No.

IN THE

Supreme Court of the United States

DURINGER LAW GROUP, PLC; STEPHEN C. DURINGER; PETER WONG; AND JUDY WONG, PETITIONERS

v.

JANEY BROWN; BING GUO; AND JUNXIAN ZHANG

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

1. May debtors let stand a state-court money judgment against them, waiving the right to dispute post-judgment collection costs, and then challenge those costs in federal court as violations of the Fair Debt Collection Practices Act when the *Rooker-Feldman* doctrine bars such suits as *de facto* appeals from state-court judgments?

2. Should the Court clarify when the *Rooker-Feldman* doctrine denies federal courts subject matter jurisdiction to hear suits implicating state-court judgments after *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005)?

PARTIES TO THE PROCEEDING

All the parties in this proceeding are listed in the caption.

STATEMENT OF RELATED CASES

None.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

STATUTES

RULES

OPINIONS BELOW

The published Opinion of the United States Court of Appeals for the Ninth Circuit in *Janey Brown; Bing Guo; and Junxian Zhang v. Duringer Law Group, PLC et al.*, C.A. Docket No. 22-55700, decided and filed November 21, 2023, and reported at 86 F.4th 1251 (9th Cir. 2023), reversing the entry of summary judgment against respondents and remanding the matter to the district court for further proceedings, is set forth in the Appendix hereto (App. 1-8).

The unpublished Order of the federal district court for the Central District of California (Southern Division) in *Janey Brown; Bing Guo; and Junxian Zhang v. Duringer Law Group, PLC et al.*, Docket No. LA CV 20-10971-DOC, decided and filed February 2, 2022, granting petitioners' summary judgment motion and dismissing respondents' suit for lack of subject matter jurisdiction, is set forth in the Appendix hereto (App. 9-15).

The unpublished Order of the United States Court of Appeals for the Ninth Circuit in *Janey Brown; Bing Guo; and Junxian Zhang v. Duringer Law Group, PLC et al.*, C.A. Docket No. 22-55700, decided and filed December 6, 2023, denying petitioners' timely filed petition for Panel rehearing, is set forth in the Appendix hereto (App. 16-17).

JURISDICTION

The published decision of the United States Court of Appeals for the Ninth Circuit reversing the entry of summary judgment against respondents and

remanding the matter to the district court for further proceedings, was entered on November 21, 2023; and its unpublished Order denying petitioners' timely filed petition for Panel rehearing was decided and filed on December 6, 2023 (App. 1-8;16-17).

This petition for writ of certiorari is filed within ninety (90) days of the date the Court of Appeals denied petitioners' timely filed petition for Panel rehearing. 28 U.S.C. § 2101(c). Revised Supreme Court Rule 13.3.

The jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. § 1254(1).

RELEVANT PROVISIONS INVOLVED

28 U.S.C. § 1331 (Federal question jurisdiction):

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 1257(a):

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title,

right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

California Code of Civil Procedure § 683.150(c):

c) In the case of a money judgment, the entry of renewal shall show the amount of the judgment as renewed. Except as provided in subdivisions (d) and (e), this amount is the amount required to satisfy the judgment on the date of the filing of the application for renewal and includes the fee for the filing of the application for renewal.

California Code of Civil Procedure § 685.040:

The judgment creditor is entitled to the reasonable and necessary costs of enforcing a judgment. Attorney's fees incurred in enforcing a judgment are not included in costs collectible under this title unless otherwise provided by law.

Attorney's fees incurred in enforcing a judgment are included as costs collectible under this title if the underlying judgment includes an award of attorney's fees to the judgment creditor pursuant to subparagraph (A) of paragraph (10) of subdivision (a) of Section 1033.5.

California Code of Civil Procedure § 685.070(a)-(d):

Costs judgment creditor may claim in enforcing judgment

(a) The judgment creditor may claim under this section the following costs of enforcing a judgment:

(1) Statutory fees for preparing and issuing, and recording and indexing, an abstract of judgment or a certified copy of a judgment.
(2) Statutory fees for filing a notice of judgment lien on personal property.
(3) Statutory fees for issuing a writ for the enforcement of the judgment to the extent that the fees are not satisfied pursuant to Section 685.050.
(4) Statutory costs of the levying officer for performing the duties under a writ to the extent that the costs are not satisfied pursuant to Section 685.050 and the statutory fee of the levying officer for performing the duties under the Wage Garnishment Law to the extent that the fee has not been satisfied pursuant to the wage garnishment.
(5) Costs incurred in connection with any proceeding under Chapter 6 (commencing with Section 708.010) of Division 2 that have been approved as to amount, reasonableness, and necessity by the judge or referee conducting the proceeding.
(6) Attorney's fees, if allowed by Section 685.040.

(b) Before the judgment is fully satisfied but not later than two years after the costs have been incurred, the judgment creditor claiming costs under this section shall file a memorandum of costs with the court clerk and serve a copy on the judgment debtor.

Service shall be made personally or by mail. The memorandum of costs shall be executed under oath by a person who has knowledge of the facts and shall state that to the person's best knowledge and belief the costs are correct, are reasonable and necessary, and have not been satisfied.

(c) Within 10 days after the memorandum of costs is served on the judgment debtor, the judgment debtor may apply to the court on noticed motion to have the costs taxed by the court. The notice of motion shall be served on the judgment creditor.

Service shall be made personally or by mail. The court shall make an order allowing or disallowing the costs to the extent justified under the circumstances of the case.

(d) If no motion to tax costs is made within the time provided in subdivision (c), the costs claimed in the memorandum are allowed.

California Code of Civil Procedure § 685.090(a) & (b):

(a) Costs are added to and become a part of the

judgment:
(1) Upon the filing of an order allowing the costs pursuant to this chapter.
(2) If a memorandum of costs is filed pursuant to Section 685.070 and no motion to tax is made, upon the expiration of the time for making the motion.
(3) As specified in Section 685.095.

(b) The costs added to the judgment pursuant to this section are included in the principal amount of the judgment remaining unsatisfied.

STATEMENT

On October 31, 2005, petitioners and apartment owners Judy Wong and Peter Wong ("petitioners" or "Owners") leased their residential property in Los Angeles to respondents Janey Brown, Bing Guo and Junxian Zhang ("respondents" or "Tenants") for a one-year term and month-to-month thereafter. The lease provided that in the event of a default by Tenants, they "shall pay to [the Owners] all costs incurred by [them]...including attorney's fees."

In May of 2010, Tenants breached the lease agreement by failing to pay rent. Owners hired petitioners Duringer Law Group, PLC and Stephen C. Duringer ("petitioners" or "Duringer") to evict respondents pursuant to California Code of Civil Procedure § 1161(2) ("the Code"). On June 21, 2010, the Los Angeles Superior Court entered a judgment in Owners' favor for $2,705, a judgment composed of $1,785 in back rent and incidental damages, $500 in attorney's fees and $420 in other costs.

