No. _____

In the Supreme Court of the United States

TERRI L. STILES AND AHMAD ALKAYALI,

Petitioners,

v.

JOHN CLIFFORD, STEVEN SMITH, DARREN RUDE AND DAVID R. CHAFFEE,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

APPENDIX TO PETITION FOR WRIT OF CERTIORARI VOL. 1 of 2

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

TERRI L. STILES et al., Plaintiffs, v. JOHN CLIFFORD et al., Defendants.	No. SA CV 22-00469-JGB (DFM) Report and Recommendation of United States Magistrate Judge

This Report and Recommendation is submitted to the Honorable Jesus G. Bernal, United States District Judge, under 28 U.S.C. § 636 and General Order 05-07 of the United States District Court for the Central District of California.

I. BACKGROUND

On March 24, 2022, Plaintiffs Terri L. Stiles and Ahmad Alkayali filed a pro se civil rights complaint under 42 U.S.C. § 1983. See Dkt. 1. Plaintiffs filed the operative First Amended Complaint on May 2, 2022. See Dkt. 14 ("FAC"). Plaintiffs alleged that a group of former business associates, lawyers, and a state-court judge conspired to deprive them of their majority ownership share in Neocell Corporation. See FAC ¶¶ 13-44. The FAC asserted claims for deprivation of property without due process of law against each Defendant. See id. ¶¶ 37-44.

Defendants Clifford, Rude, and Smith moved to dismiss the FAC on May 18, 2022. See Dkt. 15. Defendants Boukhari and Quadri moved to dismiss the FAC on May 20, 2022. See Dkt. 18. Defendant Chaffee moved to dismiss the FAC on May 23, 2022. See Dkt. 20. Across all three motions, Defendants argued that the Court lacked subject matter jurisdiction, that the FAC was barred by the applicable statute of limitations, and that the FAC failed to state a claim. See Dkt. 15-1 at 15-29; Dkt. 18 at 12-20; Dkt. 20 at 4-6, 8-11.[1]

On September 1, 2022, the Court issued a Report and Recommendation that all three motions to dismiss be granted. See Dkt. 44. The Court determined that it lacked subject matter jurisdiction over Plaintiff's claim under the Rooker-Feldman doctrine and that Plaintiffs' claim was untimely under the statute of limitations. See id. at 10-18. The Court concluded that leave to amend was not warranted because it was clear that the deficiencies in the FAC could not be cured by amendment. See id. at 18-19. Accordingly, the Court recommended that the case be dismissed with prejudice. See id. at 19. Plaintiffs obtained counsel and later filed objections to the Report and Recommendation on September 15, 2022. See Dkts. 45, 48.

On September 26, 2022, the District Judge accepted the Report and Recommendation and entered judgment dismissing the case with prejudice. See Dkts. 49-50. In the meantime, on September 12, 2022, Defendants Clifford, Rude, and Smith (collectively the "Sanctions Defendants") notified Plaintiffs' counsel of their intent to move for sanctions against Plaintiffs under Rule 11 of the Federal Rules of Civil Procedure based on Plaintiffs' filing of the FAC, and they served Plaintiffs' counsel with the draft motion. See Dkt. 51 at 2, 14. Plaintiffs did not withdraw the FAC, and on October 4, 2022,

[1] Page numbers refer to the CM/ECF pagination.

Defendants filed their Motion for Sanctions with the Court. See Dkt. 51 ("Sanctions Motion"). The Sanctions Defendants ask the Court to order Plaintiffs to pay them expenses and reasonable attorney's fees incurred as a result of Plaintiffs' claims, and to "impose any other sanctions against Plaintiffs that this Court determines will deter further such violations." Id. at 4.[2]

On October 11, 2022, Defendants Boukhari and Quadri (collectively the "Fees Defendants") moved for an award of attorney's fees under 42 U.S.C. § 1988. See Dkt. 53 ("Fees Motion"). The Fees Defendants request $73,990 in attorney's fees incurred from this action. See id. at 1, 19. Plaintiffs filed an opposition brief on October 24, 2022, see Dkt. 56 ("Opp'n"), and the Fees Defendants filed a reply brief on October 31, 2022, see Dkt. 60 ("Reply").

Both the Sanctions Motion and the Fees Motion have been referred to this Court by the District Judge for a recommendation. See Dkts. 52, 62. For the reasons set forth below, the Court recommends that both motions be DENIED.

