No. 23-3322
United States Court of Appeals, Ninth Circuit

Albert v. Gonzalez

Decided Aug 20, 2024

23-3322 24-3496

08-20-2024

LENORE ALBERT, an individual, Plaintiff - Appellant, v. ROXANNE GONZALEZ; DOES, 1 through 10, inclusive, Defendants - Appellees. Ms. LENORE L. ALBERT, Attorney, Petitioner - Appellant.

NOT FOR PUBLICATION

Submitted August 16, 2024 [**] Pasadena, California

Appeal from the United States District Court for the Central District of California Fred W. Slaughter, District Judge, Presiding D.C. No. 8:23-cv-00635-FWS-JDE

Appeal from the United States District Court for the Eastern District of California Kimberly J. Mueller, District Judge, Presiding D.C. No. 2:24-mc-00117-KJM

Before: BADE and FORREST, Circuit Judges, and CURIEL, District Judge. [***]

2 **MEMORANDUM** [*] *2

In *Albert v. Gonzalez*, No. 23-3322, Plaintiff-Appellant Lenore Albert, appearing pro se, appeals an order from the Central District of California dismissing her case alleging that Defendant-Appellee Roxanne Gonzalez, a clerk for the Eastern District of California, committed various constitutional violations in applying that court's attorney discipline rules. In *In re Albert*, No. 24-3496, Albert appeals an order from the Eastern District disbarring her from practicing before that court. We have jurisdiction under 28 U.S.C. § 1291, *see In re Corrinet*, 645 F.3d 1141, 1143 (9th Cir. 2011), and we affirm.

A. *Albert v. Gonzalez, No. 23-3322.*

Following two disciplinary proceedings, Albert was suspended from practicing law in California from February 14, 2018, to March 16, 2018, and from June 28, 2018, to February 21, 2021. *See In re Albert*, No. SBC-22-O-30348, 2024 WL 1231293, at *2 (Cal. Bar Ct. Mar. 11, 2024). During her suspension, Albert filed several court documents in the Eastern District that represented she was an attorney. *See e.g.*, *Kilgore v. Wells Fargo Home Mortg.*, No. 1:12-cv-00899, Dkts. 67-70 (E.D. Cal. Aug. 18, 2019); *Avalos v. Gonzalez*, No. 1:20-cv-01578,
3 Dkt. 14 (E.D. Cal. Feb. 19, 2021). She *3 also applied for a certificate of good standing from the Eastern District's clerk's office. Gonzalez processed this application, noticed that Albert was listed as "inactive" on the California State Bar's website, and changed Albert's standing to practice before the Eastern District from "active" to "inactive" pursuant to Eastern District Local Rules 180(c) and 184(b), which impose automatic reciprocal suspensions. In May 2021, the Eastern District reinstated Albert to "active" status after her California suspension was lifted.

Albert then sued Gonzalez in the Central District of California for (1) declaratory relief that Local Rules 180 and 184 were unconstitutional as applied to her; (2) an injunction preventing Gonalez from changing Albert's status from "active" to "inactive" without giving Albert an opportunity to be heard and an appealable order; (3) a violation of her First and Fourteenth Amendment rights under *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971); and (4) a violation of California's Unfair Competition Law (UCL) for engaging in an "unlawful, unfair, or fraudulent" business act or practice.

Gonzalez moved to dismiss the complaint, and the district court granted that motion. We review de novo a district court's decision to dismiss for failure to state a claim, "viewing factual allegations in the complaint as true and construing the pleadings in the light most favorable to the nonmoving party." *Magassa v. Mayorkas*, 52 F.4th 1156, 1161 (9th Cir. 2022), *cert. denied*, 144 S.Ct. 279 (2023). *4 We conclude that the district court did not err in dismissing Albert's complaint.

1. Albert first argues that the district court erred by applying *Younger* abstention to her claims for declaratory and injunctive relief. We do not consider this argument because we conclude that Albert's claims seeking declaratory and injunctive relief fail. For the reasons explained in Subpart B of this disposition, the Eastern District's application of its local rules to Albert did not violate her due process rights. Thus, Albert's claims for declaratory and injunctive relief based on the alleged unconstitutionality of those same local rules are foreclosed. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 89 (1998) (recognizing dismissal for lack of subject matter jurisdiction is proper where a "claim is so insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise completely devoid of merit as not to involve a federal controversy" (internal quotation marks and citation omitted)). We therefore affirm the district court's dismissal of Albert's claims for declaratory and injunctive relief, albeit on different grounds.

2. Albert next argues that the district court erred by dismissing her *Bivens* claim. When analyzing *Bivens* claims, we recognize that "most claims seeking to extend *Bivens* are dead on arrival," but still "apply a two-step framework, asking first whether the claim arises in a new context, and second, if *5 so, whether other special factors counsel hesitation against extending *Bivens*." *Stanard v. Dy*, 88 F.4th 811, 816 (9th Cir. 2023) (internal quotation marks and citations omitted).

The parties agree that Albert's claim arises in a new *Bivens* context. Albert's argument is solely that the district court erred at step two. At step two, we do not "independently assess the costs and benefits of implying a cause of action." *Egbert v. Boule*, 596 U.S. 482, 496 (2022). Instead, we ask only "whether there is *any* rational reason (even one) to think that *Congress* is better suited to weigh the costs and benefits of allowing a damages action to proceed." *Id.* (internal quotation marks and citation omitted). While only one rational reason is needed, multiple rational reasons counsel against implying a *Bivens* action here, including that Congress is in a better position to assess the social costs of litigation that would potentially inhibit public officials from performing their duties, *see id.* at 499, and that Albert had alternative ways to challenge the decision to change her admission status from active to inactive, *see id.* at 497-98; *Mejia v. Miller*, 61 F.4th 663, 669 (9th Cir. 2023) (noting that the plaintiff had "alternative administrative remedies"), including by "written motion to the Chief Judge" of the Eastern District of California. E.D. Cal. L.R. 184(b). Thus, the district court did not err in dismissing her *Bivens* claim. *6

3. Albert next challenges the district court's holding that Gonzalez had absolute quasi-judicial immunity from Albert's UCL and *Bivens* claims. We conclude that Gonzalez, who served as the Operations Supervisor for the Fresno Division of the Eastern District of California, was performing a ministerial action integral to the judicial function when she followed the district's local rules and changed Albert's status to inactive. *See In re Castillo*,

297 F.3d 940, 952 (9th Cir. 2002), *as amended*, (Sept. 6, 2002); E.D. Cal. L.R. 184(b). Because the *Bivens* claim and the UCL claim alleged that Gonzalez was liable for that action, the district court properly dismissed these claims.

