APPENDIX

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Appendix A
US Court of Appeals for the Ninth Circuit

No. 23-55128

Peter Kleidman,
Plaintiff-Appellant,
v.
Audrey B. Collins, Justice, et al.,
Defendants-Appellees.

Filed August 28, 2024

MEMORANDUM

Before Hons. S.R. Thomas, McKeown, Hurwitz,
Circuit Judges

Peter Kleidman appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action arising out of 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). *Meland v. WEBER*, 2 F.4th 838, 843 (9th Cir. 2021) (lack of standing); *Cholla Ready Mix, Inc. v. Civish*, 382 F.3d 969, 973 (9th Cir. 2004) (Eleventh Amendment immunity). We affirm.

The district court properly dismissed Count 1 of Kleidman's amended complaint as barred by the Eleventh Amendment. *See Munoz v. Superior Ct. of L.A. County*, 91 F.4th 977, 981 (9th Cir. 2024) ("[S]tate court judges cannot be sued in federal court in their judicial capacity under the Eleventh Amendment.").

The district court properly dismissed Counts 3 and 4 of Kleidman's amended complaint because Kleidman failed to allege facts sufficient to establish Article III standing. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (constitutional standing requires an "injury in fact," causation, and redressability, and "the injury has to be fairly . . . trace[able] to the challenged action of the defendant" as opposed to "the independent action of some third party not before the court" (internal quotation marks omitted)); *San Diego County Credit Union v. Citizens Equity First Credit Union*, 65 F.4th 1012, 1022-23 (9th Cir. 2023) (explaining that a party seeking declaratory relief must demonstrate Article III standing).

The district court did not abuse its discretion by dismissing without leave to amend because further amendment would be futile. *See Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011) (setting forth standard of review and explaining that dismissal without leave to amend is proper when amendment would be futile). To the extent that Kleidman seeks leave from this court to amend his complaint, the request is denied.

AFFIRMED.

Appendix B
US Court of Appeals for the Ninth Circuit

No. 23-55128

Peter Kleidman,
Plaintiff-Appellant,
v.
Audrey B. Collins, Justice, et al.,
Defendants-Appellees.

Filed December 5, 2024

ORDER

Before Hons. S.R. Thomas, Rawlinson, and Collins, Circuit Judges

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. 40.

Kleidman's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 33) are denied.

No further filings will be entertained in this closed case.

Appendix C
US District Court Central District of California

No. 2:22-cv-03263-CJC (JDE)

Peter Kleidman,
Plaintiff,
v.
Audrey B. Collins, Justice, et al.
Defendants.

Filed January 9, 2023

AMENDED JUDGMENT

Before Hon Cormac J. Carney, District Judge
Hon. John D. Early, Magistrate Judge

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

IT IS HEREBY ADJUDGED that this action is dismissed without prejudice.

Appendix D
US Court of Appeals for the Ninth Circuit

No. 23-55128

Peter Kleidman,
Plaintiff-Appellant,
v.
Audrey B. Collins, Justice, et al.
Defendants-Appellees.

Filed September 25, 2024

Portion of Appellant's Petition for Rehearing

Before Hons. S.R. Thomas, Rawlinson, and Collins, Circuit Judges

The appellate briefing was completed December, 2023, before *Munoz* was decided in 2024. The Justices never filed a FRAP 28(j) letter, apprising this Court and Kleidman of *Munoz*. Nevertheless, the Panel blindsided Kleidman by, *sua sponte*, deciding the appeal (as to Count 1) based on *Munoz*.

By ruling against Kleidman, based on an authority which he had no opportunity to address, the Panel violated Kleidman's due process rights. See *Mylan Pharmaceuticals, Inc. v. Research Corp. Tech., Inc.*, 914 F.3d 1366, 1377 (Fed. Cir. 2019) (disallowing appellant's reference to an authority, issued after briefing was complete, whereby the reference did not come via a FRAP 28(j) letter but rather came for the first time in appellant's oral argument rebuttal, and whereby appellee "had no meaningful opportunity to respond"). The Panel's reliance on *Munoz* is effectively a new *argument* in support of the Eleventh

Amendment defense, and it is fundamentally unfair for a party to lose based on a new argument to which he/she had no opportunity to respond. *Von Brimer v. Whirlpool Corp.*, 536 F.2d 838, 846 (9th Cir. 1976).

Moreover, by invoking *Munoz* for the first time in its Decision, the Panel did not have the benefit of briefing on *Munoz*'s appositeness. The Supreme Court, and all of its current Justices, have in some fashion either expressed the undesirability of rulings without the benefit of briefing, or have outright reproached such rulings. *Natl. Aero. & Space Admin. v. Nelson*, 562 US 134, 147, n. 10 (2011); *Wood v. Georgia*, 450 US 261, 272 (1981); *Greer v. Spock*, 424 US 828, 835 (1976); *McCutcheon v. Fed, Election Comm'n*, 134 S.Ct. 1434, 1447 (2014), citing *Hohn v. US*, 524 US 236, 251 (1998); *Edwards v. Carpenter*, 529 US 446, 452, n. 3 (2000); *Cunningham v. Cal.*, 549 US 270, 287, n. 13 (2007); *Andrus v. Charlestone Stone Products Co.*, 436 US 604, 614 (1978); *Ohio v. EPA*, 144 S.Ct. 2040, 2070 (2024) (Barrett, Sotomayor, Kagan, Jackson, JJ, dissenting); *Massachusetts v. EPA*, 549 US 497, 539-540 (2007) (Roberts, CJ, Scalia, Thomas, Alito, JJ, dissenting); *DOES 1-3 v. Mills*, 142 S.Ct. 17, 18 (2021) (Barrett, Kavanaugh, JJ, concurring); *McWilliams v. Dunn*, 137 S.Ct. 1790, 1802, n. 2 (2017) (Roberts, CJ, Alito, Thomas, Gorsuch, JJ, dissenting).

Consequently as a matter of fundamental fairness, and to have the benefit of full briefing, the matter should be remanded so that the parties can brief *Munoz*'s appositeness.

Furthermore, Kleidman requests that the matter be reassigned to a different panel because the Panel has twice blindsided him. The same Panel blindsided him in *Kleidman v. RFF Family Partnership, LP, No.* 23-55610, as argued in Kleidman's petition for

rehearing therein. No., 23-55610, CA9 Dkt. #27, at 18-20, §III.C. *US v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980) ("court may take judicial notice of its own records in other cases"). Here, there is a reasonable probability the Panel would find it difficult to rule in Kleidman's favor upon remand, because doing so would amount to an admission that by blindsiding Kleidman they committed harmful (not harmless) error. *US v. Sears, Roebuck & Co., Inc.*, 785 F.2d 777, 780 (9th Cir. 1986) (first factor sufficient to warrant reassignment). Also, remanding to a different panel would "preserve the appearance of justice," because Kleidman has accused the Panel of violating his due process rights in two appeals. *Ibid.* (second factor sufficient to warrant reassignment).

Appendix E
US Court of Appeals for the Ninth Circuit

No. 23-55610

Peter Kleidman,
Plaintiff-Appellant,
v.
RFF Family Partnership, LP, et al.,
Defendants-Appellees.

Filed August 28, 2024

MEMORANDUM

Before Hons. S.R. Thomas, Rawlinson, and Collins, Circuit Judges

Peter Kleidman appeals pro se from the district court's judgment dismissing his action alleging federal and state law claims related to his state court proceedings. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under Federal Rules of Civil Procedure 12(b)(1) and (6). *Davidson v. Kimberly-Clark Corp.*, 889 F.3d 956, 963 (9th Cir. 2018). We affirm.