II. LEGAL STANDARD

A. Rule 11 Sanctions

"[T]he central purpose of Rule 11 is to deter baseless filings in district court and . . . streamline the administration and procedure of the federal courts." Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 393 (1990). Rule 11 sanctions are appropriate where an attorney or unrepresented party files a pleading or other paper that is "frivolous, legally unreasonable, or without factual foundation, or is brought for an improper purpose." Estate of Blue v.

[2] On October 14, 2022, the Court issued an order taking this motion under submission staying further briefing. See Dkt. 55. Accordingly, no opposition or reply briefs were filed in connection with this motion.

County of Los Angeles, 120 F.3d 982, 985 (9th Cir. 1997) (citation omitted); Fed. R. Civ. P. 11(b). "Improper purpose" and "frivolousness" "will often overlap since evidence bearing on frivolousness or non-frivolousness will often be highly probative of purpose." Townsend v. Holman Consulting Corp., 929 F.2d 1358, 1362 (9th Cir. 1990) (en banc). For both, the standard is one of objective reasonableness. See id. A court may impose sanctions under Rule 11 even if it concludes that it lacks subject matter jurisdiction over the underlying action. See Retail Flooring Dealers of Am., Inc. v. Beaulieu of Am., LLC, 339 F.3d 1146, 1150 (9th Cir. 2003) (citing Cooter, 496 U.S. at 396).

If a court finds that Rule 11(b) has been violated, it may impose appropriate sanctions to deter similar conduct. See Fed. R. Civ. P. 11(c)(1). Where a violation has occurred, a court cannot decline to impose sanctions simply because the plaintiff is proceeding pro se. See Warren v. Guelker, 29 F.3d 1386, 1390 (9th Cir. 1994). However, a court "must take into account a plaintiff's pro se status when it determines whether the filing was reasonable." Id. (citations omitted). Ultimately, "Rule 11 is an extraordinary remedy, one to be exercised with extreme caution." Operating Eng'rs Pension Tr. v. A-C Co., 859 F.2d 1336, 1345 (9th Cir. 1988).

B. Attorney's Fees

42 U.S.C. § 1988(a) grants courts discretion to award a reasonable attorney's fee to a prevailing party in a § 1983 action. See Senn v. Smith, 35 F.4th 1223, 1224 (9th Cir. 2022). A plaintiff "prevails" when "actual relief on the merits of [the plaintiff's] claim materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff." Farrar v. Hobby, 506 U.S. 103, 111-12 (1992).

"Attorneys' fees in civil rights cases should only be awarded to a defendant in exceptional circumstances." Barry v. Fowler, 902 F.2d 770, 773 (9th Cir. 1990). "The mere fact that a defendant prevails does not

automatically support an award of fees." Patton v. Cnty. of Kings, 857 F.2d 1379, 1381 (9th Cir. 1988) (citation omitted). A prevailing civil rights defendant should be awarded attorney's fees "only where the action brought is found to be unreasonable, frivolous, meritless or vexatious." Christianburg Garment Co. v. Equal Emp. Opportunity Comm'n, 434 U.S. 412, 421 (1978) (citation omitted) (applying standard in motion for attorney's fees under Title VII); Hughes v. Rowe, 449 U.S. 4, 14-16 (1980) (applying Christianburg standard to attorney's fees motion under § 1988).

The standard for awarding attorney's fees to defendants must be applied in pro se cases "with attention to the plaintiff's ability to recognize the merits of his or her claims." Miller v. L.A. Cnty. Bd. Of Educ., 827 F.2d 617, 620 (9th Cir. 1987). A pro se plaintiff "cannot simply be assumed to have the same ability as a plaintiff represented by counsel to recognize the objective merit (or lack of merit) of a claim." Id. (citations omitted).

III. DISCUSSION

A. Motion for Sanctions

1. Timeliness of Defendants' Motion

Rule 11 includes a "safe harbor" provision, which requires that the moving party serve a motion for sanctions on the offending party 21 days before filing the motion with the court. See Fed. R. Civ. P. 11(c)(2). The purpose of the safe harbor provision is "to give the offending party the opportunity, within 21 days after service of the motion for sanctions, to withdraw the offending pleading" and thereby escape sanctions. Barber v. Miller, 146 F.3d 707, 710 (9th Cir. 1998). Courts must strictly enforce the safe harbor provision. See Holgate v. Baldwin, 425 F.3d 671, 678 (9th Cir. 2005). A motion served after the complaint has been dismissed does not afford the offending party an opportunity to withdraw the complaint and therefore does not comply with the safe harbor provision. See Barber, 146 F.3d at 710-11.