Tenants did not pay the judgment nor were they immediately pursued for payment given their apparent unstable financial condition. But under § 683.120(a) and § 683.130 of the Code, judgment creditors may apply to the court within ten (10) years to renew the judgment, extending the period to enforce the judgment for another ten years (now five years, as amended effective January 1, 2023). Duringer eventually did so on February 3, 2020, applying for a Renewed Judgment in the amount of $7,912. Its accompanying February Memorandum of Costs detailed the sums comprising the amount of this Renewed Judgment. Under § 683.150 of the Code, a judgment creditor is entitled to the amount of the judgment as renewed, the costs that have been added to the judgment pursuant to § 685.090 of the Code, the accrued interest on the aforesaid amounts, and the filing fee for the application. In addition, because Tenants agreed to do so under the lease, § 685.040 of the Code gives judgment creditors like Owners the right to recover attorney's fees they incur in enforcing the judgment.

Duringer's February Memorandum of Costs after judgment included the eviction judgment of $2,570, attorney's fees of $2,370, accrued interest of $2,570, and $222 in other authorized expenses, all of which comprised the Renewed Judgment amount of $7,912. Once Duringer filed its application to renew the judgment, Tenants within ten days of being served with the Memorandum had the right to ask the court to "tax costs," i.e., to deny or reduce the costs, including attorney's fees, which Duringer identified in its February Memorandum. Respondents did not do so. According to §685.070(d) of the Code, "[i]f no motion to tax costs is made within the time provided..., the costs

claimed in the memorandum are allowed." Moreover, by operation of § 685.090(a)(2) of the Code, those costs *automatically* became part of the Renewed Judgment of February 3, 2020.

On July 15, 2020, a writ of execution issued in the amount of $7,952, an event delayed five (5) months because of court closures caused by the COVID-19 pandemic. In early August of 2020, the Sheriff levied upon respondent Janey Brown's bank account in the amount of $8,129.57.

Opposing the levy, respondent Brown filed in Superior Court on August 15, 2020, an *ex parte* motion to "set aside the funds" and quash the writ of execution. The Superior Court denied Brown's motion. On August 21, 2020, Brown filed a claim of exemption pursuant to § 703.520(a) of the Code. Duringer opposed it. On September 30, 2020, the Superior Court denied Brown's claimed exemption and ordered that the levied funds be released to Duringer for payment of the judgment.

As of September 30, 2020, then, Duringer had yet to receive from the Sheriff the $8,129.57 already levied against respondent Brown's bank account in August of 2020; and as a result of Brown's *ex parte* motion to quash the writ of execution and her ensuing claim of exemption, Owners had incurred additional attorney's fees which were *not* reflected in the $8,129.57 already levied against Brown but not yet received by Duringer. Nor did the Sheriff's levy account for the interest which continued to accrue from the date of the Renewed Judgment on February 3, 2020, until the date the writ of execution issued on July 15, 2020, or even thereafter.

Accordingly, on October 1, 2020, Duringer filed an updated Memorandum of Costs after judgment ("October" or "second" Memorandum) to reflect the additional attorney's fees incurred as a result of respondent Brown's post-levy motions as well as the interest continuing to accrue on the Renewed Judgment until the date of this updated Memorandum. It stated $2,750 in total accrued interest on the entered money judgment to October 1, 2020; and $3,780 in attorney's fees and costs. Thus when Duringer filed the October Memorandum of Costs in accordance with the form, it accurately stated the amount of interest which had accrued as of February 3, 2020, without any credit or offset because the levied funds had not yet been released by the Sheriff.

Even though Duringer filed the updated October Memorandum of Costs with the Superior Court, it took no further action to enforce its terms by, for example, having a writ of execution issue on the new amount. Respondents once again failed to file a motion to tax costs, i.e., to have the court deny or reduce the interest or costs, including attorney's fees, which Duringer identified in its Memorandum. By operation of § 685.070(d) of the Code, those costs were thereupon allowed; and by operation of § 685.090(a)(2) of the Code, those costs *automatically* became part of the Renewed Judgment of February 3, 2020.

On November 2, 2020, respondent Brown filed another *ex parte* motion to stay execution which was denied. She also claimed as before an exemption pursuant to § 703.520(a) of the Code which was again denied. On November 5, 2020, Brown noticed her state appeal from the denial of her exemption claim. But on

November 20, 2020, Brown abandoned her state appeal. Meanwhile, on November 5, 2020, the Sheriff finally released the levied funds of $8,129.57 to Duringer.

In the wake of these events, Tenants on December 2, 2020, filed this civil action in the federal district court for the Central District of California (Southern Division) seeking damages, attorney's fees and costs for petitioners' claimed violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692p ("the FDCPA") and California's analogous "Rosenthal Act," Cal. Civ. Code §§ 1788 *et seq*., each of which prohibits debt collectors from engaging in abusive, deceptive and unfair practices.

Tenants' complaint alleged that the Sheriff's levy of respondent Brown's bank account in the amount of $8,129.57 in August of 2020 fully satisfied the amount owed on the Renewed Judgment of February 3, 2020. Thus when petitioners filed their updated Memorandum of Costs on October 1, 2020, stating accrued interest of $2,750 and collection costs of $3,780, Tenants alleged that the accrued interest of $2,750 was "duplicate" and the collection costs of $3,780 were "unreasonable." As such, Tenants asserted violations of the FDCPA and the Rosenthal Act.

Petitioners denied that the Sheriff's levy of respondent Brown's bank account in the amount of $8,129.57 in August of 2020 fully satisfied the amount Tenants owed on the Renewed Judgment of February 3, 2020. As they explained, when they filed the updated October Memorandum of Costs on October 1, 2020, they had not yet received from the Sheriff the $8,129.57 already levied against Brown's bank account; and, in

any event, that levy of $8,129.57 would not have accounted for the additional legal fees incurred by Owners in collecting this debt since the levy. Nor would it have accounted for the interest which continued to accrue on the Renewed Judgment until the date of the writ of execution issued on July 15, 2020, or even thereafter.

Thus petitioners' October Memorandum of Costs accurately stated the entire amount of interest accrued; and it accurately recited the amount of collection costs and attorney's fees incurred ($3,780) as of that date, sums in both respects which were without any credit or offset from the levy because Duringer had not yet received those funds from the Sheriff.

As petitioners asserted, their filing and service of this accurate October Memorandum of Costs—the centerpiece of Tenants' claim of abusive or unfair debt collection practices—could not possibly have violated the FDCPA. It is a mandatory Judicial Council form *which is required to be served* under § 685.040 and § 685.070 of the Code; it does no more than advise the court of the amount of accrued interest and costs incurred; it is *not* an attempt to collect a debt; and it has been fully adjudicated as a result of Tenants' failure to file an allowed motion to tax costs.