The district court properly dismissed Kleidman's constitutional claims because Kleidman failed to allege facts sufficient to show that California's vexatious litigant statute violated his constitutional rights. *See Wolfe v. George*, 486 F.3d 1120, 1125-27 (9th Cir. 2007) (upholding as constitutional California's prefiling requirements on vexatious litigants).

The district court properly dismissed Kleidman's remaining claims because these claims constituted forbidden "de facto appeal[s]" of a prior state court judgment or were "inextricably intertwined" with that judgment. *See Noel v. Hall*, 341 F.3d 1148, 1163-65 (9th Cir. 2003) (discussing proper application of the *Rooker-Feldman* doctrine). The district court did not abuse its discretion by dismissing without leave to amend because further amendment would have been futile. *See Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011) (setting forth standard of review and explaining that dismissal without leave to amend is proper when amendment would be futile).

AFFIRMED.

Appendix F
US Court of Appeals for the Ninth Circuit

No. 23-55610

Peter Kleidman,
Plaintiff-Appellant,
v.
RFF Family Partnership, LP, et al.,
Defendants-Appellees.

Filed December 5, 2024

ORDER

Before Hons. S.R. Thomas, Rawlinson, and Collins, Circuit Judges

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. 40.

Kleidman's petition for panel rehearing and petition for rehearing en banc (Docket Entry Nos. 26 and 27) are denied.

No further filings will be entertained in this closed case.

Appendix G
US District Court Central District of California

No. 2:22-cv-03947-SPG-AFM

Peter Kleidman,
Plaintiff,
v.
RFF Family Partnership, LP, et al.,
Defendants.

Filed January 11, 2023

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

Before Hon. Sherilyn Peace Garnett, District Judge
Hon. Alexander F. MacKinnon, Magistrate Judge

Before the Court is Defendant Chief Justice Tani G. Cantil-Sakauye's motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). (ECF No. 19). Plaintiff opposes. (ECF No. 30). The Court has read and considered the matters raised with respect to the motion and concluded that this matter is suitable for decision without oral argument. *See* Fed. R. Civ. P. 78(b); Local Rule 7-15. Having considered the submissions of the parties, the relevant law, and the record in this case, the Court hereby GRANTS the Chief Justice's motion.

I. BACKGROUND

Plaintiff Peter Kleidman brings suit against RFF Family Partnership, LP ("RFF") and Tani G. Cantil-Sakauye (the "Chief Justice") in her official capacity as Chair of the Judicial Council of California and

Chief Justice of the California Supreme Court. (ECF No. 1 ("Compl.")). Plaintiff has previously sued RFF in California state court multiple times. (*Id.* ¶ 5). In one of those cases,[1]1 RFF moved to declare Plaintiff a vexatious litigant pursuant to California Code of Civil Procedure § 391 *et seq.* (the "Vexatious Litigant Statute"). (*Id.* ¶ 6; ECF No. 23, Ex. 1). On January 13, 2022, the Superior Court of California for the County of Los Angeles ("LASC") granted RFF's motion and declared Plaintiff a vexatious litigant. (ECF No. 23, Ex. 1 (the "Vexatious Litigant Ruling")). The court found that Plaintiff, while proceeding pro se, "has repeatedly made filings and pleadings with the Court that have been determined adversely against Plaintiff, and Plaintiff attempts to relitigate the same claims and issues against the same parties and regarding the same loan agreement." (*Id.* at 5).

Plaintiff then commenced this case on June 9, 2022. (ECF No. 1). In his Complaint, Plaintiff seeks only declaratory relief to declare California's vexatious litigant statutory scheme unconstitutional and that Plaintiff no longer be deemed a vexatious litigant. (*Id.*). On September 19, 2022, the Chief Justice[2] filed a motion to dismiss. (ECF No. 22 ("Mot.")). Plaintiff filed an opposition on December 21, 2022, (ECF No. 30 ("Opp.")), and the Chief Justice

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[1] Case No. 19SMCV01711.

[2] On July 14, 2022, the Court ordered Plaintiff to show cause why this action should not be dismissed for lack of prosecution as to Defendant RFF. (ECF No. 14). On July 18, 2022, Plaintiff requested the Clerk of Court to enter default against RFF, (ECF No. 17), and the clerk thereafter entered default on July 27, 2022. (ECF No. 18). RFF still has neither appeared nor responded to the Complaint. On December 19, 2022, the Court again ordered Plaintiff to show cause why this action should not be dismissed for lack of prosecution. (ECF No. 29).

replied on December 28, 2022. (ECF No. 33).[3]

II. LEGAL STANDARDS

A. 12(b)(1)

Federal Rule of Civil Procedure Rule 12(b)(1) provides that an action may be dismissed for lack of subject matter jurisdiction. When subject matter jurisdiction is challenged, "[t]he party seeking to invoke the court's jurisdiction bears the burden of establishing that jurisdiction exists." *Scott v. Breeland*, 792 F.2d 925, 927 (9th Cir. 1986). A challenge pursuant to Rule 12(b)(1) may be facial or factual. *See White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000). A facial 12(b)(1) motion involves an inquiry confined to the allegations in the complaint, whereas a factual 12(b)(1) motion permits the court to look beyond the complaint to extrinsic evidence. *Wolfe v. Strankman*, 392 F.3d 358, 362 (9th Cir. 2004). Thus, in a factual 12(b)(1) motion, the Court may consider evidence outside the complaint to resolve factual disputes in the process of determining the existence of subject matter jurisdiction. *McCarthy v. United States*, 850 F.2d 558, 560 (9th Cir. 1988). Courts consequently need not presume the truthfulness of a plaintiff's allegations in such instances. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004) (citing *White*, 227 F.3d at 1242). A Rule 12(b)(1) motion will be granted if the complaint, considered in

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[3] Both parties request the Court to take judicial notice of various state court filings and dockets. *See* (ECF Nos. 23, 31). Pursuant to Rule 201 of the Federal Rules of Evidence, the Court finds these matters properly subject to judicial notice and grants the parties' requests for judicial notice. 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)

its entirety, fails on its face to allege facts sufficient to establish subject matter jurisdiction. *See Savage v. Glendale Union High Sch.*, 343 F.3d 1036, 1039 (9th Cir. 2003).

B. 12(b)(6)

Under Federal Rule of Civil Procedure 12(b)(6), a district court must dismiss a complaint if it fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). "Dismissal under Rule 12(b)(6) is proper when the complaint either (1) lacks a cognizable legal theory or (2) fails to allege sufficient facts to support a cognizable legal theory." *Somers v. Apple, Inc.*, 729 F.3d 953, 959 (9th Cir. 2013). To survive a 12(b)(6) motion, the plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007). A claim is facially plausible when the plaintiff pleads facts that "allow the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). There must be "more than a sheer possibility that a defendant has acted unlawfully." *Id.* While courts do not require "heightened fact pleading of specifics," a plaintiff must allege facts sufficient to "raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555, 570.