In addition, where the court disposes of the offending pleading before the 21-day safe harbor period ends, several circuits have concluded that a motion for sanctions cannot be filed. See Ridder v. City of Springfield, 109 F.3d 288, 295 (6th Cir. 1997) ("If the court disposes of the offending contention before the twenty-one day 'safe harbor' period expires, a motion for sanctions cannot be filed with or presented to the court."); In re Walker, 532 F.3d 1304, 1309 (11th Cir. 2008) ("[T]he service and filing of a motion for sanctions 'must occur prior to final judgment or judicial rejection of the offending' motion.'") (quoting Ridder, 109 F.3d at 297); In re Pennie & Edmonds LLP, 323 F.3d 86, 89 n.2 (2d Cir. 2003) (explaining that safe harbor provision is "interpreted to mean that Rule 11 motions must be served at least a full 21 days before the court concludes the case or resolves the offending contention").[3]

Here, the Sanctions Defendants served a copy of the Motion for Sanctions on Plaintiffs' counsel nearly two weeks after the Court issued its Report and Recommendation. See Sanctions Motion at 2. Before the safe harbor period expired, the District Judge adopted the Report and Recommendation and dismissed the FAC without leave to amend. See Dkts. 49, 50. The Sanctions Defendants then proceeded to file their motion the day after the safe harbor window would have expired.

The Sanctions Defendants argue that their motion is timely because they served the motion for sanctions 21 days before filing the motion with the Court and before the date that Plaintiffs filed objections to the Report and Recommendation. See Sanctions Motion at 6 n. 1. However, regardless of

[3] While the Ninth Circuit does not appear to have addressed this issue to date, it has signaled its approval of the Sixth Circuit's decision in Ridder. See Barber, 146 F.3d at 711 ("[W]e agree with the Sixth Circuit that 'a party cannot wait until after summary judgment to move for sanctions under Rule 11.'" (citing Ridder, 109 F.3d 288)).

Plaintiffs' decision to object to the Report and Recommendation, Plaintiffs were never afforded the entire 21-day period to withdraw the FAC before the Court entered judgment dismissing it. Moreover, the grounds for sanctions that the Sanctions Defendants assert in their motion were known to them by the time they filed their motion to dismiss the FAC in May 2022. See id. at 8 (arguing that FAC was legally doomed for reasons "set forth in detail in Defendants' Motion to Dismiss"). It is unclear why the Sanctions Defendants waited until after the Court had issued its Report and Recommendation to pursue their motion for sanctions; this delay does not appear to be reasonable. See Fed. R. Civ. P. 11 advisory committee's note to 1983 Amendment (instructing party seeking sanctions to "give notice to the court and the offending party promptly upon discovering a basis for doing so").

Given the Sanctions Defendants' apparent delay in filing this motion, and given that Plaintiffs did not receive the full 21 days under the safe harbor provision to decide whether to withdraw the FAC, the Court recommends denying this motion for failure to comply with the safe harbor provision. See Caruso v. Solorio, No. 15-0780, 2022 WL 1639951, at *6 (E.D. Cal. May 24, 2022), report and recommendation adopted, 2022 WL 2672300 (E.D. Cal. July 11, 2022) (explaining that court could recommend denying Rule 11 motion under safe harbor provision where court's judgment cut safe harbor period short); see also Airmotive Cap. Grp. v. Ultramare Singapore Pty, Ltd., No. 00-8281, 2002 WL 35644648, at *6 (C.D. Cal. Oct. 15, 2002) (denying Rule 11 motion where defendants knew grounds for sanctions at time of moving for summary judgment but waited until after court granted summary judgment motion to file Rule 11 motion).

2. Sanctions Are Not Warranted

Even if the Court were to consider the merits of the Motion for Sanctions, the Court recommends denying the motion.