4. The district court did not abuse its discretion in denying Albert leave to amend. *See Garmon v. County of Los Angeles*, 828 F.3d 837, 842 (9th Cir. 2016). Albert contends that because she incorrectly pleaded her *Bivens* claim as a Fourteenth Amendment claim, rather than a Fifth Amendment claim, she could "fix subject matter jurisdiction." But amendment of the *Bivens* claim would be futile because, despite Albert's inartful pleading, the district court analyzed her claims "under the Fifth, not Fourteenth, Amendment because legal conclusions in a complaint are not controlling." We do not consider Albert's alternative theories for amending her complaint because she advances them for the first time on appeal. *See Consumer Fin. Prot. Bureau v. Aria*, 54 F.4th 1168,
7 1173 (9th Cir. 2022) ("Because [the plaintiff] did not adequately raise these arguments to *7 preserve them below, he has forfeited them."); *One Indus., LLC v. Jim O'Neal Distrib., Inc.*, 578 F.3d 1154, 1158 (9th Cir. 2009) ("A party normally may not press an argument on appeal that it failed to raise in the district court.").

B. *In re Albert*, No. 24-3496.

In a third disciplinary proceeding, the California State Bar Court Review Department (the Review Department) recommended that Albert be disbarred and placed her on involuntary inactive status. *See In re Albert*, 2024 WL 1231293. Albert notified the Eastern District of this suspension and, as permitted by the court's local rules, asked the district court for a show cause order "on the grounds that [she] believe[d] that a reciprocal suspension or disbarment is not warranted." Following Local Rule 184(b)[1], the Eastern District automatically suspended Albert and, after she had an opportunity to show cause, disbarred her from practicing before that court. Albert appeals both the automatic suspension and the ultimate disbarment order.

[1] That rule provides that if an attorney has a change in status that would make her "ineligible for membership in the Bar of this Court or ineligible to practice in this Court," then "the attorney shall forthwith be suspended from practice before this Court without any order of Court until becoming eligible to practice." E.D. Cal. L.R. 184(b). "Upon written motion to the Chief Judge, an attorney shall be afforded an opportunity to show cause why the attorney should not be suspended or disbarred from practice in this Court." *Id.*

1. Albert first argues that that the district court violated due process by automatically suspending her under
8 Rule 184(b) without conducting an *8 independent examination of the state record. "A district court's failure to conduct adequate review of a state bar disciplinary procedure is a question of law reviewed de novo." *In re North*, 383 F.3d 871, 874 (9th Cir. 2004). We conclude that Rule 184(b)'s automatic temporary suspension, which afforded Albert an opportunity to challenge that suspension, did not violate her due process rights.

It is the attorney's "burden to demonstrate, by clear and convincing evidence, that one of the *Selling* [*v. Radford*, 243 U.S. 46, 50-51 (1917)] elements precludes reciprocal discipline." *In re Kramer*, 282 F.3d 721, 724 (9th Cir. 2002). Independent examination of the record is not necessary when an attorney "concedes that the action of the [state] courts satisfies *Selling* and its progeny." *In re Kramer*, 193 F.3d 1131, 1133 (9th Cir. 1999). Here, Albert has not made that concession, but she also has not made *any* showing to meet her burden to demonstrate a due process violation by clear and convincing evidence. *See In re Kramer*, 282 F.3d at 724. At best, she has offered bare, conclusory allegations. Accordingly, we conclude that the district court did not have to independently review the state court record because the local rules provided Albert with notice of the
9 automatic suspension and an opportunity to challenge it.[2] *See* E.D. Cal. L.R. 184(b) *9 ("Upon written motion to the Chief Judge, an attorney shall be afforded an opportunity to show cause why the attorney should not be

suspended or disbarred from practice in this Court."); *In re Corrinet*, 645 F.3d 1141, 1145 (9th Cir. 2011) (Attorneys "subject to disbarment [are] entitled to due process, including notice and an opportunity to be heard.").

[2] Albert calls for improvements to "[t]he practicalities of the system of notifying the Eastern District of a state court suspension." Even if we construe this as a claim that the current procedures violate due process, Albert does not cite any legal authority for her argument, so it fails. *See Blumenkron v. Multnomah County*, 91 F.4th 1303, 1317 (9th Cir. 2024) (concluding the plaintiffs abandoned their claims on appeal because their argument was "vague, unsupported by any citations to case authority, and untethered to the applicable legal standards").

We likewise reject Albert's contention that imposing discipline without a "State Court Order of Disbarment" lacked "due process" because only the California Supreme Court can issue an order of disbarment. Albert's placement on inactive status by the Review Department made her ineligible for admission to practice before the Eastern District, *see* E.D. Cal. L.R. 180(a)(1), and that change triggered the automatic suspension provision in Rule 184(b).

In short, we conclude the district court did not violate Albert's due process rights by applying the procedure set forth in Rule 184(b).

2. Albert next argues that the district court abused its discretion by reciprocally disbarring her. We disagree.

An attorney challenging a federal court's imposition of reciprocal discipline based on a state bar's disciplinary
10 adjudication must show, by clear and convincing *10 evidence, that the state court record revealed: "(1) a deprivation of due process; (2) insufficient proof of misconduct; or (3) grave injustice that would result from the imposition of such discipline." *In re Kramer*, 282 F.3d at 724 (citing *Selling*, 243 U.S. at 50-51) (setting forth three *Selling* elements). We review the district court's disbarment order for abuse of discretion. *In re Corrinet*, 645 F.3d at 1145.

In the California State Bar proceedings, Albert was charged with a violation of California Rule of Professional Conduct 3.4(f)-that she "knowingly disobey[ed] [her] obligation under" the Eastern District's local rules to notify the Eastern District of her suspension. *In re Albert*, 2024 WL 1231293, at *7-8. Albert was also charged with the "unauthorized practice of law in another jurisdiction" in violation of California Business and Professional Code § 6068(a) and California Rule of Professional Conduct 5.5(a)(1) by holding herself out as a licensed attorney entitled to practice law in California in two cases before the Eastern District. *Id.* at *9.

Albert first contends that the California State Bar proceedings deprived her of due process and that the district court erred by "relying on [a] State Bar recommendation which d[id] not consider" her argument that the Eastern District's "automatic suspension" was unconstitutional. This argument fails because the constitutionality of the Eastern District's automatic suspension provision in Rule 184(b) is irrelevant to the two
11 claims the state bar adjudicated. The local rule *11 providing for automatic suspension does not inform whether Albert provided proper notice of her state discipline to the Eastern District or improperly held herself out as an attorney.[3]

[3] Albert also argues that the Eastern District violated due process by disbarring her when the Review Department had only *recommended* disbarment and ordered her "involuntar[ily] inactive." This claim fails because Albert does not explain how she was prejudiced by the district court's failure to wait for the final order. *See United States v. Lovasco*, 431 U.S. 783, 790 (1977) ("[P]roof of prejudice is generally a necessary . . . element of a due process claim.").