In deciding whether the plaintiff has stated a claim upon which relief can be granted, the court accepts the plaintiff's allegations as true and draws all reasonable inferences in favor of the plaintiff. *In re Tracht Gut, LLC*, 836 F.3d 1146, 1150 (9th Cir. 2016). For a plaintiff appearing *pro se*, the Court must construe the allegations of the complaint liberally. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam). However, "the liberal pleading standard ... applies only to a plaintiff's factual allegations." *Neitzke v. Williams*,

490 U.S. 319, 330 n.9 (1989). The Court need not accept as true "allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008). Nor must the Court "assume the truth of legal conclusions cast in the form of factual allegations." *Lleto v. Glock Inc.*, 349 F.3d 119, 1200 (9th Cir. 2003). Furthermore, despite applying a liberal interpretation to plaintiff's allegations, the Court "may not supply essential elements of the claim that were not initially pled." *Ivey v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

III. DISCUSSION

The Chief Justice moves to dismiss on the grounds that the Court lacks subject matter jurisdiction under *Rooker-Feldman*, the Complaint is barred by the Eleventh Amendment and judicial immunity, and Plaintiff lacks Article III standing. For the reasons stated below, the Court agrees that it lacks jurisdiction to consider Plaintiff's request to overturn the Vexatious Litigant Order under *Rooker-Feldman* and that Plaintiff lacks standing to pursue his general constitutional challenge to the Vexatious Litigant Statute. The Court therefore does not reach the merits of the Chief Justice's remaining arguments.

A. *Rooker-Feldman*

The *Rooker-Feldman* doctrine derives its name from two Supreme Court cases: *Rooker v. Fidelity Trust Company*, 263 U.S. 413 (1923), and *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983). The doctrine "instructs that federal district courts are without jurisdiction to hear direct appeals from state court judgments." *Cooper v. Ramos*, 704 F.3d 772, 777 (9th Cir. 2012). *Rooker-Feldman* applies in 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 (2005). "The purpose of the doctrine is to protect state judgments from collateral federal attack." *Doe & Assocs. Law Offices v. Napolitano*, 252 F.3d 1026, 1030 (9th Cir. 2001). "The doctrine bars a district court from exercising jurisdiction not only over an action explicitly styled as a direct appeal" but also "the 'de facto equivalent' of such an appeal." *Cooper*, 704 F.3d at 777. A challenge under the *Rooker-Feldman* doctrine is a challenge for lack of subject matter jurisdiction. *Olson Farms, Inc. v. Barbosa*, 134 F.3d 933, 937 (9th Cir. 1998).

The *Rooker–Feldman* doctrine applies when a plaintiff in federal court alleges a "*de facto* appeal" by (1) asserting errors by the state court as an injury, and (2) seeking relief from the state court judgment as a remedy. *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1139-40 (9th Cir. 2004). If a plaintiff seeks to bring a forbidden de facto appeal, the plaintiff "may not seek to litigate an issue that is 'inextricably intertwined' with the state court judicial decision from which the forbidden de facto appeal is brought." *Bell v. City of Boise*, 709 F.3d 890, 897 (9th Cir. 2013) (quoting *Noel v. Hall*, 341 F.3d 1148, 1158 (9th Cir. 2003)). The term "inextricably intertwined" has "a narrow and specialized meaning in the *Rooker-Feldman* doctrine." *Kougasian*, 359 F.3d at 1142. The Ninth Circuit has clarified that the "inextricably intertwined" language "is not a test to determine whether a claim is a de facto appeal, but is rather a second and distinct step in the *Rooker-Feldman* analysis" following a determination that the action constitutes a de facto appeal. *Bell*, 709 F.3d at 897. "The inextricably intertwined test ...

allows courts to dismiss claims closely related to claims that are themselves barred under *Rooker-Feldman*" even if the claim was not actually decided by the state court. *Kougasian*, 359 F.3d at 1142. Issues are inextricably intertwined with state court judgments if a district court cannot rule in favor of the plaintiff "without holding that the state court had erred." *See Napolitano*, 252 F.3d at 1030.

Rooker–Feldman applies even when the challenge to the state court's actions involves federal constitutional issues. *Feldman*, 460 U.S. at 484-86. "The doctrine does not, however, prohibit a plaintiff from presenting a generally applicable legal challenge to a state statute in federal court, even if that statute has previously been applied against him in state court litigation." *Mothershed v. Justices of Supreme Ct.*, 410 F.3d 602, 606 (9th Cir. 2005). "Although a federal district court does not have jurisdiction to review constitutional challenges to a state court's decision, the court does have jurisdiction over a general constitutional challenge that does not require review of a final state court decision in a particular case." *Dubinka v. Judges of Superior Ct. of State of Cal. for Cnty. of L.A.*, 23 F.3d 218, 221 (9th Cir. 1994); *Feldman*, 460 U.S. at 486 (state courts . have jurisdiction "over general challenges to state [agency] rules . . . which do not require review of a final state-court judgment in a particular case").

Here, Plaintiff's claim for declaratory relief constitutes a forbidden *de facto* appeal. Plaintiff argues that he does not seek to reverse or reopen the state court litigations. (Opp. at 12). Yet Plaintiff's assertion is belied by the relief he seeks in the Complaint. To determine whether an action functions as a forbidden *de facto* appeal of a state-court judgment, courts "pay close attention to the *relief*

sought by the federal-court plaintiff." *Cooper*, 704 F.3d at 777–78 (quoting *Bianchi v. Rylaarsdam*, 334 F.3d 895, 900 (9th Cir. 2003) (emphasis in original)). In the Complaint, Plaintiff requests "[a] declaration that CCP § 391(b)(2), (3) do not apply to Plaintiff in connection with SC121303, 19SMCV01039 and 19SMCV01711." (Compl. ¶¶ 52, 58, Prayer for Relief). The LASC already held in the Vexatious Litigant Order that Plaintiff is a vexatious litigant under § 391. Plaintiff thus asks this Court to reverse that order by way of declaratory relief. Under *Rooker-Feldman*, this Court lacks jurisdiction to consider that request. *Accord, e.g.*, *Earls v. Cantil-Sakauye*, 745 F. App'x 696, 697 (9th Cir. 2018) ("The district court properly dismissed Earls's claims regarding past or future enforcement of the prefiling order, and her inclusion on the Judicial Council's vexatious litigant list, because such claims constitute a forbidden 'de facto appeal' of prior state court judgments or are 'inextricably intertwined' with those judgments."); *Bashkin v. Hickman*, 411 F. App'x 998, 999 (9th Cir. 2011) (holding that "the *Rooker-Feldman* doctrine barred plaintiff's action to the extent that he challenged the vexatious litigant order and any other state court orders and judgments, because the action is a 'forbidden de facto appeal' of state court judgments, and raises constitutional claims that are 'inextricably intertwined' with those prior state court judgments"); *Bernier v. Travelers Prop. Casualty Ins. Co.*, No. 8:19-CV-00657-PAFFM, 2019 WL 4865017, at *5 (C.D. Cal. Sept. 5, 2019). Therefore, the Court grants the Chief Justice's motion to dismiss Counts 9 and 10.[4]

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[4] That Counts 9 and 10 are technically pleaded against only RFF and the Chief Justice— not RFF—brought this motion alone does not preclude dismissing these claims. *See Eicherly v. Moss*, No.

Plaintiff's remaining claims, however, involve general constitutional challenges to California's Vexatious Litigant Statute. For example, Plaintiff claims that the Vexatious Litigant Statute violates the Equal Protection Clause and Due Process Clause because a party has no right to appeal an erroneous ruling. (Compl. ¶¶ 17, 18). The *Rooker-Feldman* doctrine does not apply to these claims because they do not require review of a judicial decision in a particular case. *See Feldman*, 460 U.S. at 486.