Where a complaint is at issue, "a determination of improper purpose must be supported by a determination of frivolousness." Townsend, 929 F.2d at 1362. The Sanctions Defendants argue that Plaintiffs' FAC was factually frivolous because the "allegations underlying Plaintiffs' claim are demonstrably false, as evidenced by the indisputable facts contained in the record of the underlying litigation." Sanctions Motion at 7. The Sanctions Defendants do not elaborate on what these "indisputable facts" are. See id. It appears that records from the state court proceedings in Quadri v. Alkayali, No. 30-2008-113872 (Cal. Sup. Ct. compl. filed Oct. 27, 2008) (the "Neocell Action") undercut some of Plaintiffs' allegations in the FAC. For example, Plaintiffs alleged that Judge Chaffee "inexplicably" excused Defendant Boukhari from testifying at trial," but state court records indicate that Boukhari was receiving treatment for breast cancer during the trial. Compare FAC ¶ 29 with Quadri v. Alkayali, No. G054914, 2018 WL 1870732, at *2 (Cal. Ct. App. Apr. 19, 2018).

That said, the records from state court proceedings submitted in this case do not discredit all the FAC's allegations. For example, Plaintiffs allege that Defendants Clifford and Smith "misled Alkayali into believing they were acting with the authority of a court order," when they insisted that he was required to "leave the premises by virtue of the motion papers they held in their hands." FAC at ¶¶ 17, 20. As the Sanctions Defendants confirmed in their motion to dismiss, what exactly occurred between Alkayali, Smith, and Clifford on the date in question "was a disputed factual issue" in the Neocell Action. See Dkt. 15-1 at 7. Although the court in the Neocell Action issued a preliminary injunction against Alkayali, the preliminary injunction does not discuss what happened during the alleged incident. See id. 15-1 at 61-62.

In dismissing the FAC, the Court did not reach Defendants' argument that the FAC failed to state a claim under § 1983. See Dkt. 44 at 18 n.5. Even if

the FAC failed to state a claim, the Court did not reach the issue of whether Plaintiffs could rectify this in an amended complaint because the Court concluded that Plaintiffs could not allege facts to overcome the Rooker-Feldman doctrine or the statute of limitations. See id. at 18-19. Thus, while some of the allegations in the FAC conflict with state court records, the Court cannot conclude that the FAC was so factually baseless as to render it frivolous for purposes of awarding sanctions.

The Sanctions Defendants also argue that the FAC was legally frivolous because it "ignored well-established and controlling legal principles, such as the Rooker-Feldman doctrine and the statute of limitations" and "failed to state a claim for relief" under § 1983. Sanctions Motion at 8. The Rooker-Feldman doctrine and the statute of limitations are indeed established legal principles. However, considering Plaintiffs' pro se status and lack of specialized legal knowledge, the Court cannot conclude that Plaintiffs failed to conduct a reasonable inquiry before filing the FAC. See Warren, 29 F.3d at 1390; see also Bradford v. L.A. Cnty. Off. of Educ., No. 20-3691, 2020 WL 6154284, at *2 (C.D. Cal. Aug. 19, 2020) (denying Rule 11 motion, rejecting argument that pro se plaintiff should have known that claims were barred by res judicata based on dismissal of prior claims on similar grounds); Webb v. California, No. 17-8499, 2018 WL 6184776, at *5 (C.D. Cal. Mar. 15, 2018) (concluding that although complaint was objectively baseless, plaintiff conducted a reasonable inquiry in light of his pro se status prior to filing suit).

Finally, the Sanctions Defendants argue that the FAC was filed for the improper purpose of relitigating issues previously decided in state court. See Sanctions Motion at 9-10. Because the Court does not find that the FAC was frivolous, this alone is sufficient to conclude that sanctions are not warranted. See Townsend, 929 F.2d at 1362. Moreover, that the FAC was a de facto appeal of the Neocell Action and therefore barred by the Rooker-Feldman

doctrine is not, by itself, sufficient grounds to award sanctions. See Semar Ventures, LLC v. Thornburg Mortg. Sec. Tr. 2007-3, No. 20-02238, 2021 WL 3598575, at *2 (C.D. Cal. May 17, 2021) (declining to award sanctions after dismissing underlying claim under Rooker-Feldman doctrine).[4]

In short, this case does not appear to be one of the "rare and exceptional" instances where Rule 11 sanctions are warranted. See Operating Eng'rs Pension Tr., 859 F.2d at 1344. Accordingly, the Court recommends that Sanctions Defendants' motion be DENIED.