Furthermore, shortly after the Eastern District ordered her disbarred, the California Supreme Court ordered Albert's disbarment. *In re Albert*, Case No. SBC-22-O-30348 (Cal. June 17, 2024), *https://discipline.calbar.ca.gov/portal/Home/.* Thus, any error was harmless.

Albert next argues that there was insufficient proof that she failed to give prompt notice to the Eastern District of her change in status. But she fails to point to evidence showing that she notified the Eastern District of her August 28, 2019, suspension before March 3, 2021. She only identifies filings that occurred *before* her August 28, 2019 suspension. Thus, the district court did not abuse its discretion when it concluded these notices failed to meet Rule 184(b)'s requirement that an attorney "promptly notify the Court of any disciplinary action . . . that would make the attorney ineligible for membership in the Bar of this Court."

Finally, Albert argues that the punishment recommended by the Review Department in the state bar's third disciplinary proceeding "was so ill-fitted" to her *12 "misconduct" that the Eastern District's reciprocal disbarment resulted in "grave injustice" because it was based on her suspensions imposed in her two prior disciplinary proceedings. She also contends that the district court "ignored [a] course of events" where the Ninth Circuit Bankruptcy Appellate Panel reversed dismissal of a civil claim. These arguments do not establish a "grave injustice." First, Albert ignores that this third disciplinary proceeding found her culpable on new charges. And second, Albert's pending civil claim was irrelevant to whether her punishment imposed was a "grave injustice." Because Albert's arguments are irrelevant, and because of her history of inappropriate behavior and ethical violations, we hold that the district court did not abuse its discretion in concluding that the punishment imposed did not result in grave injustice. *See In re Albert*, 2024 WL 1231293, at *19 (recounting Albert's lengthy disciplinary history).

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Albert has not demonstrated by clear and convincing evidence that reciprocal disbarment is inappropriate under any of the *Selling* elements. Therefore, the district court did not abuse its discretion by reciprocally disbarring her.[4]

4 We deny Albert's motions for judicial notice (No. 23-3322, Dkts. 33, 44; No. 24-3496, Dkt. 13) because the documents are "not relevant to the disposition of this appeal." *Cuellar v. Joyce*, 596 F.3d 505, 512 (9th Cir. 2010).

AFFIRMED.

[*] 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 Gonzalo P. Curiel, United States District Judge for the Southern District of California, sitting by designation.

2:24-mc-00117-KJM
United States District Court, Eastern District of California

In re Albert

Decided May 24, 2024

2:24-mc-00117-KJM

05-24-2024

Lenore Albert, Petitioner.

ORDER ADMINISTRATIVE MATTER

The court ordered Lenore Albert to show cause why she should not be suspended or disbarred from practice in this court. Ms. Albert has responded. After reviewing the record and reviewing Ms. Albert's responses, the court **denies** Ms. Albert's request and **disbars** her from practice in this court.

I. BACKGROUND

Ms. Albert initiated a communication with the court following her "third discipline matter since she obtained her law license in December 2000." *In the Matter of Albert*, No. 22-30348, 2024 WL 1231293, at *1 (Cal. Bar Ct. Mar. 11, 2024). Earlier this year, a California state bar hearing judge found Ms. Albert culpable on five of six counts, and, on review, the Review Department of the State Bar of California found her culpable of all six counts. *Id.* (finding Ms. Albert culpable of moral turpitude in addition to the five counts found by the hearing
2 judge, which included failure to comply with local rules, failure to comply with California law and *2 unauthorized practice of law). On March 11, 2024, the Review Department ordered Ms. Albert suspended effective March 14, 2024, pending disbarment. *Id.* at 19-20.

On March 12, 2024, Ms. Albert filed a motion for an order to show cause in this court regarding her notice of impending suspension and disbarment by the California State Bar. *See* Mot. Order Show Cause, *McMahon v. Whitney*, No. 23-1972 (E.D. Cal. Mar. 12, 2024), ECF No. 59. The court interpreted the motion as being filed in the court generally as opposed to being filed in *McMahon*, a case in which Ms. Albert is counsel for the plaintiff. *See* Order Show Cause, ECF No. 2. The court subsequently opened this miscellaneous case regarding the attorney admissions status of Ms. Albert. The court granted Ms. Albert's request for an order to show cause, as provided by the local rules, and directed Ms. Albert to show cause why she "should not be suspended or disbarred from practice in this Court." *Id.* at 1 (citing E.D. Cal. L.R. 184(b)). Ms. Albert has filed three responses. First Resp., ECF No. 5; Second Resp., ECF No. 5-1; Third Resp., ECF No. 5-2.

II. LEGAL STANDARD

"If an attorney's status so changes with respect to eligibility, the attorney shall forthwith be suspended from practice before this Court without any order of Court until becoming eligible to practice." E.D. Cal. L.R. 184(b). "Upon written motion to the Chief Judge, an attorney shall be afforded an opportunity to show cause why the attorney should not be suspended or disbarred from practice in this Court." *Id.* "[A] federal court's imposition of reciprocal discipline on a member of its bar based on a state's disciplinary adjudication is proper

unless an independent review of the record reveals" at least one of the following conditions is met: "(1) a deprivation of due process; (2) insufficient proof of misconduct; or (3) grave injustice which would result from the imposition of such discipline." *In re Kramer*, 282 F.3d 721, 724 (9th Cir. 2002) (citing *In re Kramer* ("*Kramer III*"), 193 F.3d 1131, 1132 (9th Cir. 1999)); *see also Selling v. Radford*, 243 U.S. 46, 50-51 (1917). Federal courts "extend great deference to the state [bar] court's determination unless" the court independently determines one of the enumerated conditions exists. *Gadda v. Ashcroft*, 377 F.3d 934, 943 (9th Cir. 2004).
3 However, the court "must accord a presumption of correctness to the state court factual findings." *3 *In re Rosenthal*, 854 F.2d 1187, 1188 (9th Cir. 1988) (per curiam). It is the attorney's burden to demonstrate by "clear and convincing evidence" that one of the available conditions prevents a finding of reciprocal discipline. *In re Kramer*, 282 F.3d at 724-25.

III. PAGE LIMITS

The court notes Ms. Albert has explicitly and intentionally not complied with the court's standing order, available on its web page, by significantly exceeding the court's page limits. *See* Standing Order at 3[1]; First Resp. at i ("Ms. Albert understands that the Court limits page size to twenty pages, but Ms. Albert would not have a fair chance of laying out the reasons why she should not be suspended or disbarred from this Court."); Second Resp. at i (same); Third Resp. at i (same). Rather than requesting leave to exceed the page limitations, Ms. Albert has simply assumed she could do so and filed three separate briefs, totaling 37 pages without the tables of contents, in response to the court's order to show cause.