B. Article III Standing

Article III of the United States Constitution limits the jurisdiction of federal courts to "Cases" and "Controversies." U.S. Const. art. III, § 2, cl. 1. The doctrine of standing is "an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). To satisfy the "irreducible constitutional minimum of standing," a plaintiff bears the burden of establishing three elements: (1) the plaintiff suffered an injury in fact; (2) the injury is fairly traceable to the defendant's challenged conduct; and (3) the injury is likely redressable by a court's favorable decision. *Id.* at 561-62; *see also Davidson v. Kimberly-Clark Corp.*, 889 F.3d 956, 967 (9th Cir. 2018). The three elements are not mere pleading requirements, but rather an indispensable part of the plaintiff's case. *Lujan*, 504 U.S. at 561. "A plaintiff must demonstrate constitutional standing separately for each form of relief requested." *Davidson*, 889 F.3d at 967. "Thus, a plaintiff who has standing to seek damages for a past

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SACV 16-02233-CJC(KESx), 2018 WL 813361, at *3 (C.D. Cal. Feb. 1, 2018); *Riding v. Cach LLC*, 992 F. Supp. 2d 987, 992 (C.D. Cal. 2014) ("A challenge under the Rooker–Feldman doctrine is a challenge for lack of subject-matter jurisdiction and may be raised at any time by either party or sua sponte by the court.").

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).

"In the particular context of injunctive and declaratory relief, a 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. State of California*, 304 F.3d 843, 852 (9th Cir. 2002) (quoting *Lujan*, 504 U.S. at 560; *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983)). To satisfy plaintiff's burden, moreover, the "threatened injury must be certainly impending to constitute injury in fact, and ... allegations of possible future injury are not sufficient." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013) (citation and internal quotation marks omitted). And where the plaintiff seeks only declaratory relief, such as here, "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." *San Diego Cnty. Gun Rights Comm. v. Reno*, 98 F.3d 1121, 1126 (9th Cir. 1996).

The Ninth Circuit has held that, under the doctrines of standing and *Rooker-Feldman*, "a constitutional challenge is 'inextricably intertwined' with a request to set aside a state court judgment if the plaintiff would lack standing to bring the constitutional challenge on its own." *See Bianchi*, 334 F.3d at 900 n.3 (citing *Facio v. Jones*, 929 F.2d 541, 543 (10th Cir. 1991)). In both *Bianchi* and the Tenth Circuit's decision in *Facio*—just as here—the plaintiffs asserted general constitutional challenges to state rules underlying the state court judgment they sought to overturn. The Ninth and Tenth Circuits rejected those arguments, noting that if the plaintiff

cannot "set aside the state court judgment against him [pursuant to *Rooker-Feldman*], he would lack standing to assert his constitutional claim. This is so, because unless the state court judgment is overturned, [plaintiff's] only interest in the state's procedures is prospective and hypothetical in nature." *Id.* (quoting *Facio*, 929 F.2d at 543 (internal quotation marks and brackets omitted)).

Likewise, a court in this district recently arrived at the same result in a suit brought by Plaintiff. In *Kleidman v. Willhite*, No. 2:20-cv-02365-PSG-JDE, 2020 WL 5823278 (C.D. Cal. Aug. 20, 2020), Plaintiff sued several California courts and judicial officers seeking declaratory relief to reopen state court judgments and declare certain state court rules unconstitutional. The defendants moved to dismiss, arguing that the court lacked subject matter jurisdiction under *Rooker-Feldman* and Plaintiff lacked Article III Standing. The magistrate judge agreed that Plaintiff's attempt to overturn final state-court judgments constituted a forbidden *de facto* appeal under *Rooker-Feldman*. *Id.* at *8. In his Report and Recommendation, the judge found that *Rooker-Feldman* did not, however, bar consideration of Plaintiff's general constitutional challenges to state court rules.[5] *Id.* The judge then analyzed whether Plaintiff had standing to raise those constitutional challenges given that *Rooker-Feldman* precluded the court from overturning the underlying decisions. The judge found that Plaintiff lacked standing because he could not demonstrate that a potentially favorable determination would likely redress any injury in fact. *Id.* at *9. Relying on *Facio*, the judge reasoned that the state court

[5] Plaintiff challenged California Rule of Court 8.1115, Ninth Circuit Rule 36-3, and what he referred to as the "Great Public Important Rule." *Id.*

judgments were final, and even if the California rules were later declared unconstitutional, that holding could not impact the state court judgments under *Rooker-Feldman*, which was ultimately what Plaintiff desired. *Id.* at *11 (citing *Facio*, 929 F.2d at 541). The judge concluded that Plaintiff lacked standing to assert his general constitutional challenges because "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" those rules. *Id.* The district court adopted the magistrate judge's report and recommendation, and the Ninth Circuit affirmed. *See Kleidman v. Willhite*, No. 2:20-cv-02365-PSG-JDE, 2020 WL 5824163 (C.D. Cal. Sept. 29, 2020) (adopting Report and Recommendation); *Kleidman v. California Ct. of Appeal for Second App. Dist.*, No. 20-56256, 2022 WL 1153932 (9th Cir. Apr. 19, 2022) ("The district court properly dismissed for lack of standing [Plaintiff'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 [Plaintiff] failed to allege facts sufficient to establish an injury in fact as required for Article III standing."); *see also, e.g.*, *Lopez v. Trendacosta*, No. LA CV 14-05406 JAK, 2014 WL 6883945, at *10 (C.D. Cal. Dec. 4, 2014) (finding that plaintiffs cannot establish an injury-in-fact for standing because the court lacked jurisdiction to order the relief sought in accordance with *Rooker-Feldman*).

Here, too, because *Rooker-Feldman* precludes Plaintiff from seeking a declaratory judgment invalidating the Vexatious Litigant Order, Plaintiff may not "seek a declaratory judgment invalidating the state court rule on which the state court decision relied, for [P]laintiff's 'request for declaratory relief [is] inextri-

cably intertwined with his request to vacate and to set aside the state court judgment." *See Noel*, 341 F.3d at 1158 (quoting *Facio*, 929 F.2d at 543 (internal alterations omitted)). Without being able to reverse the Vexatious Litigant Order, Plaintiff's situation is just like anyone else who may seek to challenge the Vexatious Litigant Statute. Plaintiff thus has failed to allege an imminent threat of future harm to satisfy the injury-in-fact requirement for standing under Article III. Accordingly, Plaintiff lacks Article III standing to seek a declaratory judgment declaring the Vexatious Litigant Statute unconstitutional.[6]

IV. CONCLUSION

For the foregoing reasons, the Court GRANTS the Chief Justice's motion to dismiss. The entirety of this action is dismissed without prejudice to Plaintiff raising them in a court with competent jurisdiction.[7]

IT IS SO ORDERED.

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[6] The Court notes that even if Plaintiff had standing to bring his constitutional challenge to the Vexatious Litigant Statute, the Ninth Circuit's decision in *Wolfe v. George*, 486 F.3d 1120 (9th Cir. 2007) likely forecloses Plaintiff's argument. In *Wolfe*, the Ninth Circuit noted that "[a] long line of California decisions upholds [the vexatious litigant procedure] against constitutional challenges." *Id.* at 1125. The Ninth Circuit held, *inter alia*, that the Vexatious Litigant Statute "is not unconstitutionally vague, because it gives fair notice to those who might violate the statute." *Id.* (internal citations and alterations omitted). Under *Wolfe*, the Vexatious Litigant Statute does not violate the Due Process Clause or the Equal Protection Clause. *Id.* at 1126

[7] Accordingly, the Court's order to show cause (ECF No. 29) is discharged as moot.

Appendix H
US Court of Appeals for the Ninth Circuit

No. 23-55610

Peter Kleidman,
Plaintiff-Appellant,
v.
RFF Family Partnership, LP, et al.,
Defendants-Appellees.

Filed December 6, 2023

Portion of Appellant's Opening Brief

Before Hons. S.R. Thomas, Rawlinson, and Collins, Circuit Judges

ISSUES FOR REVIEW

This action pertains to California's Vexatious Litigant Statutory Scheme ("VLSS"), California Code of Civil Procedure Part 2, Title 3A, §391 - §391.8.[1] Kleidman asserted constitutional challenges to the VLSS. Kleidman also asserted pendant state-law claims to the effect that §391(b)(2), (3) do not apply to him.