B. Motion for Attorney's Fees

1. Jurisdiction to Consider Motion for Attorney's Fees

The Court first determines whether it has jurisdiction to consider the Motion for Attorney's Fees. In certain contexts, the Ninth Circuit has held that where a district court lacks jurisdiction over a case, it also lacks authority to award attorney's fees. See, e.g., Skaff v. Meridien N. Am. Beverly Hills, LLC, 506 F.3d 832, 837 (9th Cir. 2007) (concluding that district court lacked

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[4] Defendants compare this case to Roundtree v. United States, 40 F.3d 1036 (9th Cir. 1994) and Paciulan v. George, 38 F. Supp. 2d 1128 (N.D. Cal. 1999). See Sanctions Motion at 9-10. But while the FAC was an improper de facto appeal of the Neocell Action, Plaintiffs' filing of the FAC does not compare to the level of abuse of the judicial system at issue in those cases. In Roundtree, the Ninth Circuit upheld the district court's award of sanctions against an attorney who had become "enamored of the theory" that the Federal Aviation Administration "has no authority to suspend or revoke certificates in response to violations of safety regulations" and then "beguile[d] plaintiff after plaintiff" into asserting the same legal theory in seven different lawsuits filed across five judicial circuits. See 40 F.2d at 1037, 1041-41. In Paciulan, the district court awarded sanctions against an attorney who both had a long history of filing unsuccessful challenges to the requirements for admission to practice law in California, and was representing plaintiffs in a suit challenging an attorney admissions rule that the attorney himself had unsuccessfully challenged on "virtually identical" grounds in a recent case. See 38 F. Supp. 2d at 1130-33, 1145-47.

authority to award attorney's fees under ADA and California law where plaintiff lacked standing); Smith v. Brady, 972 F.2d 1095, 1097 (9th Cir. 1992) (finding that court lacked authority to award attorney's fees under Equal Access to Justice Act where it lacked jurisdiction over underlying tax-related case) Latch v. United States, 842 F.2d 1031, 1033 (9th Cir. 1988) (vacating attorney's fee award under 26 U.S.C. § 7430 because district court lacked subject matter jurisdiction over underlying tax dispute).

The Ninth Circuit previously held in Branson v. Nott that a district court lacks authority to award attorney's fees under § 1988 where it lacks subject matter jurisdiction over the underlying civil rights action. See 62 F.3d 287, 292-93 (9th Cir. 1995). Branson also concluded that where a case was dismissed for lack of subject matter jurisdiction, the defendant was not a "prevailing" party within the meaning of § 1988 and thus could not be awarded attorney's fees. See id. Relying on Branson, Plaintiffs argue that because the Court dismissed this action under the Rooker-Feldman doctrine, it cannot rule on the Motion for Attorney's Fees. See Dkt. 56 at 11-12.

This argument is unavailing because Branson has been effectively overruled. In CRST Van Expedited Inc. v. Equal Emp. Opportunity Comm'n, the Supreme Court held that a defendant who prevailed on non-meritorious grounds could still be deemed a "prevailing party" for purposes of awarding attorney's fees under Title VII. See 578 U.S. 419, 432-34 (2016). The Court indicated that its reasoning applied to other fee-shifting statutes as well. See id. at 422 (explaining that Court "interpret[s] the term ['prevailing party'] in a consistent manner" in various fee-shifting statutes). After CRST, the Ninth Circuit has made clear on multiple occasions that the rule from Branson is no longer controlling. See Amphastar Pharms., Inc., v. Aventis Pharma SA, 856 F.3d 696, 710 (9th Cir. 2017) ("[W]e conclude that the Supreme Court has effectively overruled Branson's holding that when a defendant wins because

the action is dismissed for lack of subject matter jurisdiction he is never a prevailing party."); Citizens for Free Speech, LLC v. Cnty. of Alameda, 953 F.3d 655, 658 n.3 (9th Cir. 2020).[5]

Taking into consideration the further developments in case law after Branson, the Court concludes that has jurisdiction to consider the Motion for Attorney's Fees. See Garmong v. Cnty. of Lyon, 807 F. App'x 636, 639 (9th Cir. 2020) (rejecting argument that district court could not award attorney's fees under § 1988 after dismissing case for lack of subject matter jurisdiction); see also Guppy v. City of Los Angeles, No. 18-1360, 2019 WL 6362469, at *3-4 (C.D. Cal. Sept. 20, 2019) (considering motion for attorney's fees under § 1988 after dismissing case for lack of subject matter jurisdiction).[6]

2. Attorney's Fees are not Warranted

Turning to the merits of the Motion for Attorney's fees, the Court recommends denying the motion.