[1] Chief Judge Kimberly J. Mueller, *Civil Standing Order*, https://www.caed.uscourts.gov/caednew/index.cfm/judges/all-judges/5020/civil-standing-order.

"The district court has considerable latitude in managing the parties' motion practice and enforcing local rules that place parameters on briefing." *Christian v. Mattel, Inc.*, 286 F.3d 1118, 1129 (9th Cir. 2002). This includes setting page limits on briefs and enforcing its orders. *See Swanson v. U.S. Forest Serv.*, 87 F.3d 339, 345 (9th Cir. 1996) (affirming district court's decision to strike an overlength brief). As Ms. Albert acknowledges, this court has specific rules regarding the length and format of motion papers. *See* Standing Order at 3 ("Memoranda of Points and Authorities in support of or in opposition to motions shall not exceed twenty (20) pages."). These page limits are not mere formalities. They promote judicial economy and "encourage litigants to hone their arguments and to eliminate excessive verbiage." *Fleming v. County of Kane*, 855 F.2d 496, 497 (7th Cir. 1988) (citation omitted); *see also N/S Corp. v. Liberty Mut. Ins. Co.*, 127 F.3d 1145, 1146 (9th Cir. 1997) ("[R]esources are limited. In order to give fair consideration to those who call upon us for justice, we must insist that parties not clog the system by presenting us with a slubby mass of words rather than a true brief. Hence we have briefing rules."); *Snyder v. HSBC Bank, USA, N.A.*, 913 F.Supp.2d 755, 766 (D. Ariz.
4 2012) ("Judicial economy and concise *4 argument are purposes of the page limit." (citation omitted)). District courts have imposed various sanctions for noncompliance with page limits, including disregarding noncompliant briefs, striking only portions of the brief that exceed the page limit and imposing monetary sanctions. *See Snyder*, 913 F.Supp.2d at 766 (collecting cases). After receiving notice of her suspension and pending disbarment, on multiple grounds including failure to comply with local rules, Ms. Albert proceeded to flagrantly disregard an established rule of practice here. Given the gravity of the consequences Ms. Albert is facing, the court will nonetheless consider the merits of her responses without striking or disregarding the responses in part or in full. The court also notes Ms. Albert has attached over a thousand pages to her briefs, without providing pinpoint cites. The court is under no obligation to comb this voluminous record to find what may be helpful to Ms. Albert, if anything, but will take account of portions of the exhibits to the extent they are

obviously relevant and pertain to the State Bar Court record. *See In re Kramer*, 282 F.3d at 723; *see also, e.g., Orr v. Bank of America*, 285 F.3d 764, 775 (9th Cir. 2002) ("Judges need not paw over the files without assistance from the parties." (internal marks and citation omitted)).

IV. DISCUSSION

Before proceeding to the analysis of the *Selling* factors, the court briefly addresses two arguments raised by Ms. Albert in her first response. First, Ms. Albert argues suspension or disbarment is not warranted by a local rules violation. First Resp. at 5. She argues the Ninth Circuit has limited discipline for local rules violations to small sanctions. But review of the State Bar Court record makes clear her suspension pending disbarment was based not only on her violation of the local rule, but on other bases such as unauthorized practice of law and moral turpitude. *See generally In the Matter of Albert*, 2024 WL 1231293. Second, Ms. Albert argues the state bar refused to consider legal precedent that prevents federal courts from automatically suspending or disbarring an attorney based on a state court decision. First Resp. at 8. However, the State Bar court specifically discussed the automatic suspension provision and noted the procedure in this court's Local Rules to challenge automatic suspensions. *See In the Matter of Albert*, 2024 WL 121293, at *4 ("Suspended attorneys can challenge the automatic EDCA suspension through the process detailed in EDCA L.R. 184(b), which requires the suspended
5 *5 attorney to take the proactive step of filing a motion directed to the Chief Judge for the EDCA."). The court finds neither of these arguments meritorious.

A. Due Process

Although Ms. Albert claims she was deprived of due process, she has not demonstrated such a deprivation. To establish a violation, Ms. Albert must show by clear and convincing evidence "that the state procedure, from want of notice or opportunity to be heard, was wanting in due process." *Selling*, 243 U.S. at 51. "The lawyer subject to discipline is entitled to procedural due process, including notice and an opportunity to be heard." *Rosenthal v. Justs. of the Sup. Ct. of Cal.*, 910 F.2d 561, 564 (9th Cir. 1990); *Rosenthal*, 854 F.2d at 1188. Ms. Albert claims "she was not informed that placing her State Bar Number . . . next to her name would be a form of [unauthorized practice of law] (advertising/holding oneself out [as a lawyer])." First Resp. at 13. However, as the State Bar Court of California Review Department concluded, her use of her "State Bar number[, her] signed pleadings as counsel of record, and her signature line [being placed above that of the practicing attorney she was working with when she was suspended from practice] . . . are all clear signals she held herself out as an attorney on the matter." *In the Matter of Albert*, 2024 WL 1231293, at *9; *see* Cal. Bus. & Prof. Code § 6126; *cf. Matter of Wyrick*, No. 88-10804, 1992 WL 70556, at *2-5 (Cal. Bar Ct. Apr. 6, 1992) (finding suspended attorney held himself out to be an attorney by using "Member, State Bar of CA" and "Esq." to describe himself).

Additionally, Ms. Albert appears to argue she was deprived of due process when the state bar refused to consider her federal constitutional claim. Resp. at 13-14. The court is not persuaded. The case Ms. Albert seems to quote, for which she provides no citation, disproves her argument and concludes that under the California Constitution, the State Bar Court is not able to consider federal constitutional arguments. *See* First Resp. at 13; *Albert v. Gonzalez*, No. 2300635, 2023 WL 8895708, at *6 (C.D. Cal. Oct. 6, 2023); *Hirsh v. Justs. of Sup. Ct.*, 67 F.3d 708, 713 (9th Cir. 1995) ("The California Constitution precludes the Bar Court from considering federal constitutional claims." (citing Cal. Const. art. III, § 3.5)). The State Bar did not deprive Ms.
6 Albert of due process when it did not consider her constitutional claims. *6

Moreover, Ms. Albert argues she did not have notice the State Bar would find she committed unauthorized practice of law in federal court because the State Bar Act is meant to be limited to state court practice. *See* First Resp. at 17-19. This argument is wholly without merit. Compliance with the State Bar Act is required by this court's local rules, which require attorneys practicing here to "comply with the standards of professional conduct required of members of the State Bar of California and contained in the State Bar Act, the Rules of Professional Conduct of the State Bar of California, and court decisions applicable thereto[.]" E.D. Cal. L.R. 180(e); *see Birbrower, Montalbano, Condon & Frank v. Superior Ct.*, 17 Cal.4th 119, 130 (1998), *as modified* (Feb. 25, 1998) (recognizing while "[t]he [State Bar] Act does not regulate practice before Unite States courts[,]" several federal district courts "today condition[] admission to their respective bars . . . on active membership and good standing in California State Bar").