On October 29, 2021, petitioners moved for summary judgment contending that a resolution of Tenants' allegations of "duplicate" interest or "unreasonable" collection costs would necessarily invite the federal district court to assess the accuracy of the amount of interest accrued or attorney's fees incurred in enforcing the Renewed Judgment of February 3,

2020, the judgment which authorized petitioners' October Memorandum advising the court of accrued interest and collection costs. This invitation, they argued, was barred by the *Rooker-Feldman* doctrine which deprives federal courts of subject matter jurisdiction to hear *de facto* appeals from state-court judgments.

On February 2, 2022, District Judge David O. Carter issued an order granting petitioners' summary judgment motion (App. 9-15). He noted that where a federal plaintiff asserts errors by a state court and seeks relief from the state-court judgment as a remedy, it is a *de facto* appeal from a state- court judgment barred by the *Rooker-Feldman* doctrine (App. 13). As he ruled, Tenants' claim that petitioners' Memorandum of Costs of October 1, 2020, contains "duplicative" interest and "unreasonable" collection costs "impliedly ask[s] this Court to determine the accuracy of the amount of interest listed on the writ of execution, an amount that was approved and determined by the state court" in the form of the Renewed Judgment of February 3, 2020 (App. 14). Because doing so would require the district court to review and possibly reverse the state court rulings and the state-court Renewed Judgment, Judge Carter ruled that Tenants' claims amounted to a *de facto* appeal of a state- court judgment barred by the *Rooker-Feldman* doctrine (App. 14-15 citing *Balogun v. Winn Law Group, A.P.C.*, 2017 WL 2984075 at *5 (C.D. Cal. 7/12/2017).

Tenants appealed this ruling and on November 21, 2023, the court of appeals reversed the entry of summary judgment in petitioners' favor and remanded the case to the district court for further proceedings

(App. 1-8). The Panel disagreed with the district court's interpretation of Tenants' claims under the FDCPA (App. 5). It believed Tenants were not challenging Duringer's *first* Memorandum of Costs filed in February of 2020—as it supposed the district judge had wrongly assumed—but rather its *second* Memorandum of Costs filed on October 1, 2020 (App. 5-6).

So reading Tenants' complaint, the Panel determined that there was no relevant state-court judgment purporting to adjudicate the validity of the costs described in Duringer's second Memorandum of Costs (App. 6). It wrote:

> Brown never filed a motion to tax costs, so the state court never used that vehicle to decide the accuracy of the costs. Moreover, Duringer did not apply for a writ of execution, so Brown never moved to quash—giving the state court no opportunity to assess the costs claimed in the memorandum. *Simply put, the October memorandum was not the subject of any state-court judgment.*

(*Id.*) (emphasis supplied).

Because it thought there was no relevant state-court judgment addressing the issues which Tenants were raising in their federal complaint, i.e., the alleged duplicative interest and unreasonable attorney's fees contained in Duringer's second Memorandum of Costs, the Panel found no state-court judgment at risk of reversal in this lawsuit (App. 7). It therefore ruled that the *Rooker-Feldman* doctrine did not apply to prevent the district court from exercising subject matter

jurisdiction over Tenants' FDCPA claims (*Id.*). It remanded the matter to the district court for further proceedings consistent with its opinion (*Id.*).

On December 6, 2023, the Panel denied petitioners' timely filed petition for Panel rehearing (App. 16-17).

REASONS FOR GRANTING THE PETITION

1. Respondents' FDCPA Suit Is A De Facto Appeal From A State Court Money Judgment Updated By An Unopposed Memorandum of Costs Which Established Their Debt And Its Accrued Interest And Collection Costs. By Permitting This Suit In Federal Court, The Panel Contravenes The *Rooker-Feldman* Doctrine, Misreads California Debt Collection Law, And Dangerously Federalizes Routine Debt Collection In The State.

The *Rooker-Feldman* doctrine is confined to 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 Industries Corp.*, 544 U.S. 280, 283-284 (2005). Each of Tenants' claims of "duplicative" interest or "unreasonable" collection costs hinges on a review and rejection of the state court's Renewed Judgment of February 3, 2020, and the interest and attorney's fees included therein.

Tenants admitted the debt due in state court and waived any opportunity to dispute the interest or

attorney's fees assessed against them. By operation of settled California law, their waiver *automatically* made these post-judgment costs part of the Renewed Judgment of February 3, 2020. No other state-court "judgment" was necessary in order to make these costs enforceable parts of the Renewed Judgment. The Panel's view that Duringer's second October Memorandum of Costs never became "the subject of any state-court judgment" is flat wrong. Because the undisputed costs contained in this October Memorandum of Costs *automatically* became part of the Renewed Judgment of February 3, 2020—as expressly provided by California law—Tenants' federal lawsuit challenging those costs as FDCPA violations seeks to undo this Renewed Judgment. It is therefore a *de facto* appeal from a state-court judgment seeking relief which would effectively reverse the state-court judgment or void its effect. The *Rooker-Feldman* doctrine applies with full force to bar Tenants' federal suit for lack of subject matter jurisdiction.

The Panel's decision is founded on a misreading of California law which provides judgment creditors with valuable remedies for debt collection when the debtor fails to contest either the debt due or the amount of post-judgment costs incurred in its collection. By ruling that petitioners' October Memorandum of Costs must be subject to a separate state-court judgment validating the amount of the post-judgment costs contained therein—even when the debtors admit the debt due and then waive their right to contest those costs—effectively repeals § 685.070(d) and § 685.090(a)(2) of the Code, unraveling settled debt collection law in California. These provisions, intended to simplify and make straightforward the collection of

debt in the state, make plain that the costs of debt collection *by operation of law* become part of the money judgment establishing the debt when the debtor fails to challenge those costs. Upending these time-honored concepts dramatically prejudices judgment creditors in the state.

This mistake by the Panel also dangerously federalizes routine debt collection in California. Instead of relying on § 685.070(d) and § 685.090(a)(2) of the Code to incorporate automatically uncontested costs within a money judgment, in order to avoid a federal lawsuit claiming violations of the FDCPA, judgment creditors will now be forced to pursue separate, stand-alone judgments authorizing their collection costs be included in the money judgment itself. Debtors in California will be also be encouraged to remove routine state-court debt collection actions to federal court for FDCPA violations whenever a judgment creditor fails to obtain a separate judgment for costs. And debtors will be further incentivized to bring FDCPA actions in federal court even when they've failed to file timely motions to tax costs in state court, reviving undeserved claims of debt collection abuse whenever judgment creditors stray from the requirements imposed upon them by the Panel here. None of this squares with the public policy of California, its Code of Civil Procedure or the rights and remedies provided both judgment creditors and debtors under state law.