Does *Rooker-Feldman* bar Kleidman's constitutional challenges to the VLSS?

Does Kleidman have Article III standing to prosecute his constitutional challenges to the VLSS?

Are Kleidman's constitutional challenges to the VLSS barred by judicial immunity?

[1] Unlabeled statutory references are to the California Code of Civil Procedure.

Are Kleidman's constitutional challenges to the VLSS barred by the Eleventh Amendment?

Are the pendant state-law claims barred by the *Rooker-Feldman*?

Does Kleidman have standing to assert the state-law claims?

Are the pendant state-law claims barred by judicial immunity or the Eleventh Amendment?

Appendix I
US Court of Appeals for the Ninth Circuit

No. 23-55610

Peter Kleidman,
Plaintiff-Appellant,
v.
RFF Family Partnership, LP, et al.,
Defendants-Appellees.

Filed February 5, 2024

Portion of Appellees' Brief

Before Hons. S.R. Thomas, Rawlinson, and Collins, Circuit Judges

STATEMENT OF ISSUES PRESENTED

A. Did the district court err in dismissing Kleidman's Complaint pursuant to the *Rooker-Feldman* doctrine?
B. Did the district court err in finding that Kleidman failed to establish Article III standing to sue the Chief Justice for injunctive and declaratory relief?
C. Is Kleidman's Complaint against the Chief Justice barred by the Eleventh Amendment?
D. Is Kleidman's Complaint against the Chief Justice barred by absolute judicial immunity?

Appendix J
US Court of Appeals for the Ninth Circuit

No. 23-55610

Peter Kleidman,
Plaintiff-Appellant,
v.
RFF Family Partnership, LP, et al.,
Defendants-Appellees.

Filed September 11, 2024

Portion of Appellant's Petition for Rehearing

Before Hons. S.R. Thomas, Rawlinson, and Collins, Circuit Judges

§A. Preliminary statement

Question 3 involves a question apparently of first impression. If a panel decides an issue on appeal which was not presented by the parties in their statement of issues (under FRAP 28), and was also not briefed by the parties, is that decision void for lack of jurisdiction and/or lack of due process?

§B. Procedural background

As mentioned above, in the instant action Kleidman sued RFF and the California Chief Justice. The complaint asserted (inter alia) certain constitutional challenges to California's Vexatious Litigant Statutory Scheme ("VLSS"). Cal. Code Civ. Proc. §§ 391-§391.8.

RFF did not appear and was defaulted.

The California Chief Justice moved to dismiss based on *Rooker-Feldman*, the Eleventh Amendment,

judicial immunity and lack of Article III standing.

The District Court dismissed the entire action (even as to RFF), based on *Rooker-Feldman* and lack of Article III standing.. DC Dkt. #39.

In Kleidman's Opening Brief ("OB"), the Statement of Issues under FRAP 28(a)(5) were limited to these four issues: *Rooker-Feldman*, Eleventh Amendment, judicial immunity, and Article III standing. OB, 10-11. Kleidman's summary of arguments (FRAP 28(a)(7)) and arguments (FRAP 28(a)(8)) were also limited to these four issues. OB, at 17-23, 23-48.

The Appellee's Brief ("AB") (CA9 Dkt. #15) likewise raised only these four issues in its statement of issues, summary of arguments and argument under FRAP 28(b). AB, at 6, 10-11; 11-24 (using CM/ECF top-of-page header pagination).

The Panel Decision ruled against Kleidman's constitutional challenges "because Kleidman failed to allege facts sufficient to show that California's vexatious litigant statute violated his constitutional rights." Panel Decision, at p. 2.

§C. Discussion

The Panel Decision ruled against Kleidman because Kleidman "failed to allege [sufficient] facts" in his challenge to the VLSS, and cited *Wolfe v. George*, 486 F.3d 1120, 1125-1127 (9th Cir. 2007). This portion of *Wolfe* addresses the *merits*, because it holds that the VLSS is indeed *constitutional* (at least with respect to the constitutional challenges brought by plaintiff Wolfe). Thus this portion of the Panel Decision *was not based on the four issues raised by the parties* (namely, (*Rooker-Feldman*, Eleventh Amendment, judicial immunity, and Article III standing).

That the Panel Decision reached beyond the scope

of what the parties raised clearly implicates due process concerns, and perhaps even jurisdictional concerns.

"'[I]n preparing briefs and arguments, an appellee is entitled to rely on the content of an appellant's brief for the scope of the issues appealed.'" *People of the Territory of Guam v. Reyes*, 879 F.2d 646, 648 (9th Cir. 1989). By symmetry, an appellant should also be entitled to rely on the contents of an appellee's brief for the scope of issues to be addressed in the reply brief. And by natural extension, the parties collectively should be entitled to rely on their own briefing for the scope of issues to be adjudicated by the panel adjudicating the appeal. Thus when the panel goes beyond what was raised by the parties, due process rights are likely violated because the parties do not have an opportunity to respond to the points made by the panel, *sua sponte*, after the briefing was complete. Moreover here, there was no oral argument so Kleidman had absolutely no opportunity to address the Panel Decision's *sua sponte* ruling.

The Panel Decision, by reaching beyond the scope of what the parties briefed, is at odds with principles that this Court has espoused.

> Courts generally do not decide issues not raised by the parties. [Otherwise, the parties] ... would be deprived of a fair opportunity to respond, and the courts would be deprived of the benefit of briefing, so generally courts limit themselves to resolving the issues the parties put before them, as opposed to the issues they spot outside what the parties elect to raise.

Galvan v. Alaska Dept. of Corrections, 397 F.3d 1198, 1204 (9th Cir. 2005) (footnote omitted), accord *US v. Mendez*, 467 F.3d 1162, 1174 (9th Cir. 2006) ("If the

court reaches an issue not briefed by the concerned party, the opposing party is deprived of the opportunity to respond and the court is deprived of the benefit of briefing")

Based on the foregoing, it is requested that the Court rehear the matter en banc, to decide whether the Panel Decision, insofar as it reaches beyond the scope of the issues briefed by the parties, is void for lack of jurisdiction and/or lack of due process.

Appendix K

US District Court Central District of California

No. 2:22-cv-03263-CJC (JDE)

Peter Kleidman,
Plaintiff,
v.
Audrey B. Collins, Justice, et al.
Defendants.

Filed January 9, 2023

ORDER GRANTING PLAINTIFF'S MOTION TO AMEND OR ALTER JUDGMENT [DKT. 34] AND DENYING MOTION TO RECONSIDER JUDGMENT [DKT. 35]

Before Hon Cormac J. Carney, District Judge
Hon. John D. Early, Magistrate Judge

On December 8, 2023, the Court issued an Order Accepting a Report and Recommendation of United States Magistrate Judge (Dkt. 31) and entered a Judgment of Dismissal (Dkt. 32, "Judgment"). On January 3, 2023, Plaintiff filed a Motion to Alter Judgment (Dkt. 34, "Motion to Alter") and on January 5, 2023, Plaintiff filed a Motion for Reconsideration of Judgment (Dkt. 35, "Motion to Reconsider"), each of which argues that the Judgment incorrectly dismissed the action with prejudice. Plaintiff is correct. The Court will issue an Amended Judgment directing that the dismissal is without prejudice.

For the foregoing reasons, Plaintiff's Motion to Alter (Dkt. 34) is GRANTED and an Amended Judgment shall issue dismissing the action the Motion to Reconsider, that motion (Dkt. 35) is DENIED as moot.