The court is also unpersuaded by Ms. Albert's arguments regarding the timing of the State Bar Court hearing, *see id.* at 14, the "[u]nfair[ness]" of the ruling on her request for judicial notice, *see id.* at 14-16, and the purported lack of any basis for the Review Department's finding of moral turpitude, *see id.* at 19-20. Ms. Albert provides either no relevant legal authority or no legal authority at all in support of these arguments. She was heard on the merits by a hearing officer and on appeal, and she has not shown by clear and convincing evidence that she was deprived of due process. *See, e.g.*, *In re Scannell*, 411 Fed.Appx. 110, 112 (9th Cir. 2011).

B. Proof of Misconduct

Ms. Albert contends there is insufficient proof of her misconduct. For her to benefit from this condition would require "that there was such an infirmity of proof as to facts found to have established the want of fair private and professional character as to give rise to a clear conviction on [the court's] part that [the court] could not, consistently with [the court's] duty, accept as final the conclusion on that subject[.]" *Selling*, 243 U.S. at 51. Ms. Albert repeatedly mentions in support of this argument a letter she received from the U.S. Supreme Court and a recent opinion from the Ninth Circuit Bankruptcy Appeals Panel. *See, e.g.*, Second Resp. at 1 (making references without citation). Though Ms. Albert claims the letter from the Supreme Court "demonstrate[s] that
7 any suspension or disbarment would be premature under the Rules," the *7 letter says nothing of the sort. *See* Letter from U.S. Supreme Court Clerk, ECF No. 5-9. Rather, the letter acknowledges her notice of interim suspension and notes "Supreme Court Rule 8 does not provide an avenue for [her] to seek the review of disbarment or disciplinary proceedings." *Id.* Nothing in the letter supports the argument that the State Bar's interim suspension is premature. *See* First Resp. at 1; Second Resp. at 1.

Similarly, she vaguely states the Ninth Circuit Bankruptcy Appeals Panel "reversed dismissal of Ms. Albert's claim that the State Bar violated her constitutional rights with such disproportionate State Bar costs." First Resp. at 1; Second Resp. at 1. However, she omits the critical detail that the opinion actually concluded "[t]he bankruptcy court properly dismissed Albert's Eighth Amendment Claim for excessive fines against the State Bar," and the opinion otherwise reversed dismissal of "Albert's claims under the California constitution" because the bankruptcy court incorrectly determined there was no subject matter jurisdiction. *See In re Albert-Sheridan*, No. 18-01065, 658 B.R. 516, 527, 543. (B.A.P. 9th Cir. Apr. 2, 2024). This finding has no bearing on the merits of her claim or the relevant analysis here under *Selling*. Moreover, the Bankruptcy Appeals Panel, in issuing the reversal on jurisdictional grounds, noted "Albert's scattered pleading and ever-changing arguments have confused the jurisdictional analysis," *id.* at 545, and the concurrence in that case concluded Ms. Albert's "briefing and oral argument . . . were incompetent" and "[s]he richly deserved the suspension and other discipline that the California Supreme Court imposed," *id.* at 550 (Farris, J., concurring). The opinion in no way supports Ms. Albert's argument that there was insufficient proof of misconduct. Her referencing it is of a piece with Ms. Albert's practice of making false and misleading statements to the court.

Ms. Albert disputes the State Bar's conclusions that her notification of her second suspension to this court was not "prompt," as required by the local rules. Second Resp. at 2. She contends the lack of explicit statements by courts, judges and court staff that her notification of her suspension was not "prompt" amounts to evidence that her notification was, in fact, "prompt." *Id.* at 2. Her argument is a logical fallacy, without any legal support. *Id.* at 2-3. Though there is no clear deadline required by the "prompt" notice requirement in the Local Rules, Ms.
8 Albert *8 waited more than six months before providing the court notice of her suspension. *See In the Matter of Albert*, 2024 WL 1231293, at *8. As the Review Board explained in its opinion, Ms. Albert even had "actual direct notice" of the relevant local rules and their requirements when the opposing party in a case she was working on cited them in reference to her eligibility to practice law, months before she notified the court. *See id.* Under no reasonable formulation could the six months Ms. Albert waited before giving notice to the court qualify as "prompt." The Review Department provided sufficient proof of her misconduct.

Ms. Albert contends, also without citation, there was insufficient evidence to support the conclusion she was a "burden" on Judge McAuliffe and others in this court. Second Resp. at 3. The court construes this argument as pertaining to the Review Department's determination that "limited weight in aggravation [was] warranted" under the aggravating factor regarding "[significant harm to the client, the public, or the administration of justice." *In the Matter of Albert*, 2024 WL 1231293, at *14; *Matter of Reiss*, No. 09-10499, 2012 WL 5406816 (Cal. Bar Ct. Oct. 3, 2012) (giving weight in aggravation for wasted judicial time and resources). In support of its determination, the Review Department pointed to the "wasted judicial time and resources" that stemmed from Ms. Albert's inability to simply comply with this court's Local Rules and appropriately provide notice of her suspension, which would have obviated the need for the additional burdens placed on the court. *Id.* The court finds the Review Department relied on sufficient proof.

Ms. Albert argues her appeals of her suspensions rendered the dates of her suspension "speculative," potentially validating her conduct at the time. Second Resp. at 4-5. But her pending appeal did not nullify the suspension imposed by the State Bar and does not detract from the proof the Review Department determined established her culpability for her violations of the suspension at the time.

Finally, Ms. Albert argues there was insufficient proof because she was listed on this court's website as having active status. *Id.* at 5; *In the Matter of Albert*, 2024 WL 1231293, at *6. This argument is meritless. As the Review Department pointed out, "[t]he only reason the EDCA website showed Albert as active on February 12,
9 2021, is because Albert did not comply with *9 EDCA L.R. 184 and inform the EDCA of her suspensions." *In the Matter of Albert*, 2024 WL 1231293, at *12.

For these reasons, and upon an independent review of the record, the court finds there was sufficient proof of misconduct to support Ms. Albert's suspension and disbarment.