Most important, as a matter of federal jurisdiction, the Panel's decision improperly expands the subject matter jurisdiction of federal courts in the Ninth Circuit to hear routine state-court debt collection cases under the guise of alleged violations of the

FDCPA. By constricting the concept of a state-court "judgment" for the purpose of analyzing whether the *Rooker-Feldman* applies, the Panel has misread *Exxon Mobil Corp.'s* direction about when to apply the doctrine. While the Court in *Exxon Mobil Corp.* tried to rein in expansive views of the doctrine which have led federal courts to refuse to hear cases which legitimately invoked their federal jurisdiction, it is just as true that the doctrine surely applies when state-court losers like Tenants seek to litigate anew their established state-court debt under the guise of an alleged FDCPA violation.

This exceptionally important question of the subject matter jurisdiction of the federal courts, an issue wrongly decided by the Panel, is one which should be settled by the Court because it is at odds with *Exxon Mobil Corp.* and presents another iteration of the confusion among the federal courts about when the *Rooker-Feldman* doctrine applies. In this regard, it is important to clarify that state-court judgments are not static entities; and that the definition of a "judgment" for purposes of the *Rooker-Feldman* doctrine includes a renewed or updated judgment amount established under state law procedures. Otherwise, federal district courts will be destined to act as arbiters of whether post-judgment costs already established and settled under state law were reasonable or excessive. In order to avoid this result, the Court should grant certiorari, identify the Panel's error, clarify the contours of the *Rooker-Feldman* doctrine in these circumstances, and remand to the district court for dismissal of Tenants' civil action.

The Rooker-Feldman Doctrine.

In *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), Court determined that only it, *not* the lower federal courts, has jurisdiction under 28 U.S.C. § 1257, to review state court decisions. *Id.* at 416. In *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), it further held that federal district courts may not exercise jurisdiction over constitutional issues which are "inextricably intertwined" with a state-court judgment because it would be tantamount to a federal district court sitting in direct review of the decisions of the state tribunal. *Id.* at 476;482 n.16. Thus the *Rooker-Feldman* doctrine prohibits federal courts from adjudicating actions where the relief requested implicates a determination that the state judgment was either wrong or should be voided.

In *Exxon Mobil Corp.*, 544 U.S. at 283-284, the Court simplified the reach of *Rooker-Feldman* by holding unanimously that the doctrine

> is confined to...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.

Id. at 283-284.

To determine whether the doctrine applies to losers of run-of-the-mill debt collection actions brought in state court who then seek in federal court to undo those results like Tenants here, district courts "first

must determine whether the federal action contains a forbidden *de facto* appeal of a state court decision." *Bell v. City of Boise*, 709 F.3d 890, 897 (9th Cir. 2013) citing *Noel v. Hall*, 341 F.3d 1148, 1158 (9th Cir. 2003). Even when a plaintiff seeks relief from a state-court judgment, a suit constitutes a "forbidden *de facto* appeal only if the plaintiff also alleges a legal error by the state court." *Id.* See also *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1140 (9th Cir. 2004) ("[A] plaintiff must seek not only to set aside a state court judgment; he or she must also allege a legal error by the state court as the basis for that relief.").

In this assessment, federal courts pay close attention to the relief sought by federal plaintiffs: if they seek relief which would effectively reverse the state court judgment or void its ruling, then their claims are "inextricably intertwined" with the state-court judgment and the court must dismiss the federal action for lack of subject matter jurisdiction. *Bryant v. Gordon & Wong Law Group, P.C.*, 681 F. Supp.2d 1205,1208 (E.D. Cal. 2010) (no federal jurisdiction to hear FDCPA suit seeking to undo state debt collection); *Fleming v. Gordon & Wong Law Group, P.C.*, 723 F. Supp.2d 1219,1223 (N.D. Cal. 2010) (*Rooker-Feldman* bars FDCPA suit challenging validity of state-court debt collection); *Balogun v. Winn Law Group, A.P.C.*, 2017 WL 2984075 at *5 (C.D. Cal. 2017) (same); *Muhammad v. Reese Law Group, APC*, Dkt. No. 16cv2513-MMA (BGS) at *7;10-11 (S.D. Cal. 10/12/2017) (same).

In contrast, if they seek relief for alleged harm stemming from the writ of garnishment itself, separate from the underlying judgment, the *Rooker-Feldman*

doctrine does not apply. *Vanderkodde v. Mary Jane M. Elliott, P.C.*, 951 F.3d 397, 402-403 (6th Cir. 2020) (federal plaintiff's alleged harm arose from the writ of garnishment, not the underlying judgment; doctrine inapplicable). *Van Hoven v. Buckles & Buckles, P.L.C.*, 947 F.3d 889, 892-893 (6th Cir. 2020) (same). And if the federal plaintiff seeks damages for the debt collector's conduct in simply bringing the state lawsuit itself, conduct having nothing to do with the state-court judgment, the efficacy of the state-court judgment is not implicated. See *Dexter v. Tran*, 654 F. Supp.2d 1253, 1260 (E.D. Wash. 2009).

Here Tenants alleged that the accrued interest amount of $2,750 listed in Duringer's second October Memorandum of Costs was "duplicate;" and that its collection costs of $3,780 were "unreasonable," thereby violating the FDCPA. In other words, Tenants assert injury caused by Duringer's unopposed updating of the Renewed Judgment via the October Memorandum. Before Tenants are entitled to relief, the federal court would be required to rule that petitioners had improperly calculated the alleged debt due, including costs, and that it attempted to collect more money than Tenants actually owed. However, in order to do so, the federal court will necessarily have to examine the accuracy of the amounts contained in the Renewed Judgment, as augmented by accrued interest and collection costs as of October 1, 2020, a review process which would invite the federal court to rule that the state court had erred in its calculations. The *Rooker-Feldman* doctrine, however, bars federal courts from making these decisions about state-court judgments.

Tenants' suit is therefore a *de facto* appeal from a state-court judgment seeking relief which would effectively reverse the state-court judgment or void its effect. Judge Carter's spare analysis in district court—directed at the *first* Memorandum of Costs rather than the second—still had it right in the end: Tenants' claims directly implicate the efficacy of the Renewed Judgment of February 3, 2020, as augmented by Duringer's second Memorandum of Costs; and the *Rooker-Feldman* doctrine bars their federal suit for lack of subject matter jurisdiction.

The Panel's Misreading of California Debt Collection Law.

The Panel ruled that there was no relevant state-court judgment purporting to adjudicate the validity of the costs described in Duringer's second Memorandum of Costs (App. 6;7). Since it saw no state-court judgment implicated by Tenants' challenge to this second Memorandum, the Panel concluded that the *Rooker-Feldman* doctrine was not triggered (App. 7).

