

NOT FOR PUBLICATION

FILED

AUG 25 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALSUNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

COLETTE CLAIRE SAVAGE,

Plaintiff-Appellant,

v.

MARK SAVAGE, Fiduciary/Trustee,

Defendant-Appellee.

No. 20-17297

D.C. No. 4:19-cv-07994-DMR

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Donna M. Ryu, Magistrate Judge, Presiding**

Submitted August 17, 2021***

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

Colette Claire Savage appeals pro se from the district court's judgment in her diversity action challenging past Texas and California state court judgments.

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

** The parties consented to proceed before a magistrate judge. *See* 28 U.S.C. § 636(c)

*** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2). Savage's request for oral argument, set forth in the opening brief, is denied.

We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1040 (9th Cir. 2011) (dismissal under Federal Rule of Civil Procedure 12(b)(6)); *Noel v. Hall*, 341 F.3d 1148, 1154 (9th Cir. 2003) (dismissal under the *Rooker-Feldman* doctrine). We affirm.

The district court properly dismissed Savage's action for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine because it was a "forbidden *de facto appeal*" of prior state court decisions and Savage raised claims that were "inextricably intertwined" with those state court decisions. *See id.* at 1163-65 (discussing the *Rooker-Feldman* doctrine); *see also Cooper v. Ramos*, 704 F.3d 772, 782 (9th Cir. 2012) (explaining that *Rooker-Feldman* doctrine bars "inextricably intertwined" claims where federal adjudication "would impermissibly undercut the state ruling on the same issues" (citation and internal quotation marks omitted)).

The district court did not abuse its discretion in denying Savage's postjudgment motions for reconsideration because Savage failed to establish any basis for such relief. *See Sch. Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d, 1262-63 (9th Cir. 1993) (setting forth standard of review and grounds for reconsideration under Rules 59(e) and 60(b)).

AFFIRMED.

United States Court of Appeals for the Ninth Circuit

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Information Regarding Judgment and Post-Judgment Proceedings**Judgment**

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)**Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)****(1) A. Purpose (Panel Rehearing):**

- A party should seek panel rehearing only if one or more of the following grounds exist:
 - ▶ A material point of fact or law was overlooked in the decision;
 - ▶ A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
 - ▶ An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Purpose (Rehearing En Banc)

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ▶ Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ▶ The proceeding involves a question of exceptional importance; or
- ▶ The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- *See Advisory Note to 9th Cir. R. 40-1* (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

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- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-7806.

Petition for a Writ of Certiorari

- Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
 - ▶ Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Jean Green, Senior Publications Coordinator);
 - ▶ and electronically file a copy of the letter via the appellate ECF system by using “File Correspondence to Court,” or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

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

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7 COLETTE CLAIRE SAVAGE,
8 Plaintiff,
9 v.
10 MARK SAVAGE,
11 Defendant.

Case No. 19-cv-07994-DMR

**ORDER ON MOTIONS FOR
RECONSIDERATION**

Re: Dkt. Nos. 33, 39

12 Pro se Plaintiff Colette Savage filed a lawsuit against her brother, Defendant Mark Savage.
13 She subsequently filed two motions for a preliminary injunction or temporary restraining order.
14 Defendant moved to dismiss the complaint. On May 18, 2020, the court granted the motion to
15 dismiss and dismissed the complaint on the ground that the court lacks subject matter jurisdiction
16 over Plaintiff's claims because they are barred by the *Rooker-Feldman* doctrine. The court also
17 denied Plaintiff's motions for injunctive relief and entered judgment the same day. [Docket Nos.
18 31, 32.]

19 Plaintiff filed a motion for reconsideration and/or relief from the judgment. [Docket No.
20 33.] On September 18, 2020, while the motion for reconsideration was still pending, Plaintiff filed
21 a third motion for a preliminary injunction seeking to enjoin writ of execution proceedings in
22 Texas court and a request for an "Emergency Stay of Execution." [Docket Nos. 35, 37.] On
23 October 5, 2020, the court issued an order clarifying that because the orders dismissing the
24 complaint and entering judgment against Plaintiff have not been vacated or set aside, the court
25 lacks subject matter jurisdiction over Plaintiff's claims, including her newly-raised claims for
26 injunctive relief. [Docket No. 38.] On October 13, 2020, Plaintiff filed an objection to the court's
27 October 5, 2020 order, which the court construes as a motion for reconsideration of that order.
28 [Docket No. 39.]