C. Grave Injustice

Ms. Albert argues grave injustice would result if the discipline imposed by the State Bar were honored by this court. *See generally* Third Resp. She argues "reciprocal suspension or disbarment would result in a manifest injustice because the practice of law is [her] sole source of support." *Id.* at 1. She provides no legal authority to support this argument. She appears to "confuse[] the painful repercussion from reciprocal discipline itself (i.e., disbarment) with the legal standard of whether imposing reciprocal discipline would result in grave injustice because the discipline was improperly imposed." *Matter of Dubin*, No. 20-00419, 2021 WL 4496948, at *16 (D. Haw. Sept. 30, 2021) (alteration omitted). "Instead, [the court] inquire[s] only whether the punishment imposed by another disciplinary authority or court was so ill-fitted to an attorney's adjudicated misconduct that reciprocal disbarment would result in grave injustice." *In re Kramer*, 282 F.3d at 727.

Ms. Albert's argument the disciplinary decision is retaliation for the lawsuit she brought against the State Bar regarding a data breach is equally unconvincing. Ms. Albert identifies the relevant date as her filing of the State Bar data breach putative class action on March 18, 2022, after which she was the subject of State Bar disciplinary proceedings. But the State Bar's disciplinary actions against her began in 2015, predating the data breach lawsuit, with additional proceedings initiated virtually annually through the present.[2]

[2] Attorney Profile for Lenore LuAnn Albert, STATE BAR OF CALIFORNIA, https://apps.calbar.ca.gov/attorney/Licensee/Detail/210876.

The court also is not persuaded by Ms. Albert's meandering argument that there was an unjustifiable and unpredictable break in the law. *See* Third Resp. at 3-6. In making this argument, Ms. Albert seems to request review of the merits of her case based on the underlying acts and law. However, "[i]n reviewing a reciprocal
10 disbarment, we do not re-try an attorney for *10 misconduct." *In re Kramer*, 282 F.3d at 727. As explained above, the court finds the Review Department provided sufficient proof regarding Ms. Albert's misconduct.

The court is not convinced by Ms. Albert's arguments that grave injustice would occur if she were suspended or disbarred in this court because "[t]he putative class action of the State Bar data breach needs a home if the Central District cannot reopen the case," Third Resp. at 1, 7-9, and "[h]er client Ryan McMahon cannot find other counsel due to the negative publicity and cancel-culture in the current environment," *id.* at 1. Assuming without deciding that Mr. McMahon is unable to find other counsel, whatever the reason, that cannot provide a reason for Ms. Albert's avoiding the consequences of her actions.

Ms. Albert has not shown by clear and convincing evidence that the third condition under *Selling*, grave injustice, applies here to spare her from reciprocal disbarment.

D. Conclusion

Ms. Albert has not shown any of the three conditions under *Selling* are satisfied to preclude disbarment. Ms. Albert is hereby **disbarred** from practice in the Eastern District of California.

This order resolves ECF No. 5.

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS-6

CIVIL MINUTES – GENERAL

Case No.: 8:23-cv-00635-FWS-JDE Date: October 6, 2023
Title: Lenore Albert v. Roxanne Gonzalez *et al.*

Present: **HONORABLE FRED W. SLAUGHTER, UNITED STATES DISTRICT JUDGE**

Melissa H. Kunig	N/A
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiff:	Attorneys Present for Defendant:
Not Present	Not Present

PROCEEDINGS: ORDER GRANTING IN PART AND DENYING AS MOOT IN PART DEFENDANT'S MOTION TO DISMISS OR TRANSFER [19]

Before the court is Defendant Roxanne Gonzalez's ("Defendant") Motion to Dismiss, or, in the Alternative, Transfer this Action to the Eastern District of California. (Dkt. 19 ("Motion" or "Mot.").) Plaintiff Lenore Albert ("Plaintiff") opposes. (Dkt. 22 ("Opposition" or "Opp.").) Defendant has replied. (Dkt. 24 ("Reply").) Based on the state of the record, as applied to the applicable law, the court **GRANTS IN PART AND DENIES AS MOOT IN PART** the Motion.

I. Background

This case arises from Defendant, a court clerk for the United States District Court for the Eastern District of California ("Eastern District"), changing Plaintiff's status from an "active" member of the Bar of the Eastern District to an "inactive" one pursuant to Eastern District Local Rules 180(c) and 184(b).[1] (Dkt. 1 ("Complaint" or "Compl.") ¶¶ 3, 7, 9, 17.) Plaintiff asserts this involuntary change in status violated her constitutional rights and consequently seeks

[1] Although Plaintiff appears in this action *pro se*, the liberal construction of pleadings customarily afforded to *pro se* parties does not apply because she is an attorney. *Huffman v. Lindgren*, --- F.4th ----, 2023 WL 5660151, at *3 (9th Cir. Sept. 1, 2023); *Holtz v. Rockefeller & Co.*, 258 F.3d 62, 82 n.4 (2d Cir. 2001).

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CENTRAL DISTRICT OF CALIFORNIA

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various forms of equitable relief, including declaratory and injunctive relief, in addition to damages. (*Id.* ¶¶ 20-59.)

To put the matter in context requires some review of the record. Plaintiff was previously suspended[2] by the California Supreme Court in 2017 for one year, stayed, and was placed on probation for one year with actual suspension for 30 days.[3] Within a week of her suspension and prior to paying the sanctions award underlying the suspension, Plaintiff filed for Chapter 13 bankruptcy. *See Albert v. Williams*, 2018 WL 6092578, at *3 (C.D. Cal. Nov. 21, 2018). The bankruptcy court ultimately discharged some of the sanctions award against Plaintiff but required her to pay discipline costs. (Dkt. 19-1 ("Pinchas Decl."), Exh. 1 at 5.) Plaintiff paid the amounts owed on April 21, 2021, after which the State Bar determined Plaintiff should be reinstated.[4] (*Id.* at 6.)

Around this time in 2021, Plaintiff participated in the defense of at least one case in the Eastern District, *Avalos v. Gonzalez*, No. 1:20-cv-01578 (E.D. Cal.). In connection with that case, Plaintiff requested a certificate of good standing from Defendant on or about February 12, 2021. (Compl. ¶ 33.) After receiving Plaintiff's request, Defendant changed Plaintiff's status from "active" to "inactive" pursuant to Eastern District Local Rules 180(c) and 184(b) on or about March 3, 2021.[5] (*Id.* ¶¶ 9, 11.) Defendant decided to change Plaintiff's status after

[2] Defendant notes Plaintiff has some history in proceedings before the State Bar, (*see* Mot. at 1-2); the bulk of these are not relevant here.
[3] *See* State Bar Court of California Case No. 15-O-12260, *available at* https://apps.statebarcourt.ca.gov/dockets.aspx.
[4] Plaintiff's license was apparently briefly reinstated on June 1, 2018, backdated to March 16, 2018 due to developments in the Chapter 13 proceedings. *See Albert*, 2018 WL 6092578, at *3. The suspension was re-imposed on June 28, 2018 after the Bankruptcy converted her case into a Chapter 7 proceeding. *See id.*
[5] In sum, Rule 180(c) requires attorneys admitted to the Eastern District to notify the court of changes in status in other jurisdictions that would make them ineligible to practice in that District, and provides a procedure by which ineligible attorneys may be suspended form practice without a separate court order in certain circumstances. *See* E.D. Cal. L.R. 180(c).