This analysis, however, overlooks settled California debt collection law which causes Tenants' allegations to directly implicate the terms of the Renewed Judgment. Specifically, § 685.070(d) of the Code provides that "[i]f no motion to tax costs is made within the time provided [i.e., 10 days]..., the costs claimed in the memorandum *are allowed*." (emphasis supplied). This language means that if the judgment creditor files a Memorandum of Costs, and the judgment debtor does not timely move to tax costs, then *all* of the costs claimed in the Memorandum are *required* to be included in the money judgment. *Briggs*

v. Elliott, 92 Cal.App.5th 683, 694-695 (Cal. App. 2023) (emphasis in original) citing *David S. Karton, A Law Corp. v. Dougherty*, 171 Cal. App.4th 133, 147 (Cal. App. 2009). See also Ahart, *Cal. Practice Guide: Enforcing Judgments and Debts* (The Rutter Group 2022), ¶ 6:51 ("If a timely motion to tax is not filed by the judgment debtor, enforcement costs claimed in the judgment creditor's Memorandum are *automatically* allowed and *added to the judgment*.") (emphasis in original and supplied).

Contrary to the Panel's analysis, there is *no* requirement in California law for any separate "adjudication" addressing the costs contained within a judgment creditor's Memorandum of Costs before it can be added to the money judgment, Renewed or otherwise. It is an *automatic* procedure made possible as a matter of California law by Tenants' failure to file a timely motion to tax costs and carried out regardless of whether the judgment creditor ever applies for a writ of execution or otherwise seeks to enforce the judgment. The Panel's requirement of a separate adjudication for such costs is simply unsupported by California law.

Confirming this point and consistent with § 685.070(d) of the Code, § 685.090(a)(2) of the Code further provides that "[c]osts [will be] added to and *become part of the judgment*: ...(2) If a memorandum of costs is filed pursuant to 685.070 and no motion to tax is made, upon the expiration of the time for making the motion." (emphasis supplied). Thus when post-judgment enforcement costs are allowed by Tenants' failure to bring a timely motion to tax those costs, as here, *those costs automatically become part of the*

principal amount of the judgment. See *id.* and *Lucky United Props. Inv., Inc. v. Lee*, 185 Cal. App. 4th 125, 138 (Cal. App. 2010) citing *David S. Karton, A Law Corp., supra.*

For these reasons anchored in California's Code of Civil Procedure and its settled debt collection law, there was *no* need, as the Panel ruled, for a state-court judgment to adjudicate separately the validity of the costs detailed in Duringer's second Memorandum of Costs. Those costs were already *automatically* allowed and became part of the Renewed Judgment of February 3, 2020, upon Tenants' failure to file a timely motion to tax those costs pursuant to § 685.070(d) and § 685.090(a)(2) of the Code as well as state decisional law interpreting those provisions.

For the same reasons, Tenants' FDCPA claims alleging that Duringer attempted to collect more money than what Tenants owed on the Renewed Judgment of February 3, 2020—a money judgment augmented by and including the costs detailed in Duringer's second Memorandum of Costs—is a direct challenge to the efficacy and enforceability of that state-court judgment. As such, the *Rooker-Feldman* doctrine bars this suit for lack of subject matter jurisdiction.

2. The Court Should Clarify The Contours Of The *Rooker-Feldman* Doctrine In The Wake Of *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005).

Since 2005 when *Exxon Mobil Corp.* was decided, several Circuits have split regarding the meaning of that decision, e.g., whether fraud in the

state court proceeding gives rise to the *Rooker-Feldman* doctrine (compare *Pondexter v. Allegheny Cty. Hous. Authy.*,329 Fed. Appx. 347, 350 (3rd Cir. 2009) (doctrine does not apply when federal plaintiff asserts state-court judgment was procured by extrinsic fraud) with *Myers v. Wells Fargo Bank, N.A.*, 685 Fed. Appx. 679, 681 (10th Cir. 2017) (rejects this exception to the doctrine's application)); whether the doctrine applies to non-final state-court rulings or decisions (compare *Malhan v. Sec'y, U.S. Dep't of State*, 938 F.3d 453, 461 (3d Cir. 2019) (only final judgments can fall under the doctrine's framework) with *Harold v. Steel*, 773 F.3d 884, 886 (7th Cir. 2014) (recognizing Circuit split whether doctrine applies to interlocutory appeals)); or whether the "inextricably intertwined" component is a requirement before the doctrine can be invoked. Compare *McCormick v. Braverman*, 451 F.3d 382, 394-395 (6th Cir. 2006) (abandoning this component) with *Chris H. v. New York*, 764 F. App'x 53, 56 (2d Cir. 2019) (recognizing this component as a separate requirement of the doctrine).

As Circuit Judge Sutton observed in his concurrence in *Vanderkodde v. Mary Jane M. Elliott, P.C.*, 951 F.3d at 405;409, , "*Rooker-Feldman* continues to wreak havoc across the country....[and despite *Exxon Mobil Corp.*,] lawyers continue to invoke the rule...." *Id.* He proposes cabining the doctrine to its essential purpose, i.e., to prevent litigants from seeking to evade Congress' decision to funnel all appeals from final state-court decisions to the Supreme Court. *Id.* at 406-407. As he suggests, the doctrine should be invoked only to bar review of state-court *judgments*, i.e., final dispositions by state courts affecting the rights of the litigants before them. *Id.* at 408.

Judge Sutton also thought that *Exxon Mobil Corp.* "potentially left room for debate over the meaning of federal causes of action 'complaining of injuries caused by state-court *judgments*.'" *Id.* quoting *Exxon Mobil Corp.*, 544 U.S. at 284 (emphasis supplied). As he concluded, the term "judgment" needs better definition from the Court so that more elastic versions of the concept will not "transform the rule into a difficult-to-pin-down inquiry" which invariably overlaps with claim preclusion and issue preclusion principles. *Id.* at 408-409.

The same confusion pervades this case about the nature of a state-court "judgment" for purposes of applying the *Rooker-Feldman* doctrine. By misunderstanding the substantive law of debt collection in California, the Panel wrongly assumed that a separate state-court judgment or adjudication was necessary to validate the costs identified in Duringer's second Memorandum of Costs. But California debt collection law demonstrably provides that *no* such separate adjudication is necessary where Tenants failed to file a timely motion to tax those costs pursuant to § 685.070(d) and § 685.090(a)(2) of the Code. The Panel's mistaken notions about state-court "judgments" has now unnecessarily federalized a State-court-centric exercise, providing Tenants a remedy in federal court to which they are not entitled under our federal system.