The Fees Defendants argue that Plaintiffs' claims were meritless. See Fees Motion at 14-16. They argue that the FAC was "doomed to fail from the start," because it was "beyond this Court's jurisdiction and unquestionably time-barred," it failed to allege any actions taken under color of state law by the Fees Defendants, and it did not allege any actions that would constitute extrinsic fraud by the Fees Defendants. Id. at 14. They assert that Plaintiffs should have known that their claim lacked foundation based on their past

[5] Plaintiffs discuss Branson at length in their opposition but do not acknowledge its subsequent treatment. See Opp'n at 10-12. The Court finds Plaintiffs' reliance on Branson difficult to justify, as Plaintiffs' counsel could have uncovered Branson's effective overruling with minimal inquiry.

[6] Plaintiffs also argue that under Branson, the Fees Defendants are not prevailing parties within the meaning of § 1988. See Opp'n at 10. For the same reasons discussed above, the Court finds this argument unpersuasive.

litigation history with Defendants and prior sanctions entered against Alkayali by the state courts. See id. at 15.

In determining whether Plaintiffs' claim was meritless, the Court must "resist the understandable temptation to engage in post hoc reasoning by concluding that, because [Plaintiffs] did not ultimately prevail, [their] action must have been unreasonable or without foundation." Christianburg, 434 U.S. at 421-22 (1978). As discussed above, the Court does not find that the FAC was frivolous; for the same reasons, the Court cannot find that the FAC was meritless. While Plaintiffs' claim was ultimately barred under the Rooker-Feldman doctrine and the statute of limitations, Plaintiffs set forth arguments as to why they believed the FAC fell within exceptions to these grounds for dismissal. See Dkt. 26 at 7-15, 17-23; Dkt. 27 at 6-20; Dkt. 38 at 17-31. Although these arguments failed, the Court cannot conclude that Plaintiffs, particularly as parties proceeding pro se, should have known that their claim would not survive a motion to dismiss.[7] See Miller, 827 F.3d at 620; see also

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[7] In their reply, the Fee Defendants cite several cases in which a district court awarded attorney's fees because the action was clearly barred under the statute of limitations. See Reply at 8-9 (citing Branson, 62 F.3d 287; Goldberg v. Cameron, No. 05-03534, 2011 WL 3515899 (N.D. Cal. Aug. 11, 2011); and U.S. Equal Emp. Opportunity Comm'n v. PC Iron, Inc., No. 16-02372, 2019 WL 1017264 (S.D. Cal. Mar. 4, 2019)). However, the Court finds these cases distinguishable from the instant action.

First, in Goldberg, the plaintiff was represented by counsel, and in PC Iron, the plaintiff was a government agency with extensive litigation experience. See Goldberg, 2011 WL 3515899, at *1; PC Iron, Inc., 2019 WL 1017264, at *1. Second, unlike in this case, there is no indication that the plaintiffs in Branson or PC Iron argued that an exception to the statute of limitations applied to them. See Branson, 62 F.3d at 291; see generally PC Iron, Inc., 2019 WL 1017264. And third, while the plaintiff in Goldberg offered an excuse for his untimely filing, the circumstances of that case differ significantly from this case: the plaintiff in Goldberg filed a copyright

Rasmussen v. Cal. DMV, No. 08-1604, 2009 WL 605784, at *3 (C.D. Cal. Mar. 6, 2009) (denying defendants' § 1988 motion in case involving pro se attorney plaintiff, reasoning that plaintiff lacked legal expertise in civil rights cases and could have possessed a reasonable belief that he could prevail on his claims when he filed the complaint).