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observing Plaintiff was listed on the California State Bar's website as "not eligible" to practice law in California. (*Id.* ¶¶ 10, 34.)

On February 19, 2021, Plaintiff filed an answer in the *Avalos* litigation. Request for Ruling at 1, *Avalos v. Gonzalez*, No. 1:20-cv-01578 (E.D. Cal.) (Dkt. 15). Plaintiff later sought an order from the court on March 3, 2021 permitting her to represent a party in that action. *Id.* Two days later, the presiding Magistrate Judge ordered Plaintiff to show cause why her request for admission should not be denied based on her suspension from the practice of law in California. Order to Show Cause at 1-2, *Avalos v. Gonzalez*, No. 1:20-cv-01578 (E.D. Cal.) (Dkt. 16). Plaintiff submitted several filings in response, and a hearing was held on April 16, 2021. *See, e.g.*, Memorandum of Points and Authorities in Support of Lenore Albert's Response to the Court's Order to Show Cause, *Avalos v. Gonzalez*, No. 1:20-cv-01578 (E.D. Cal.) (Dkt. 22); Minutes for Proceedings, *Avalos v. Gonzalez*, No. 1:20-cv-01578 (E.D. Cal.) (Dkt. 33). The order was discharged as moot on May 12, 2021, after Plaintiff's reinstatement. Order Discharging Order to Show Cause at 1-2, *Avalos v. Gonzalez*, No. 1:20-cv-01578 (E.D. Cal.) (Dkt. 39).

A California State Bar disciplinary proceeding, Case No. 22-O-30348, was initiated against Plaintiff on April 29, 2022. (Pinchas Decl., Exh. 1, at 2.) After a four-day trial in December 2022, the State Bar Court issued its opinion on April 3, 2023 recommending, in part, that Plaintiff be suspended from practice for eighteen months, pay monetary sanctions and costs, and remain on parole for 3 years. (Pinchas Decl., Exh. 1 at 49, 51-56.) The State Bar Court based its recommendation on its findings that Plaintiff knowingly violated the rules of a tribunal (i.e., the Eastern District's Local Rules) in violation of State Bar Rule 3.4(f), that Plaintiff failed to comply with California law by engaging in the unauthorized practice of law in

Likewise, Rule 184(b) requires admitted attorneys to provide similar notice of a change in status in another jurisdiction or disciplinary actions taken against them, an automatic suspension if that attorney becomes ineligible to practice in the Eastern District as a consequence, and a procedure by which the attorney may receive an opportunity to contest their suspension or disbarment from the Eastern District. *See* E.D. Cal. L.R. 184(b).

the Eastern District, and that insufficient evidence supported a finding that Plaintiff's actions involved moral turpitude, dishonesty, or corruption. (*Id.* at 21-34.)

This action was filed in this court on April 12, 2023. (Dkt. 1.) In it, Plaintiff seeks (1) declaratory relief that (a) Local Rules 180 and 184 are unconstitutional as applied to Plaintiff, (b) she has a right to contest her change in status in the Eastern District of California, and (c) a right to an appealable order of decision; (2) to enjoin Defendant from changing Plaintiff's status from "active" to "inactive" without a prior hearing and accompanying appealable order; (3) damages on account of Defendant's asserted violations of Plaintiff's First and Fifth[6]

[6] The complaint alleges Plaintiff's "due process" rights were violated, (Compl. ¶ 39), but only explicitly references the Fourteenth Amendment, (*e.g.*, *id.* ¶ 51). The Fourteenth Amendment is not a proper vehicle for the relief Plaintiff seeks because it "applies to actions by a State," not the federal government. *San Francisco Arts & Athletics, Inc. v. U.S. Olympic Comm.*, 483 U.S. 522, 542 n.21 (1987). Because Defendant is an employee of the federal government, Plaintiff's due process claims arise under the Fifth Amendment. *See, e.g.*, *Bingue v. Prunchak*, 512 F.3d 1169, 1174 (9th Cir. 2008) ("The Fifth Amendment prohibits the federal government from depriving persons of due process, while the Fourteenth Amendment explicitly prohibits deprivations without due process by the several States.") (quoting *Castillo v. McFadden*, 399 F.3d 993, 1002 n.5 (9th Cir. 2005)). Relatedly, Plaintiff filed a notice of errata and declaration indicating her desire to have the Complaint reference the Fifth Amendment instead of the Fourteenth. (*See* Dkts. 22-23.) Filing an erratum concurrently with an opposition to a noticed motion is not the proper procedure to correct inconsistencies in a challenged complaint. *See Gunn v. Tilton*, 2010 WL 3744610, at *3 (E.D. Cal. Sept. 21, 2010) (noting "it is not proper" a plaintiff to use errata to add claims and allegations to a lodged amended complaint and consequently denying request to append those claims to the lodged amended complaint). The court will nevertheless analyze Plaintiff's constitutional claims under the Fifth, not Fourteenth, Amendment because legal conclusions in a complaint are not controlling. *See, e.g.*, *Whitaker v. Tesla Motors, Inc.*, 985 F.3d 1173, 1176 (9th Cir. 2021).

Amendment rights; and (4) equitable relief under California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.* ("UCL").[7] (*Id.* ¶¶ 20-59.)

Meanwhile, Plaintiff has appealed the State Bar Court's recommendation in California Superior Court, filing her opening brief in the State Bar Court Review Department on June 29, 2023. (Pinchas Decl., Exh. 2.) In her brief, Plaintiff argues, as she does in this action, that Eastern District Local Rules 180 and 184 are unconstitutional and violate Supreme Court law, and that she was denied due process by the Eastern District of California. (*Id.* at 12, 15.)

II. Relevant Legal Standards[8]

A. Motion to Dismiss under Rule 12(b)(1)

"Federal courts are courts of limited jurisdiction, possessing only that power authorized by Constitution and statute." *Gunn v. Minton*, 568 U.S. 251, 257 (2013) (citation and internal

[7] Given they overlap in the relief requested, (*see* Compl. ¶¶ 26-27, 29, 31), and are materially indistinguishable for purposes of the court's analysis, the court refers to Plaintiff's sought declaratory and injunctive relief as her "first" and "second" claims. The court refers to Plaintiff's claim for damages based on asserted constitutional violations as her "third" or "*Bivens*" claim, and her claim under the UCL as her "fourth" or "UCL" claim.