This important issue addressing the nature of the state-court "judgment" necessary for invocation of the *Rooker-Feldman* doctrine—an issue left open for debate after *Exxon Mobil Corp.*—needs to be addressed by the Court. This is an ideal case to grant

certiorari because the contours of the *Rooker-Feldman* doctrine, especially its state-court "judgment" component, in the wake of *Exxon Mobil Corp.* have become elusive and ill-defined. This petition presents a simple case of a federal forum misreading relevant state law to conclude that no state-court judgment was put at risk by the federal action when, in reality, the opposite was true. This case will also provide the Court with the opportunity to define and thereby further cabin the meaning of state-court "judgments" for purposes of applying the doctrine.

CONCLUSION

For all of the reasons identified herein, Court should grant certiorari, identify the Panel's error, clarify the contours of the *Rooker-Feldman* doctrine in the circumstances of this case, and remand to the district court for dismissal of Tenants' civil action; or provide petitioners with such other relief as is fair and just in the circumstances.

Respectfully submitted,

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APPENDIX

86 F.4th 1251

United States Court of Appeals, Ninth Circuit.

Janey BROWN; Bing Guo; Junxian Zhang, Plaintiffs-Appellants,

v.

DURINGER LAW GROUP PLC; Stephen C. Duringer; Peter Wong; Judy Wong, Defendants-Appellees,

and

Does, 1-10, Defendant.

No. 22-55700

Argued and Submitted September 11, 2023 Pasadena, California

Filed November 21, 2023

Appeal from the United States District Court for the Central District of California, David O. Carter, District Judge, Presiding, D.C. No. 2:20-cv-10971-DOC-AGR

Attorneys and Law Firms

Louis P. Dell (argued), Law Office of Louis P. Dell, Burbank, California, for Plaintiffs-Appellants.

Edward Luddington Laird II (argued), Stephen C. Duringer, and C. Tyler Greer, Esq., The Duringer Law Group PLC, Anaheim Hills, California, for Defendants-Appellees.

Before: MILAN D. SMITH, JR., MICHELLE T. FRIEDLAND, and ERIC D. MILLER, Circuit Judges.

OPINION

M. SMITH, Circuit Judge:

Janey Brown, Bing Guo, and Junxian Zhang (collectively, Tenants) filed suit against the Duringer Law Group, PLC, and Stephen C. Duringer (collectively, Duringer) in the United States District Court for the Central District of California. In their complaint, Tenants allege that Duringer violated the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. §§ 1692–1692p, by filing an October 2020 memorandum of costs pursuant to § 685.070(b) of the California Code of Civil Procedure (the Code). In Tenants' view, the October 2020 filing sought duplicative interest on their back rent as well as unreasonable attorneys' fees in connection with Duringer's debt collection efforts. The district court concluded that Tenants' federal suit constituted an improper appeal of a state-court judgment and thus was barred by the *Rooker-Feldman* doctrine. We disagree. Tenants' FDCPA action does not attack any state-court judgment regarding the October 2020 memorandum of costs, and therefore the *Rooker-Feldman* doctrine does not bar the action. Accordingly, we reverse and remand.

FACTUAL AND PROCEDURAL BACKGROUND

In 2005, Peter and Judy Wong (the Wongs) leased an apartment to Tenants. The lease agreement stated that "[i]n the event of a default by Tenant hereunder, Tenant shall pay to Landlord all costs incurred by Landlord ... including attorneys' fees." In 2010, Tenants breached the lease agreement by failing to pay rent, and the Wongs hired Duringer to initiate

an unlawful-detainer action pursuant to § 1161(2) of the Code. On June 21, 2010, the California Superior Court entered judgment in favor of the Wongs for $2,705, composed of $1,785 in back rent and incidental damages, $500 in attorneys' fees, and $420 in other costs.

For over nine years, Duringer did not attempt to enforce the judgment on behalf of the Wongs. Then, in February 2020, Duringer filed an application for renewal of the judgment pursuant to § 683.120 of the Code, as well as a memorandum of costs. In the memorandum of costs, Duringer sought $2,570 in post-judgment interest and $2,592 in post-judgment costs, including attorneys' fees incurred from June 2018 to December 2019. Tenants did not object to the claimed costs within the ten days required under state law, and thus the claimed costs were added to the judgment. *See* Cal. Civ. Proc. Code § 685.070(c), (d).

In July 2020, the Wongs applied for a writ of execution. *See id.* § 699.510(a). The clerk of the court issued the writ, levying Janey Brown's bank account. Brown then requested that the court quash the writ of execution. The Superior Court denied Brown's request, explaining that her filing did not comply with California's procedural requirements and rejecting Brown's assertions that Duringer committed fraud and that she "knew nothing of this lawsuit and was never served." Three days later, Brown filed a claim of exemption pursuant to § 703.520(a) of the Code. In the filing, Brown reported a monthly income of $1,215 and argued that the levy "robs [Brown of her] chance to live" due to, in part, her mother's significant medical costs. The Superior Court denied the exemption.

In November 2020, Duringer received the levied funds on behalf of the Wongs, which fully satisfied the writ stemming from the renewal of judgment and the

February 2020 memorandum of costs. However, shortly before receiving those levied funds, Duringer filed a second memorandum of costs, seeking $2,750 in accrued interest and $3,780 in costs and attorneys' fees incurred in litigating the first memorandum of costs. Duringer never applied for a writ of execution to enforce this second memorandum of costs, and thus the court never took any further action regarding the claimed costs.

On December 2, 2020, Tenants filed suit against Duringer, alleging violations of the FDCPA. Tenants moved for partial summary judgment on the issue of Duringer's liability for these violations. Duringer cross-moved, arguing that the *Rooker-Feldman* doctrine deprived the district court of jurisdiction and that, in any event, Tenants' FDCPA claims failed on the merits as a matter of law. The district court held that the *Rooker-Feldman* doctrine barred Tenants' claims and granted Duringer's cross-motion for summary judgment without reaching the merits of those claims. It did not adjudicate Tenants' motion for partial summary judgment. Tenants timely appealed.

JURISDICTION AND STANDARD OF REVIEW

We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo a district court's ruling on a summary judgment motion. *Donell v. Kowell*, 533 F.3d 762, 769 (9th Cir. 2008). We also determine de novo whether a district court had subject-matter jurisdiction over an action. *Singh v. Am. Honda Fin. Corp.*, 925 F.3d 1053, 1062 (9th Cir. 2019).