1 These matters are suitable for resolution without a hearing. Civ. L.R. 7-1(b). For the
2 following reasons, Plaintiff's motions are denied.

3 **I. BACKGROUND**

4 The facts of this case were set forth in detail in the court's May 18, 2020 order dismissing
5 Plaintiff's complaint. *Savage v. Savage*, No. 19-CV-07994-DMR, 2020 WL 2525079, at *1-4
6 (N.D. Cal. May 18, 2020). In relevant part, Plaintiff's complaint challenges Defendant's actions
7 with respect to a promissory note and family trust and litigation related to the same. The
8 complaint includes three California and Texas state court orders as attachments. At Defendant's
9 request, to which Plaintiff did not object, the court took judicial notice of an additional 12
10 decisions, pleadings, and orders from California and Texas state courts in litigation involving
11 these parties. *Id.* at *3-4.

12 Defendant moved pursuant to Federal Rules of Civil Procedure 8(a), 12(b)(1), and 12(b)(6)
13 to dismiss the complaint, arguing in part that the court lacks subject matter jurisdiction over the
14 complaint because Plaintiff's claims are barred by the *Rooker-Feldman* doctrine. [Docket No. 16.]
15 Plaintiff filed responses to the motion in which she did not address Defendant's *Rooker-Feldman*
16 argument. [Docket Nos. 21, 23.]

17 In its May 18, 2020 order dismissing the complaint, the court found that "the heart of
18 Plaintiff's complaint is that a court order issued by a state court in Texas regarding the promissory
19 note conflicts with orders by a California state probate court." *Id.* at 1. Having considered the
20 documents attached to the complaint and the judicially-noticeable California and Texas court
21 proceedings, the court concluded that the *Rooker-Feldman* doctrine bars Plaintiff's claims because
22 "Plaintiff's lawsuit amounts to a forbidden *de facto* appeal of state court decisions that entered
23 judgment against her in Defendant's favor regarding a promissory note she executed in Texas."
24 *Savage*, 2020 WL 2525079, at *5-6. Specifically, Plaintiff's lawsuit "challenge[s] the propriety of
25 various state court orders and seeks relief from those orders." *Id.* at *6. Accordingly, the court
26 concluded that "the *Rooker-Feldman* doctrine bars this court from exercising subject matter
27 jurisdiction over Plaintiff's complaint" and dismissed the complaint without prejudice. *Id.*

28 Plaintiff now moves for reconsideration and/or relief from the May 18, 2020 judgment

1 pursuant to Federal Rules of Civil Procedure 59(e) and 60(b)(1). She also moves for
2 reconsideration of the October 5, 2020 order denying her third motion for injunctive relief.

3 **II. MOTION FOR RECONSIDERATION AND/OR RELIEF FROM THE MAY 18,
2020 JUDGMENT**

4 Federal Rule of Civil Procedure 59(e) “permits a district court to reconsider and amend a
5 previous order.” However, reconsideration is an “extraordinary remedy, to be used sparingly.”
6 *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). Absent highly unusual
7 circumstances, a motion for reconsideration should not be granted “unless the district court is
8 presented with newly discovered evidence, committed clear error, or if there is an intervening
9 change in the controlling law.” *Id.* (quoting *389 Orange St. Partners v. Arnold*, 179 F.3d 656, 665
10 (9th Cir. 1999)). Under Rule 60(b)(1), a court may “relieve a party or a party’s legal
11 representative from a final judgment, order or proceeding” based on “mistake, inadvertence,
12 surprise, or excusable neglect.” Fed. R. Civ. P. 60(b)(1).

13 In her motion for reconsideration, Plaintiff appears to argue that relief from the May 18,
14 2020 judgment is justified based on her “not knowing or understanding what” a request for
15 judicial notice was, and because she “had little time to research Rooker-Feldman.” Mot. 2, 26
16 (emphasis removed). As an initial matter, these grounds do not justify relief under Rule 59(e) or
17 60(b)(1), because “[a] Rule 59(e) motion may not be used to raise arguments or present evidence
18 for the first time when they could reasonably have been raised earlier in the litigation,” *Kona*, 229
19 F.3d at 890 (emphasis removed). Further, the Ninth Circuit has instructed that Rule 60 is to be
20 used “sparingly” and only in “extraordinary circumstances.” *United States v. Wash.*, 98 F.3d
21 1159, 1163 (9th Cir. 1996). Plaintiff’s motion does not demonstrate any of the Rule 59(e) or
22 60(b)(1) factors justifying relief.