IT IS SO ORDERED.

Appendix L

US District Court Central District of California

No. 2:22-cv-03263-CJC (JDE)

Peter Kleidman,
Plaintiff,
v.
Audrey B. Collins, Justice, et al.
Defendants.

Filed December 8, 2022

ORDER ACCEPTING REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Before Hon Cormac J. Carney, District Judge
Hon. John D. Early, Magistrate Judge

Pursuant to 28 U.S.C. § 636, the Court has reviewed the records on file, including the Complaint (Dkt. 1) filed by Plaintiff Peter Kleidman ("Plaintiff"), Plaintiff's operative First Amended Complaint (Dkt. 13, "FAC"), the Motion to Dismiss the FAC (Dkt. 15, "Motion") filed by the named defendants ("Defendants"), Defendants' Supplement to the Motion (Dkt. 18), Plaintiff's Opposition to the Motion and Request for Judicial Notice (Dkt. 19, 21), the Report and Recommendation of the assigned Magistrate Judge (Dkt. 23, "Report"), and the Objections and Amended Objections to the Report and additional Requests for Judicial Notice filed by Plaintiff (Dkt. 27-30).

The Court has engaged in a de novo review of those portions of the Report to which objections have been made. The Court accepts the findings and recommendation of the magistrate judge.

Therefore, IT IS HEREBY ORDERED that:

1. The Motion (Dkt. 15) is GRANTED as to all claims against all Defendants without leave to amend;

2. Judgment shall be entered dismissing this action accordingly.

Appendix M

US District Court Central District of California

No. 2:22-cv-03263-CJC (JDE)

Peter Kleidman,
Plaintiff,
v.
Audrey B. Collins, Justice, et al.
Defendants.

Filed October 24, 2022

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Before Hon Cormac J. Carney, District Judge
Hon. John D. Early, Magistrate Judge

This Report and Recommendation is submitted to the Honorable Cormac J. Carney, 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 May 12, 2022, Plaintiff Peter Kleidman ("Plaintiff"), proceeding pro se, filed a complaint against Justices Audrey B. Collins, Thomas L. Willhite, Jr., and Brian S. Currey ("Defendants"), alleging Defendants violated his due process rights during the course of appellate proceedings in the California Court of Appeal. Dkt. 1 ("Complaint"). This is the second federal action Plaintiff has filed in this Court regarding his prior state court action, Kleidman

v. RFF Family Partnership, LP, Case No. SC121303 ("Underlying Action"). See Kleidman v. The Hon. Thomas L. Willhite, Jr., et al., Case No. 2:20-cv-02365-PSG-JDE (C.D. Cal.) ("Prior Action"). Judgment was entered against Plaintiff in the Prior Action on September 29, 2020. Prior Action, Dkt. 34. As in the Prior Action, this action seeks among other things to challenge and set aside a decision entered against Plaintiff in state court.

On August 8, 2022, Defendants filed a motion to dismiss the Complaint pursuant to Fed. R. Civ. P. ("Rule") 12(b)(1) and (6). Dkt. 8. Defendants also filed a Request for Judicial Notice in support of the Motion. Dkt. 9. Plaintiff did not file an opposition to the Motion or request an extension of time within which to do so. On August 26, 2022, the undersigned magistrate judge issued a Report and Recommendation, recommending that the motion to dismiss be granted on the merits and judgment be entered dismissing this action. Dkt. 12 ("First Report").

Three days later, on August 29, 2022, Plaintiff filed the operative First Amended Complaint, reasserting his due process claim and adding claims seeking to declare multiple unfavorable legal precedents, laws, and rules unconstitutional. Dkt. 13 ("FAC"). On the same date, the undersigned found the FAC was timely under Rule 15(a)(1)(B), denied the motion to dismiss as moot, and withdrew the First Report. Dkt. 14.

On September 12, 2022, Defendants filed a Motion to Dismiss the FAC pursuant to Rule 12(b)(1) and (6). Dkt. 15 ("Motion"). On September 19, 2022, the parties filed a stipulation to continue the hearing on the Motion. Dkt. 16. On September 20, 2022, the undersigned granted the parties' stipulation to continue the hearing on the Motion and ordered

Defendants to file a supplemental brief clarifying their contentions in the Motion. Dkt. 17. On September 23, 2022, Defendants filed a Supplemental Brief. Dkt. 18. On October 6, 2022, Plaintiff filed an Opposition to the Motion. Dkt. 19 ("Opp."). Although provided an opportunity to do so, Defendants did not file a Reply in support of their Motion. On October 20, 2022, Plaintiff requested judicial notice of the operative complaint in the Prior Action. Dkt. 21.

The undersigned Magistrate Judge finds this matter appropriate for decision without oral argument and vacates the hearing date on the Motion set for October 27, 2022. See C.D. Local Civil Rule 7-15. For the reasons discussed hereafter, the undersigned recommends that the District Court grant Defendants' Motion and dismiss this action.

II. SUMMARY OF PLAINTIFF'S ALLEGATIONS

Plaintiff alleges that on September 19, 2019, the superior court in the Underlying Action awarded RFF Family Partnership, LP certain attorney's fees against him ("Fee Order"). Plaintiff appealed the Fee Order to the California Court of Appeal, Case No. B302449. Defendants presided over this appeal and on April 14, 2022, issued an opinion, affirming the Fee Order. FAC ¶ 5. Petitioner's petition for review was denied. Id. ¶¶ 7-8.

Plaintiff challenges the appellate court's decision, arguing Defendants violated his due process rights during the appellate proceedings by: (1) making new arguments and raising new issues for the first time in the opinion without giving Plaintiff an opportunity to be heard; (2) ignoring "numerous arguments" made by Plaintiff; (3) ruling "according to their own personal sense of justice and their own personal sensitivities, without sincerely attempting to apply the law"; and (4) making "factual findings with secret evidence that

they did not disclose to" Plaintiff. FAC ¶¶ 10-13, 15. He further alleges that Defendants were biased against him because two of them were named in the Prior Action and they "wanted to exact retribution against" him. Id. ¶ 14.

Plaintiff seeks declaratory and injunctive relief. He seeks an injunction "commanding" Defendants to "reopen the appellate proceedings in B302449, so that [Plaintiff] may have a fair trial in accordance with due process" and "prohibiting" Defendants from "enforcing the judgment in B302449." He also seeks an order declaring: "numerous laws" unconstitutional; the Eleventh Amendment "must bow to the Fourteenth Amendment"; Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280 (2005) overturned Bianchi v. Rylaarsdam, 334 F.3d 895 (9th Cir. 2003); the Ninth Circuit Rule of Interpanel Accord violates due process and equal protection; C.D. Cal. Local Civil Rule 7-12 violates Rule 83 and is unconstitutionally vague; and Ninth Circuit Rule 36-3 violates equal protection and Fed. R. App. P. 47. FAC at 15-16.

III. STANDARD OF REVIEW

Rule 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). 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 Rule 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 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)). "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. REQUESTS FOR JUDICIAL NOTICE

Defendants filed a request for judicial notice in support of their motion to dismiss the Complaint, which they cite in the Motion. Defendants request judicial notice of the Report and Recommendation issued in the Prior Action and the April 14, 2022 appellate court decision at issue in this action. Plaintiff does not object; instead, he requests that the Court take judicial notice of the operative Second Amended Complaint in the Prior Action.

Pursuant to Rule 201 of the Federal Rules of Evidence, the Court finds these matters properly subject to judicial notice and grants the requests for judicial notice. 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). The Court takes judicial notice of pleadings and decisions filed in Plaintiff's state and federal actions.