ANALYSIS

Section 1257 of Title 28 authorizes the U.S. Supreme Court to hear appeals from "[f]inal judgments or decrees rendered by the highest court of a State" if they raise a federal question. 28 U.S.C. § 1257. The *Rooker-Feldman* doctrine provides that § 1257, by vesting jurisdiction over state-court appeals in the Supreme Court, necessarily "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," if the action asks the federal district court to "overturn an injurious state-court judgment." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 291–92, 125 S.Ct. 1517, 161 L.Ed.2d 454 (2005). The doctrine occupies "narrow ground" and applies only in "limited circumstances." *Id.* at 284, 291, 125 S.Ct. 1517; *see also Lance v. Dennis*, 546 U.S. 459, 464, 126 S.Ct. 1198, 163 L.Ed.2d 1059 (2006) (per curiam) ("[O]ur cases since *Feldman* have tended to emphasize the narrowness of the *Rooker-Feldman* rule."). Namely, it "is confined to ... cases [1] brought by state-court losers [2] complaining of injuries caused by state-court judgments [3] rendered before the district court proceedings commenced and [4] inviting district court review and rejection of those judgments." *Exxon*, 544 U.S. at 284, 125 S.Ct. 1517.

In this case, the district court interpreted Tenants' FDCPA claims as attacking the validity of the costs Duringer claimed in its February memorandum of costs, on which the Superior Court already rendered judgment. We disagree with the district court's interpretation. A fair reading of Tenants' complaint and the subsequent record shows that Tenants seek to

remedy the harms caused by Duringer's filing of the October memorandum of costs, not the February memorandum, as the district court assumed. For instance, in their complaint, Tenants allege that the October memorandum "claimed duplicat[ive] interest and unreasonable collection costs." At summary judgment, Tenants conceded that the Superior Court had already rejected Brown's motions relating to the costs in the February memorandum.

Once we properly construe Tenants' action as challenging the October memorandum, our *Rooker-Feldman* analysis becomes straightforward. There is no relevant state-court judgment purporting to adjudicate the validity of the costs in the October memorandum. Brown never filed a motion to tax costs, so the state court never used that vehicle to decide the accuracy of the costs. Moreover, Duringer did not apply for a writ of execution, so Brown never moved to quash—giving the state court no opportunity to assess the costs claimed in the memorandum. Simply put, the October memorandum was not the subject of any state-court judgment.

Duringer's counterarguments are unpersuasive. First, Duringer argues that we should broadly interpret "judgment" in our *Rooker-Feldman* analysis to include the original 2010 unlawful-detainer judgment and that because Tenants "undoubtably lost the state court Eviction Action," they are state-court losers. However, even if we were to adopt Duringer's broad conception of "judgment" at prong one of our analysis, Duringer would still fail to meet prongs two and four. Since the 2010 unlawful-detainer judgment does not purport to rule on the accuracy of the costs claimed in the October memorandum (as would have been impossible given that the judgment was entered over a

decade earlier), Tenants would be neither complaining of injuries caused by the state-court judgment (*i.e.*, prong two) nor inviting district court review and rejection of that judgment (*i.e.*, prong four).

Second, Duringer posits that Tenants' claims "necessarily require[ ] the [federal] court to determine the accuracy of the amount approved by the state court on the Writ of Execution" enforcing the February memorandum of costs. However, Tenants' claims assume the accuracy of the costs obtained through the February memorandum and accompanying writ; Tenants challenge only the allegedly duplicative interest and unreasonable attorneys' fees Duringer claimed in the October memorandum. Because there is no relevant state-court judgment addressing those issues to improperly appeal, we reverse the district court's holding that *Rooker-Feldman* precludes it from exercising jurisdiction over Tenants' FDCPA claims.

After this appeal was briefed, we *sua sponte* raised the question whether Tenants have Article III standing to pursue their claims. Because the question of standing was not addressed by the district court and because Tenants may wish to submit evidence in support of their claimed injuries, we remand so the district court can address this issue in the first instance. *See Cold Mountain v. Garber*, 375 F.3d 884, 891 (9th Cir. 2004).[1]

CONCLUSION

For the foregoing reasons, the district court's summary judgment order is **REVERSED**, and this case is **REMANDED** to the district court for further proceedings consistent with this opinion.

Footnotes

1We may consider the appeal of the *Rooker-Feldman* issue without first reaching the standing issue. *Sinochem Int'l Co. v. Malay. Int'l Shipping Corp.*, 549 U.S. 422, 431, 127 S.Ct. 1184, 167 L.Ed.2d 15 (2007) ("[T]here is no mandatory

United States District Court, C.D. California, Southern Division.

Janey BROWN, Bing Guo, Junxian Zhang, Plaintiffs,

v.

DURINGER LAW GROUP PLC et al., Defendants.

Case No. LA CV 20-10971-DOC (agrx)

Signed 02/02/2022

Attorneys and Law Firms

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ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT [42]

DAVID O. CARTER, UNITED STATES DISTRICT JUDGE

Before the Court are Defendants Stephen C Duringer and Duringer Law Group PLC's (collectively, "Defendants") Motion for Summary Judgment ("Motion" or "Mot.") (Dkt. 42). The Court heard oral arguments on February 1, 2022. For the reasons described below, the Court **GRANTS** Defendants' Motion.

I. BACKGROUND

A. Facts[1]

Defendants Judy Wong and Peter Wong ("the Wongs") are the owners of a residential property that was leased to Plaintiffs Janey Brown, Bing Guo, and Junxian Zhang (collectively, "Plaintiffs") on October 31, 2005. Defendants' Statement of Uncontroverted Facts ("Defendants SUF") (Dkt. 42-2) ¶¶ 1-2. Around May 2010, Plaintiffs breached the lease agreement, and Defendants Judy and Peter Wong worked with Defendant Duringer Law Group ("DLG") to successfully evict Plaintiffs ("Eviction Action"). *Id.* ¶¶ 4-5. Defendants obtained judgment in the amount of $2,750, and the judgment was entered on June 21, 2010. *Id.* ¶ 5.

On February 3, 2020, DLG filed an "Application for Renewal of Judgment and a Memorandum of Costs After Judgment" in the amount of $7,912, which included the Eviction Action judgment of $2,750, attorney fees of $2,370, accrued interest of $2,570, and $222 in other expenses authorized under CCP 685.040. *Id.* ¶ 6.

On July 15, 2020, a writ of execution amounting to $7,952.00 was issued, and the Sheriff proceeded to levy Plaintiff Brown's bank account for an amount of $8,129.57. *Id.* ¶ 7.

In August and September of 2020, Plaintiff Brown filed an unsuccessful ex parte application to 'set aside the funds' and an unsuccessful claim of exemption. *Id* ¶ 7-9. As a result of these filings, Defendants incurred additional legal fees. *Id.* ¶ 9.