23 Moreover, nothing in Plaintiff’s motion for reconsideration changes the court’s
24 determination that it lacks jurisdiction over Plaintiff’s complaint. Plaintiff’s argument appears to
25 be the following: when Plaintiff moved for injunctive relief, she submitted several documents with
26 her moving papers, including two 2015 orders by the Honorable George A. Miram, Superior Court
27 of the State of California, in litigation over the William B. and Beatrice S. Savage Family Trust.
28

1 [Docket No. 33-3 at ECF pp. 2-3, 5-7.] Plaintiff states that she “mistakenly believed and was
2 under the presumption that when she submitted evidence *she was always asking the court to take*
3 *judicial notice.*” Mot. 8 (emphasis in original). According to Plaintiff, these California probate
4 orders “**void all following orders in Texas and subsequent courts.**” Plaintiff then goes on to
5 explain that “[n]ow that she is learning about Judicial Notice . . . she would like to oppose the
6 judgments that are introduced by [Defendant] . . . and she lays out why those judgements are void
7 in this brief.” *Id.* at 9 (emphasis in original). It appears that Plaintiff now objects to the court
8 taking judicial notice of the decisions, pleadings, and orders submitted by Defendant in connection
9 with his motion to dismiss on the basis that some of the decisions are “void.” Plaintiff repeats the
10 central claim she made in her complaint and opposition to the motion to dismiss; that is, that the
11 decisions by the Texas state court were “null and void” for various reasons, including for lack of
12 subject matter jurisdiction, the court’s “refus[al] to enforce the proper contract,” the court’s
13 “refus[a] to apply the law to fact,” and the fact that the “California probate orders void all
14 following orders in Texas and subsequent courts.” Mot. 7-9, 18-23. According to Plaintiff, the
15 court’s decision that her claims are barred by the *Rooker-Feldman* doctrine was based “on the
16 wrong orders.” *Id.* at 12.

17 These arguments reinforce the court’s prior decision that “Plaintiff’s lawsuit complains ‘of
18 a legal wrong allegedly committed by the state court, and seeks relief from the judgment of that
19 court,’” and that this court accordingly “lacks jurisdiction to consider her claims pursuant to the
20 *Rooker-Feldman* doctrine.” *See Savage*, 2020 WL 2525079, at *6 (citing *Noel v. Hall*, 341 F.3d
21 1148, 1163 (9th Cir. 2003)); *see also Henrichs v. Valley View Dev.*, 474 F.3d 609, 614 (9th Cir.
22 2007) (a request to declare a state court judgment void “is squarely barred by *Rooker-Feldman*”).
23 As the court explained, Plaintiff’s lawsuit “challenges the judgments by the Texas state court and
24 Marin County Superior Court and asks the court to ‘extinguish’ the promissory note at issue in
25 Texas; in other words, she asks this court to ‘review and reject[] those [state court] judgments.’”
26 *Savage*, 2020 WL 2525079, at *6 (quoting *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*,
27 544 U.S. 280, 284 (2005)). “As a result, the court must refuse to hear what is a ‘de facto appeal
28 from’ those decisions, and ‘must also refuse to decide any issue raised in the suit that is

1 ‘inextricably intertwined’ with an issue resolved by the state court in its judicial decision.”” *Id.*
2 (quoting *Noel*, 341 F.3d at 1154).