V. DISCUSSION

Defendants raise several arguments as to why the Court should dismiss this action. First, Defendants argue the Court lacks subject matter jurisdiction under the Rooker-Feldman doctrine. Motion at 8-10. Second, Defendants argue that the FAC fails to allege sufficient facts to state a cognizable legal theory

because the FAC is barred by the Eleventh Amendment and absolute judicial immunity. Id. at 10-15. Third, Defendants claim Plaintiff lacks Article III standing. Id. at 15-16. Finally, Defendants contend this action is "an improper attempt to relitigate the exact same issues brought before this court" in the Prior Action, rendering it subject to the principles of res judicata and issue preclusion. Id. at 6 & n.7.

A. 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 Rsrv., 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. Ct. 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., 544 U.S. at 284. 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, 334 F.3d at 900 (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 [his] 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; Benavidez v. Cty. of San Diego, 993 F.3d 1134, 1142 (9th Cir. 2021) (explaining that the Rooker-Feldman doctrine applies "'even where the challenge to the state court decision involves federal constitutional issues,' including section 1983 claims" (citation omitted)). Further, although Rooker-Feldman "applies only when the federal plaintiff both asserts as

[his] injury legal error or errors by the state court and seeks as [his] 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' decision 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 again seeks an order from this Court reversing or reopening state court decisions that are final, which is barred by the Rooker-Feldman doctrine. Motion at 10. Based upon the allegations in the FAC and the appellate court decision submitted by Defendants in their request for judicial notice, the Court agrees that Plaintiff's due process claim seeking to invalidate and reopen the appellate court's decision is barred by the Rooker-Feldman doctrine.

Despite Plaintiff's contention that he is not challenging the judgment itself but only the manner in which it was rendered (FAC ¶ 18), Plaintiff requests

an injunction "commanding" Defendants to "reopen the appellate proceedings" and "prohibiting" Defendants from "enforcing the judgment in B302449." As in the Prior Action, the FAC 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. Plaintiff's argument that he is invoking "original," not appellate, jurisdiction does not alter this result. See Opp. at 7. "Simply put, 'the United States District Court, as a court of original jurisdiction, has no authority to review the final determinations of a state court in judicial proceedings.'" Bianchi, 334 F.3d at 898 (citation omitted). Plaintiff's due process claim seeking to reopen and set aside the decision in the California Court of Appeal is barred by the Rooker-Feldman doctrine.

In an attempt to avoid the Rooker-Feldman bar, Plaintiff avers that unfavorable Ninth Circuit and Supreme Court decisions regarding Rooker-Feldman are unconstitutional "insofar as they impinge upon or impair a party's right to sue to obtain a fair trial when it had been derived of a fair trial." FAC ¶¶ 24-43, 46. While Plaintiff's general constitutional challenges in his FAC may not, at least facially, be barred by the Rooker-Feldman doctrine, they suffer from other defects. As to his challenges to the decisions cited above, these cases do not violate "a party's right to sue to obtain a fair trial." To the contrary, as noted, Congress, in 28 U.S.C. § 1257, vested the United States Supreme Court, not the lower federal courts, with jurisdiction over appeals from state court judgments. Lance, 546 U.S. at 463. Thus, Plaintiff remains free to seek review in the Supreme Court; indeed, he has sought and been granted an extension of time to file a petition for writ of certiorari in the

Supreme Court. See Kleidman v. RFF Family Partnership, LP, Case No. 22A277 (U.S.).

Second, as this Court explained in the Prior Action, a published decision of the Ninth Circuit (or Supreme Court) "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)); see also Hart v. Massanari, 266 F.3d 1155, 1171 (9th Cir. 2001); Yong v. INS, 208 F.3d 1116, 1119 n.2 (9th Cir. 2000). A district court cannot overrule the decision of a higher court. See Hart, 266 F.3d at 1171. Because these decisions have not been overruled by the Supreme Court, this Court is bound by them. Id. see also United States v. Langley, 17 F.4th 1273, 1275 (9th Cir. 2021) (per curiam).[1]

Accordingly, Plaintiff's due process challenge to the state appellate court decision, seeking to reopen that case, is barred by the Rooker-Feldman doctrine. See Bianchi, 334 F.3d at 901 ("If the injury alleged resulted from the state court judgment itself, Rooker-Feldman directs that the lower federal courts lack jurisdiction." (citation omitted)); Black v. Haselton, 663 F. App'x 573, 575 (9th Cir. 2016) (action against appellate court judges barred by Rooker-Feldman as a forbidden de facto appeal of court of appeals decision).

B. Article III Standing

Article III of the United States Constitution limits the jurisdiction of federal courts to actual cases and

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[1] The Court similarly finds Plaintiff's constitutional challenges to the doctrines of absolute judicial immunity, Eleventh Amendment immunity, and the Rule of Interpanel Accord are meritless. The Court is bound by the Ninth Circuit's and Supreme Court's decisions interpreting and applying these doctrines.

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) there must be a causal connection between the injury and 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) (citations 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)), 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. See 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 Plaintiff lacks Article III standing here, arguing there is no direct, "real and immediate" injury upon which Plaintiff brings this action and as such, no legal controversy between Plaintiff and Defendants. Motion at 15. As to the general constitutional challenges, the Court agrees.

As to Ninth Circuit Rule 36-3, Plaintiff raised an identical claim in the Prior Action (Prior Action, Dkt. 12 ¶¶ 170-71) and the Court found he lacked standing. Id., Dkt. 28 at 24; Dkt. 33. That decision was affirmed by the Ninth Circuit. Id., Dkt. 42 at 3. Plaintiff has

provided no basis for reconsideration of that issue. The renewed challenge is barred by the doctrine of res judicata. See Hawkins v. Risley, 984 F.2d 321, 324-25 (9th Cir. 1993) (per curiam) (explaining issue preclusion bars "relitigation of all '"issues of fact or law that were actually litigated and necessarily decided" in the prior proceeding' against the party who seeks to relitigate the issues" (citation omitted)).

As to Plaintiff's challenges to C.D. Local Civil Rule 7-12 and 42 U.S.C. § 1983, the SAC does not allege facts sufficient to establish an injury in fact that is fairly traceable to the challenged conduct of Defendants as required for Article III standing. With respect to C.D. Local Civil Rule 7-12, Plaintiff claims that a party has an "absolute right" to file an amended complaint within 21 days after a motion to dismiss under Rule 12(b) is filed pursuant to Rule 15(a)(1)(B) and C.D. Local Civil Rule 7-12 conflicts with that rule by "empowering the magistrate judge . . . to issue a report and recommendation to dismiss the case immediately after the plaintiff misses the deadline to file an opposition to a motion to dismiss." FAC ¶¶ 59-60. However, Defendants never applied this district court rule in the appellate proceedings; thus, any injury is not traceable to conduct by Defendants. In fact, this Local Rule was not even applied in this action. Despite Plaintiff's failure to file an opposition to Defendants' first motion to dismiss, the undersigned nevertheless considered the motion to dismiss on its merits; accepted the FAC for filing; and withdrew the First Report. First Report at 2; Dkt. 14. Plaintiff has suffered no injury in fact for purposes of Article III standing.