On October 1, 2020, Defendant DLG filed the at issue "Memorandum of Costs After Judgment, Acknowledgement of Credit, and Declaration of

Accrued interest" (the "memorandum of costs"). *Id.* ¶ 10. The memorandum of costs claimed $2,750 in interest (interest accrued from the date of judgment to the date of the memorandum of costs) and $3,780 in attorney's fees and costs. *Id.* Plaintiff did not file a motion to tax costs. *Id.* Although the Memorandum of Costs was filed, no writ was ever issued, and no further action was taken to enforce the judgment. *Id.* ¶ 13.

On November 2, 2020, Plaintiff Brown filed an unsuccessful ex parte application to stay execution and a notice of appeal challenging the denial of the claim of exemption. *Id.* ¶ 15.

Then, on November 5, 2020, Defendant DLG received the levied funds from the Sheriff. *Id.* ¶ 11.

B. Procedural History

On December 2, 2020, Plaintiffs filed a Complaint in this Court. *See* Complaint (Dkt. 1). On October 29, 2021, Defendants filed their Motion for Summary Judgment ("Mot.") (Dkt. 42). Plaintiffs opposed ("Opp'n") on November 7, 2021 (Dkt. 46), and Defendants replied ("Reply") on November 15, 2021 (Dkt. 48). The Court heard oral arguments on February 1, 2022.

II. LEGAL STANDARD

Summary judgment is proper if "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Summary judgment is to be granted cautiously, with due respect for a party's right to have its factually grounded claims and defenses tried to a jury. *Celotex Corp. v. Catrett*,

477 U.S. 317, 327 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). A court must view the facts and draw inferences in the manner most favorable to the non-moving party. *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1992); *Chevron Corp. v. Pennzoil Co.*, 974 F.2d 1156, 1161 (9th Cir. 1992). The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact for trial, but it need not disprove the other party's case. *Celotex*, 477 U.S. at 323. When the non-moving party bears the burden of proving the claim or defense, the moving party can meet its burden by pointing out that the non-moving party has failed to present any genuine issue of material fact as to an essential element of its case. *See Musick v. Burke*, 913 F.2d 1390, 1394 (9th Cir. 1990).

Once the moving party meets its burden, the burden shifts to the opposing party to set out specific material facts showing a genuine issue for trial. *See Liberty Lobby*, 477 U.S. at 248–49. A "material fact" is one which "might affect the outcome of the suit under the governing law ...." *Id.* at 248. A party cannot create a genuine issue of material fact simply by making assertions in its legal papers. *S.A. Empresa de Viacao Aerea Rio Grandense v. Walter Kidde & Co., Inc.*, 690 F.2d 1235, 1238 (9th Cir. 1982). Rather, there must be specific, admissible, evidence identifying the basis for the dispute. *See id.* The Court need not "comb the record" looking for other evidence; it is only required to consider evidence set forth in the moving and opposing papers and the portions of the record cited therein. Fed. R. Civ. P. 56(c)(3); *Carmen v. S.F. Unified Sch. Dist.*, 237 F.3d 1026, 1029 (9th Cir. 2001). The Supreme Court has held that "[t]he mere existence of a scintilla of evidence ... will be insufficient; there must be evidence

on which the jury could reasonably find for [the opposing party]." *Liberty Lobby*, 477 U.S. at 252.

III. DISCUSSION

Defendants argue that this Court lacks jurisdiction under the *Rooker-Feldman* doctrine because Plaintiffs' Complaint is a "misplaced de facto appeal of the Eviction Action judgment" and would improperly require the court to wade through state court eviction action proceedings. Mot. at 4. Plaintiffs respond that the doctrine is inapplicable because they "do not seek review of a state court decision and they do not seek its de facto equivalent." Opp'n at 1. Since the Court must first determine if it has subject matter jurisdiction over the matter, the Court does not address the other arguments raised in Defendants' Motions for Summary Judgment or Plaintiffs' separate Motion for Summary Judgment (Dkt. 38).

The *Rooker-Feldman* doctrine deprives federal courts of jurisdiction to hear direct appeals from state court judgments. *Cooper v. Ramos*, 704 F.3d 772, 777 (9th Cir. 2012). A district court also may not exercise jurisdiction over "the de facto equivalent of such an appeal." *Noel v. Hall*, 341 F.3d 1148, 1155 (9th Cir. 2003). The doctrine is construed narrowly and is limited to situations where a plaintiff alleges a de facto appeal by both asserting errors by the state court and seeking relief from the state court judgment as a remedy. *See Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 283 (2005); *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1140 (9th Cir. 2004). To determine 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) (internal quotation marks and citations omitted). If "the relief requested in the federal action would effectively reverse the state court decision or void its ruling," the claims are "inextricably intertwined" and the court must dismiss the federal action for lack of subject matter jurisdiction. *Cooper*, 704 F.2d at 777.

The Court finds that Plaintiff's FDCPA claim is barred by the *Rooker–Feldman* doctrine. Plaintiffs argue that the Eviction Action judgment was fully satisfied when the Sheriff released the levied funds, thus making the 2020 cost memorandum an inappropriate attempt to collect duplicate interest. Opp'n at 1. Thus, the ultimate question is whether the levy fully satisfied the judgment.

Here, the memorandum of costs, which was issued on February 3, 2020, predated the writ of execution, which was issued on July 15, 2020. As Defendants argue, the amount of due interest listed on the writ of execution reflected interest that was due as of the issue date of February 3, 2020. Reply at 3. Defendants contend that following the writ of execution's issue date, additional interest was accruing up until the date of the levy, July 15, 2020. *Id.* That interest was not included on the writ of execution. Accordingly, although Plaintiffs do not contest the amounts set forth in the costs memorandum or writ of execution, Opp'n at 4, Plaintiffs impliedly ask this Court to determine the accuracy of the amount of interest listed on the writ of execution, an amount that was approved and determined by the state court. As this Court has noted before, to do so would "would require review and possible reversal of the state court rulings," which is barred by *the Rooker-Feldman* doctrine. See

Balogun v. Winn Law Group, A.P.C., 2017 WL 2984075, at *5 (C.D. Cal. July 12, 2017).

Thus, the Court finds that Plaintiff's claim constitutes a de-facto appeal and is barred by the Rooker–Feldman doctrine.

IV. DISPOSITION

For the foregoing reasons, the Court GRANTS Defendants' Motion for Summary Judgment.

Footnotes

1Unless indicated otherwise, to the extent any of these facts are disputed, the Court concludes they are not material to the disposition of the Motion. Further, to the extent the Court relies on evidence to which the parties have objected, the Court has considered and overruled those objections. As to any remaining objections, the Court finds it unnecessary to rule on them because the Court does not rely on the disputed evidence.

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Case Name:	Janey Brown, et al v. Duringer Law Group PLC, et al
Case Number:	22-55700

Docket Text:

Filed text clerk order (Deputy Clerk: MCD): Appellees' petition for panel rehearing, Dkt. [41], is denied. [12833894] (AF)

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