3 Plaintiff also appears to argue for the first time that the *Rooker-Feldman* doctrine does not
4 apply because Defendant committed fraud on the Texas court by concealing the California probate
5 orders. Mot. 9 (Defendant “committed an extrinsic fraud not disclosing those orders.” (emphasis
6 removed)). “*Rooker-Feldman* does not bar a federal plaintiff from asserting as a legal wrong that
7 an adverse party engaged in ‘conduct which prevent[ed] a [federal plaintiff] from presenting his
8 claim in court.’” *Reusser v. Wachovia Bank*, 525 F.3d 855, 859 (9th Cir. 2008) (citing *Kougasian*
9 *v. TMSL, Inc.*, 359 F.3d 1136, 1140 (9th Cir. 2004)). However, Plaintiff does not contend that she
10 was prevented from submitting those orders in the Texas state court litigation; to the contrary, she
11 repeatedly accuses the Texas courts of being “well aware of the facts and omissions,” disregarding
12 the probate orders, and denying her claims and affirmative defenses. Mot. 18-19; *see Savage*,
13 2020 WL 2525079, at *6 (finding that Plaintiff’s claims “amount[] to a ‘forbidden de facto appeal
14 of a state court decision’ because at least some of Plaintiff’s defenses to her obligation to pay the
15 [promissory] note have already been adjudicated in Defendant’s favor.” (internal citation
16 omitted)). Therefore, the extrinsic fraud exception to the *Rooker-Feldman* doctrine does not
17 appear to apply. *See Ezor v. Goetz*, 698 F. App’x 442, 443 (9th Cir. 2017) (holding that the
18 extrinsic fraud exception did not apply because the plaintiff “did not allege any facts showing that
19 he was prevented from presenting his claims in state court.”).

20 In sum, Plaintiff has articulated no basis upon which reconsideration of the May 18, 2020
21 judgment should be granted.

22 **III. OBJECTION TO OCTOBER 4, 2020 ORDER**

23 As noted, Plaintiff filed a third motion for a preliminary injunction seeking to enjoin writ
24 of execution proceedings in Texas court on September 18, 2020, and later filed a request for an
25 “Emergency Stay of Execution.” [Docket Nos. 35, 37.] The court denied the motions on the
26 ground that it lacks subject matter jurisdiction over Plaintiff’s claims. Plaintiff now moves for
27 reconsideration of the court’s October 5, 2020 order. [Docket No. 39.] In her motion, Plaintiff
28 again argues that her claims are not barred by the *Rooker-Feldman* doctrine and asserts that the

1 Texas courts are violating her rights and are part of Defendant's "counterfeit scheme to defraud
2 her." *Id.* at 2, 5-6.

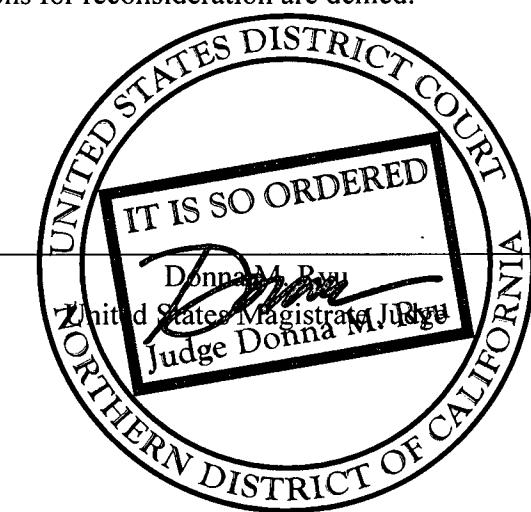
3 For the reasons discussed above, Plaintiff has not established a basis for the court to revisit
4 or reconsider its order dismissing the complaint for lack of subject matter jurisdiction.
5 Accordingly, Plaintiff's motion for reconsideration of the order denying her third motion for a
6 preliminary injunction is denied.

7 **IV. CONCLUSION**

8 For the foregoing reasons, Plaintiff's motions for reconsideration are denied.

9
10 **IT IS SO ORDERED.**

11 Dated: November 10, 2020



FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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No. 20-17297

D.C. No. 4:19-cv-07994-DMR
Northern District of California,
Oakland

ORDER

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

Appellant's petition for panel rehearing (Docket Entry Nos. 27, 30, and 31) is denied.

Appellee's unopposed motion for attorney's fees (Docket Entry No. 29) is granted. Appellee is entitled to attorney fees on appeal. The determination of an appropriate amount of fees is referred to Appellate Commissioner Lisa B. Fitzgerald, who has authority to conduct whatever proceedings she deems appropriate and to enter an order awarding fees subject to reconsideration by the panel. *See* 9th Cir. R. 39-1.9.

**Additional material
from this filing is
available in the
Clerk's Office.**