Similarly, Plaintiff lacks standing to raise his due process challenge to 42 U.S.C. § 1983. Plaintiff, anticipating that Defendants will contend his

requests for injunctive relief are barred by 42 U.S.C. § 1983, preemptively claims the bar on injunctive relief against a judicial officer is unconstitutional to the extent it impinges upon or impairs "a party's right to sue to obtain a fair trial when it has been deprived of a fair trial." FAC ¶¶ 45-46. Again, however, Defendants never applied the Section 1983 limitation to him in the underlying state court action. Rather, he seeks to avoid the Court's application of the bar here. Such a claim is not fairly traceable to conduct by Defendants, and, regardless, the Court lacks jurisdiction to consider such a claim. See Louisville & Nashville R.R. Co. v. Mottley, 211 U.S. 149, 152-54 (1908) (no federal question jurisdiction based on anticipated defense to a cause of action wherein the plaintiff asserted the defense was invalidated by some provision of the Constitution). In any event, Section 1983 does not violate Plaintiff's constitutional rights by limiting his right to sue judicial officers for acts they performed in their judicial capacity. Congress created a private right of action in Section 1983 and has the discretion to define and circumscribe that right. See Lansdale v. Hi-Health Supermart Corp., 314 F.3d 355, 357 (9th Cir. 2002). The amendment to Section 1983 at issue restored "400 years of common-law tradition" providing judicial immunity protections from "burdensome litigation creat[ing] a chilling effect that threatens judicial independence" and potentially "impair[s] the day-to-day decisions of the judiciary . . . ." Federal Courts Improvement Act of 1996, Pub. L. No. 104-317, S. Rep. No. 104-366, at 36-37 (1996). Judicial immunity serves the goal of judicial independence: "[s]ubjecting judges to liability for the grievances of litigants 'would destroy that independence without which no judiciary can be either respectable or useful.'" Lund v. Cowan, 5 F.4th

964, 971 (9th Cir. 2021) (quoting Bradley v. Fisher, 80 U.S. 335, 347 (1871)). As such, limiting injunctive relief to those narrow cases where a declaratory decree was violated or declaratory relief was unavailable cannot be deemed unconstitutional as it is not beyond Congress's authority or a violation of any right, particular where, as here, Plaintiff has appellate rights and can seek relief from the United States Supreme Court.

C. Immunity

Although dismissal is warranted for the reasons described above, the Court also agrees with Defendants that Plaintiff's challenge to the underlying appellate court decision is barred on immunity grounds. See Motion at 11-15.

1. The Eleventh Amendment

"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. (footnote omitted); Pennhurst State Sch. & Hosp., 465 U.S. at 100 ("This jurisdictional bar applies regardless of the nature of the relief sought."). 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).

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. Thus, Defendants are entitled to Eleventh Amendment immunity in their official capacity. Lund, 5 F.4th at 969-70 (Eleventh Amendment barred Section 1983 claim against superior court judge); Black, 663 F. App'x at 575- 76 (action against appellate court judges barred by Eleventh Amendment).

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 Pennhurst State Sch. & Hosp., 465 U.S. at 102-06; Coal. to Defend Affirmative Action v. Brown, 674 F.3d 1128, 1133-34 (9th Cir. 2012). While this narrow exception may be applicable to Plaintiff's general constitutional challenges, the Ex Parte Young exception is inapplicable to Plaintiff's claim seeking to reopen and set aside the state court decision, i.e., seeking retroactive relief. See Pennhurst State Sch. & Hosp., 465 U.S. at 105-06.

2. Judicial Immunity

Further, Plaintiff's claim seeking to reopen and set aside the state court decision is barred by absolute judicial immunity. Judges generally have absolute immunity from claims for damages for acts performed in their judicial capacity. Mireles v. Waco, 502 U.S. 9, 11 (1991) (per curiam); Miller v. Davis, 521 F.3d 1142, 1145 (9th Cir. 2008) ("It has long been established that judges are absolutely immune from liability for acts done by them in the exercise of their judicial functions." (internal quotation marks and citation omitted)). Judicial immunity bars suit even if a judge is accused of acting in bad faith, maliciously, corruptly, erroneously, or in excess of jurisdiction. Mireles, 502 U.S. at 11-13. Judicial immunity is overcome in only two sets of circumstances. "First, a judge is not immune from liability for nonjudicial actions, i.e., actions not taken in the judge's judicial capacity. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction." Id. at 11-12 (internal citations omitted).

The doctrine of judicial immunity "'has been extended beyond liability for damages, to include ... declaratory relief arising from' judicial acts performed in a judicial capacity." Hill v. Ponner, 2019 WL 142280, at *5 (E.D. Cal. Jan. 9, 2019) (alteration in original) (citation omitted). Again, while a narrow exception to judicial immunity may exist for prospective declaratory relief, Weldon v. Kapetan, 2018 WL 2127060, at *5 (E.D. Cal. May 9, 2018), this exception does not apply in instances where the plaintiff is challenging the lawfulness of a judge's conduct in a specific judicial action in state court. Hill, 2019 WL 142280, at *5 (finding request for declaratory relief regarding a judge's previous actions

is retrospective in nature, and thus, does not provide an exception to the general rule of judicial immunity).

Additionally, as Plaintiff acknowledges, the language of 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 Moore v. Urquhart, 899 F.3d 1094, 1104 (9th Cir. 2018). The phrase "declaratory relief" refers to the ability of a litigant to "appeal[] the judge's order." Payne v. Marsteiner, 2021 WL 765713, at *3 (C.D. Cal. Feb. 23, 2021) (quoting Weldon, 2018 WL 2127060, at *4), findings and recommendation accepted by 2021 WL 765714 (C.D. Cal. Feb. 25, 2021), affirmed by 2022 WL 256357 (9th Cir. 2022).

Here, Plaintiff challenges Defendants' actions as judicial officers presiding over his appeal of the Fee Order. Thus, Plaintiff's claim seeking to reopen the appellate case arises out of the exercise of Defendants' judicial functions. The FAC fails to set forth any factual allegations showing that Defendants acted in the "clear absence of all jurisdiction." See O'Neil v. City of Lake Oswego, 642 F.2d 367, 369-70 (9th Cir. 1981) (judicial action is taken in the "clear absence" of jurisdiction only when judicial officers "rule on matters belonging to categories which the law has expressly placed beyond their purview"). Further, although Plaintiff claims "[t]here is no right of appeal" (FAC ¶ 6), appellate remedies were available, both in the California Supreme Court and United States Supreme Court. Plaintiff did, in fact, seek review in the California Supreme Court. He also intends to file a petition for writ of certiorari in the United States Supreme Court and was recently granted an extension of time to file his petition. The fact that he has not been granted relief does not render

declaratory relief "unavailable." See, e.g., Dettamanti v. Staffel, 793 F. App'x 583, 583 (9th Cir. 2020) (barring injunctive relief against superior court judge on the basis of judicial immunity).

Accordingly, Plaintiff's due process claim challenging the underlying appellate court decision also is barred by the Eleventh Amendment, judicial immunity, and the plain language of Section 1983.

D. 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 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 FAC are not the result of inartful pleading. Rather, they are the result of legal flaws that cannot be remedied by amendment. Plaintiff was previously advised of these defects in the Prior Action and the First Report. The FAC suffers from the same legal defects. The Court finds that the deficiencies of the FAC cannot be cured by further amendment. As such, the Court recommends that the FAC be dismissed without further leave to amend. See

Black, 663 F. App'x at 576 (affirming denial of leave to amend because Rooker-Feldman doctrine and Eleventh Amendment immunity were fatal to plaintiff's claims); 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).

VI. RECOMMENDATION

IT IS THEREFORE RECOMMENDED that the District Court issue an Order: (1) approving and accepting this Report and Recommendation; (2) granting the parties' requests for judicial notice (Dkt. 9, 21); (3) granting Defendants' Motion to Dismiss (Dkt. 15) without leave to amend; and (4) directing that Judgment be entered dismissing this action without prejudice.