The Fees Defendants also argue that they are entitled to attorney's fees because Plaintiffs' FAC was "no more than a prohibited attempt to bring their previously rejected claims to federal court." Fees Motion at 16. They cite Shah v. County of Los Angeles, No. 08-6499, 2010 WL 11578744, at *1-2 (C.D. Cal. Sept. 20, 2010), and Lenk v. Monolithic Power Sys., Inc., No. 20-08094, 2022 WL 824233, at *1 (N.D. Cal. Mar. 18, 2022), as examples of cases where a court awarded attorney's fees after a plaintiff improperly sought to relitigate claims that had been previously denied. See id. at 15-16. However, while the FAC was a forbidden de facto appeal of claims that are inextricably intertwined with the state court's judgment in the Neocell Action, Plaintiffs' decision to file the FAC is not on par with the conduct of the plaintiffs in Shah and Lenk. Shah involved a plaintiff's fifth suit (and third suit filed in federal court) against his employer based on alleged discrimination against him, with significant overlap in the claims asserted in each action. See 2010 WL 11578744, at *1-2. In this fifth action, the plaintiff filed four complaints before the action was ultimately dismissed, and the court determined that the defendants were entitled to attorney's fees incurred in responding to plaintiff's

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infringement suit decades after the statute of limitations had run, arguing that he had gone on a 20-year "spiritual journey" that prevented him from learning about the infringement when it occurred. See 2011 WL 3515899, at *3. The court found this excuse insufficient and found the complaint was frivolous and unreasonable due to the delayed filing. See id. at *3-4. Here, while Plaintiffs' arguments that the FAC was timely ultimately failed, the Court cannot conclude that Plaintiffs' filing of the FAC was unreasonable or frivolous.

original and first amended complaint. See id. at *2-4. The court reasoned that the claims asserted in those filings were frivolous and unreasonable because they were "largely identical to those that had already been rejected multiple times, including in an order by this Court three months before the outset of this litigation." See id. at *4 (emphasis added). Similarly, Lenk involved a plaintiff's fifth action filed against his employer in federal court based on alleged discrimination and wrongful discharge; like in Shah, there was significant overlap in the claims plaintiff asserted in each action. See 2022 WL 824233, at *1. The court awarded attorney's fees to the defendant because it determined that each of the plaintiff's claims were either previously rejected in earlier cases, were based on the same allegations underlying the previously-dismissed claims, or were frivolous because the allegations did not rise above "bare speculation." See id. at *3-6.

Here, on the other hand, this action is Plaintiffs' first claim asserted under § 1983 and their first claim filed against Defendants in federal court based on the facts alleged in this case. Unlike in Shah and Lenk, Plaintiffs were not on notice from the Court of legal defects in their claim at the time they filed the FAC. As discussed above, the Court does not find that Plaintiffs should have known from the onset of this action that their claim would be subject to dismissal.[8] Moreover, although Plaintiffs have an extensive history

[8] The Fee Defendants also argue that Plaintiffs "prolonged the litigation in this action and increased their attorneys' fees by baselessly amending their complaint, opposing the motion to dismiss, and submitting objections" to the Report and Recommendation. Id. at 16. However, the FAC added further allegations, compare Dkt. 1 ¶¶ 1-41 with FAC ¶¶ 1-44, and Plaintiffs were permitted to oppose Defendants' motions to dismiss and to file objections to the Report and Recommendation, see L.R. 7-9; Fed. R. Civ. P. 72(b)(2). Absent a showing that Plaintiffs deliberately prolonged this litigation in order to harass Defendants or increase their costs, the Court is reluctant to penalize Plaintiffs for litigating their case.

of litigation with the Fees Defendants, Defendants' own summary of this litigation history shows that Plaintiffs did not initiate the Neocell Action, that the claims Alkayali has pursued against the Fees Defendants in the past differ from those asserted in this case, and that Plaintiffs' actions against the Fees Defendants were not consistently meritless. See Fees Motion at 7-10 (describing litigation history between Plaintiffs and Fees Defendants, including favorable judgment for Alkayali in Alkayali v. Boukhari, No. E066230, 2019 WL 1499478 (Cal. Ct. App. Apr. 5, 2019)).

The Court cannot conclude that the FAC was unreasonable, frivolous, meritless, or vexatious. Accordingly, the Fees Defendants' motion should be DENIED.

IV. CONCLUSION

Further attempts by Plaintiffs to pursue claims against Defendants based on the facts of this case could potentially warrant sanctions or attorney's fees. From the proceedings in the current action, however, there is insufficient basis to grant either of Defendants' motions.

IT IS THEREFORE RECOMMENDED that the District Judge issue an Order: (1) accepting this Report and Recommendation; (2) denying Defendants Smith, Clifford, and Rude's motion for sanctions; and (3) denying Defendants Boukhari and Quadri's motion for attorney's fees.

