If Kleidman achieves such fair trial, he'll have his grievance redressed and injury remedied, even if the resulting judgment in B268541 is identical to the current version. Kleidman's goal herein isn't obtaining a different result in B268541, but obtaining a fair trial. Kleidman's grievance isn't that B268541 affirmed the Superior Court's orders, but that Kleidman didn't have a fair trial in B268541's proceedings; and so, if B268541 is reopened and Kleidman gets a fair trial which again results in affirmances of the Superior Court's orders, Kleidman's injury will have been remedied. Kleidman wants this action to secure a fair trial in B268541, not to secure any particular income.

Kleidman doesn't allege that the orders, judgment and decisions violated his rights.

[I]t was the deprivation of due process that was the violation of Kleidman's rights. Through this federal action, Kleidman seeks a fair trial on the Formal–Practical issue, not a determination of whether the Formal–Practical Ruling is correct. If Kleidman obtains such a fair trial, his grievance will be redressed and injury remedied, *even if after such fair trial the ruling on the Formal–Practical issue remains identical to its current form.*

[T]he Supreme Court reviews "judgments or decrees." 28 USC §1257. Kleidman doesn't want review of B268541's Judgment, but a determination of whether the manner in which B268541 was adjudicated complied with due process. For instance, There are no federal questions in the B268541 Judgment itself; rather the federal question is whether Kleidman was afforded due process in B268541's proceedings.

For instance, the Formal-Practical Ruling doesn't even satisfy 28 USC §1257's conditions because it involves only state-law issues. Kleidman doesn't contend that the Formal-Practical Ruling *itself* is "repugnant to the Constitution" (28 USC § 1257), but rather the *manner* it was adjudicated was unconstitutional.

Kleidman's grievance is that he didn't have a fair trial. To prove as much involves developing an entirely new factual record, altogether distinct from the facts underlying the Formal-Practical issue itself. For instance, one of the facts is whether [Respondents] sincerely attempted to apply the law, or merely imposed their judicial wills. *supra*, 11, 12. This fact will have to be developed in Kleidman's prosecution of Count 1. It is unfair to force Kleidman to develop this new, factual record for the first time in the Supreme Court. *England v. Louisiana Bd. of Medical Examiners*, 375 US 411, 417 (1964) ("possibility of appellate review by this Court of ... state[-]court determination may not be substituted, against a party's wishes, for his right to litigate ... federal claims fully in federal courts"). Indeed, the Supreme Court reviews the record below; one doesn't develop a new factual record in an appeal to the Supreme Court.

Appendix K

U.S. Court of Appeals
for the Ninth Circuit

No. 20-56256

Peter Kleidman,
Plaintiff-Appellant,
v.

California Court of Appeal for the Second Appellate District, et al.,
Defendants-Appellees.

Filed May 10, 2022

Before McKeown, Christen, Bress, Circuit Judges

Excerpts from Appellant's Combined Petition for Panel Rehearing and Rehearing En Banc
(some ellipses omitted)

[R]egarding the cause of action at issue in this Petition, Kleidman's alleged injury-in-fact is that Hons. Willhite, Collins denied Kleidman the opportunity to be heard on their newly-raised arguments appearing for the first time in their 7/10/18 Opinion. Kleidman is *not* requesting that the district court assess the *merits* of these newly-raised arguments. Indeed, the portions of the SAC's prayer for relief which pertain to this cause of action make no request that the district court find Hons. Willhite, Collins ruled incorrectly. SAC, 65:1-7; 65:22-25.

Admittedly, the SAC does accuse Hons. Willhite, Collins of ruling incorrectly. E.g., SAC, 18:13, 19:23-24. But these allegations are irrelevant to the cause of action at issue in this Petition so need not be considered. *Austin v. Garard*, 61 F.2d 129, 131 (7th Cir. 1932) ("We ... attempt[] to construe ... petition as liberally as possible and to exclude ... irrelevant allegations as surplusage"); *Sharpe v. Conole*, 386 F.3d 482, 484 (2nd Cir. 2004) (pro se complaint construed broadly and interpreted "to raise the strongest arguments it suggests"); *Erickson v. Pardus*, 551 US 89, 94 (2007) (pro se documents are "'liberally construed'"). What matters here is only that Kleidman was denied an opportunity to be heard..

Kleidman ... *does* have a protected right to be afforded the opportunity to be heard. For the purposes of this Petition, Kleidman's injury-in-fact is the denial of his opportunity to be heard. The merits of Hons. Willhite's, Collins' rulings and arguments are of no moment.

According to *Exxon*, *Rooker-Feldman* stands merely for the proposition that a federal district court can exert only original jurisdiction. According to *In re Center Wholesale, Inc.*, 759 F.2d 1440 (9th Cir. 1985), a federal district court can set aside a prior judgment "if the court that considered it ... acted in a manner inconsistent with due process of law," i.e., if there was "a violation of ... due process." *Id.*, 1448.

Putting these elements together, one argues syllogistically:

- A federal district court can exert only original jurisdiction;
- A federal district court can (in appropriate circumstances) set aside a prior judgment;

- Therefore, a federal district court can (in appropriate circumstances) set aside a former judgment while exerting original jurisdiction.

For according to *Bianchi*, *Rooker–Feldman* bars a federal district court from "'undoing'" a state-court judgment. Therefore, according to the Panel's quotation of *Bianchi*, when a federal district court attempts to undo a state-court judgment, it necessarily attempts to exert appellate jurisdiction.

But this conclusion contradicts the aforementioned syllogism. A federal district court *can* undo a prior judgment without necessarily exerting appellate jurisdiction. Therefore, *Bianchi* is wrong. The mere fact that a federal district court attempts to set aside a prior judgment is *not* necessarily an attempt to exert appellate jurisdiction, and therefore is *not* necessarily barred by *Rooker–Feldman*.