Date: December 12, 2022

DOUGLAS F. McCORMICK
United States Magistrate Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

TERRI L. STILES et al., Plaintiff, v. JOHN CLIFFORD et al., Defendant.	Case No. SA CV 22-00469-JGB (DFM) Order Accepting Report and Recommendation of United States Magistrate Judge

Pursuant to 28 U.S.C. § 636, the Court has reviewed the pleadings and all the records and files herein, along with the Report and Recommendation of the assigned United States Magistrate Judge. No objections to the Report and Recommendation were filed, and the deadline for filing such objections has passed. The Court accepts the findings, conclusions, and recommendations of the United States Magistrate Judge.

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IT IS THEREFORE ORDERED that:

1. The Report and Recommendation is approved and accepted;
2. Defendants' Motion for Sanctions pursuant to Rule 11 (Dkt. 51) is DENIED; and
3. Defendants' Motion for Attorney's Fees (Dkt. 53) is DENIED.

Date: January 18, 2023

JESUS G. BERNAL
United States District Judge

NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TERRI L. STILES and AHMAD ALKAYALI, Plaintiffs-Appellants, v. JOHN CLIFFORD, STEVEN SMITH, DARREN RUDE, and DAVID R. CHAFFEE, Defendants-Appellees.	No. 22-55993 D.C. No. 8:22-CV-00469-JGB-DFM MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Jesus G. Bernal, District Judge, Presiding

Submitted December 4, 2023**
Pasadena, California

Before: WARDLAW and BUMATAY, Circuit Judges, and BENCIVENGO,*** District Judge.

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

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Cathy Ann Bencivengo, United States District Judge for the Southern District of California, sitting by designation.

Terri L. Stiles and Ahmad Alkayali ("Appellants") appeal the district court's order granting the motions to dismiss of Defendants (1) John Clifford, Steven Smith, and Darren Rude; and (2) David R. Chaffee. We have jurisdiction under 28 U.S.C. § 1291, and we **AFFIRM.**

1. The district court properly dismissed Appellants' First Amended Complaint ("FAC") based on the *Rooker-Feldman* doctrine. *See D.C. Ct. of Appeals v. Feldman,* 460 U.S. 462, 482–86 (1983); *Rooker v. Fid. Tr. Co.*, 263 U.S. 413, 415–16 (1923). For Appellants to receive damages, the district court would need to overturn a state court decision twice reviewed by the California Court of Appeal. The FAC is therefore a *de facto* appeal of the state court's multiple rulings that Appellants lack an ownership interest in the disputed Neocell Corporation. *See Reusser v. Wachovia Bank, N.A.*, 525 F.3d 855, 859 (9th Cir. 2008) (holding that a *de facto* appeal exists where the federal claims are "inextricably intertwined" with the state court ruling). Nor have Appellants demonstrated that the extrinsic fraud exception to the *Rooker-Feldman* doctrine applies, because their claim asserts that the state court judge erred in his handling of the state court proceedings. *See Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1141 (9th Cir. 2004) ("Extrinsic fraud on a court is, by definition, not an error by that court.").

2. The district court also properly dismissed the FAC because it was barred by the applicable two-year statute of limitations. *See* Cal. Code Civ. Proc. § 335.1.

The state court case that allegedly deprived Appellants of their rights was initiated in 2008, and any alleged fraud was discovered no later than 2015. Appellants brought this case in 2022, over ten years after the initial injuries occurred, and seven years after discovery of the alleged fraud. The permanent injunction enforced against Appellants is an "individualized claim" of injury that does not invoke the continuing violations doctrine. *See Bird v. Dep't of Hum. Servs.*, 935 F.3d 738, 748 (9th Cir. 2019) (holding that the normal discovery rule of accrual applies to a continuing impact from a past violation). Furthermore, equitable estoppel did not toll the statute of limitations, as there is no evidence in the record that Defendants prevented Appellants from filing their federal claim until 2022. *See Lukovsky v. City & Cnty. of San Francisco*, 535 F.3d 1044, 1052 (9th Cir. 2008) (finding equitable estoppel inapplicable where "plaintiffs did not allege any fraudulent concealment . . . above and beyond the actual basis for the lawsuit").

3. Because an amendment to the FAC could not cure these deficiencies, the district court did not abuse its discretion by denying leave to amend. *See Chappel v. Lab'y Corp. of Am.*, 232 F.3d 719, 725–26 (9th Cir. 2000) ("A district court acts within its discretion to deny leave to amend when amendment would be futile . . ..").

AFFIRMED.

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