[8] Defendant does not clearly establish whether a particular argument for the dismissal it seeks under *Younger* is brought under Rule 12(b)(1) or 12(b)(6). The court is unaware of Supreme Court or Ninth Circuit authority squarely resolving the issue, and notes that federal courts apply both standards. *See, e.g.*, *Parker v. Jud. Inquiry Comm'n of the State of Alabama*, 212 F. Supp. 3d 1171, 1174 n.1 (M.D. Ala. 2016) (observing split). For present purposes, the court finds the Rule 12(b)(1) standard is better suited to this aspect of the Motion. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 100 n.3 (1998) (describing the Supreme Court's "treat[ment]" of *Younger* as "jurisdictional"); *Washington v. Los Angeles Cnty. Sheriff's Dep't*, 833 F.3d 1048, 1057-58 (9th Cir. 2016) (treating dismissal under *Younger* as a Rule 12(b)(1) motion for purposes of calculating strikes under the Prisoner Litigation Reform Act because *Younger* "contemplates the outright dismissal of the federal suit, and the presentation of all claims, both

quotation marks omitted). Pursuant to Federal Rule of Civil Procedure 12(b)(1), a party may move to dismiss a case for lack of subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). A defendant's challenge under the Rule may be either facial or factual. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). A facial attack "accepts the truth of plaintiff's allegations but asserts that they 'are insufficient on their face to invoke federal jurisdiction.'" *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014) (quoting *Safe Air for Everyone*, 373 F.3d at 1039). A factual attack "contests the truth of the plaintiff's factual allegations, usually by introducing evidence outside of the pleadings." *Id.*

"In resolving a factual attack on jurisdiction, the district court may review evidence beyond the complaint without converting the motion to dismiss into a motion for summary judgment." *Safe Air for Everyone*, 373 F.3d at 1039 (citation omitted). The court need not presume the truthfulness of the plaintiff's allegations in doing so. *Id.* "Once the moving party has converted the motion to dismiss into a factual motion by presenting affidavits or other evidence properly brought before the court, the party opposing the motion must furnish affidavits or other evidence necessary to satisfy its burden of establishing subject matter jurisdiction." *Savage v. Glendale Union High Sch.*, 343 F.3d 1036, 1039 n.2 (9th Cir. 2003) (citation omitted). Where "the jurisdictional disputes [are] not intertwined with the merits of

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state and federal, to the state courts") (quoting *Gibson v. Berryhill*, 411 U.S. 564, 577 (1973)). The court notes either standard would yield the same outcome; the court may take judicial notice of the Superior Court filings submitted by Defendant in the Rule 12(b)(6) context, *see Tye v. Cnty. of Los Angeles*, 785 F. App'x 479, 480 (9th Cir. 2019), and the court is permitted on a Rule 12(b)(1) motion to "look beyond the complaint and consider extrinsic evidence," *Warren v. Fox Fam. Worldwide, Inc.*, 328 F.3d 1136, 1141 n.5 (9th Cir. 2003) (citation omitted). The court will likewise consider the supplementary materials submitted by Plaintiff in analyzing *Younger* abstention. (Dkts. 22-23.) However, absent a party demonstrating an exception applies that permits consideration of extrinsic materials to evaluate an issue relevant to Defendant's challenges under Rule 12(b)(6), the court will cabin its consideration of those materials to the *Younger* analysis. *See* Fed. R. Civ. P. 12(d); (*see also* Reply at 9 (objecting to considering Plaintiff's declaration and exhibits because "[a] motion to dismiss for failure to state a claim is based on the pleadings . . . .").)

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the claim" and "the existence of jurisdiction turn[s] on disputed factual issues," the court may "resolve those factual disputes" where necessary. *See Friends of the Earth v. Sanderson Farms, Inc.*, 992 F.3d 939, 944 (9th Cir. 2021) (citation and internal quotation marks omitted); *Kingman Reef Atoll Invs., L.L.C. v. United States*, 541 F.3d 1189, 1195 (9th Cir. 2008).

B. Motion to Dismiss under Rule 12(b)(6)

Rule 12(b)(6) permits a defendant to move to dismiss a complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). "[C]ourts must consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 322 (2007). To withstand a motion to dismiss brought under Rule 12(b)(6), a complaint 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, 570 (2007). While "a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations," a plaintiff must provide "more than labels and conclusions" and "a formulaic recitation of the elements of a cause of action" such that the factual allegations "raise a right to relief above the speculative level." *Id.* at 555 (citations and internal quotation marks omitted); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (reiterating that "recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice"). "A Rule 12(b)(6) dismissal 'can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.'" *Godecke v. Kinetic Concepts, Inc.*, 937 F.3d 1201, 1208 (9th Cir. 2019) (quoting *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990)).

"Establishing the plausibility of a complaint's allegations is a two-step process that is 'context-specific' and 'requires the reviewing court to draw on its judicial experience and common sense.'" *Eclectic Props. E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 995-96 (9th Cir. 2014) (quoting *Iqbal*, 556 U.S. at 679). "First, to be entitled to the presumption of truth, allegations in a complaint . . . must contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively." *Id.* at 996 (quoting *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011)). "Second, the factual allegations

that are taken as true must plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation." *Id.* (quoting *Starr*, 652 F.3d at 1216); *see also Iqbal*, 556 U.S. at 681.

Plausibility "is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 556). On one hand, "[g]enerally, when a plaintiff alleges facts consistent with both the plaintiff's and the defendant's explanation, and both explanations are plausible, the plaintiff survives a motion to dismiss under Rule 12(b)(6)." *In re Dynamic Random Access Memory (DRAM) Indirect Purchaser Antitrust Litig.*, 28 F.4th 42, 47 (9th Cir. 2022) (citing *Starr*, 652 F.3d at 1216). But, on the other, "[w]here a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." *Eclectic Props. E.*, 751 F.3d at 996 (quoting *Iqbal*, 556 at U.S. 678). Ultimately, a claim is facially plausible where "the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *See Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 at 556); *accord Wilson v. Hewlett-Packard Co.*, 668 F.3d 1136, 1140 (9th Cir. 2012).

In *Sprewell v. Golden State Warriors*, the Ninth Circuit described legal standards for motions to dismiss made pursuant to Rule 12(b)(6):

> Review is limited to the contents of the complaint. All allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party. The court need not, however, accept as true allegations that contradict matters properly subject to judicial notice or by exhibit. Nor is the court required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.

266 F.3d 979, 988 (9th Cir. 2001) (citations omitted).

III. Discussion

UNITED STATES DISTRICT COURT
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Defendant argues the relief sought by Plaintiff either impermissibly interferes with ongoing proceedings related to Plaintiff's appeal of the State Bar Court's recommendation or are otherwise legally deficient. (Mot.) Specifically, Defendant contends the court should abstain from adjudicating Plaintiff's claims seeking injunctive and declaratory relief based on asserted constitutional violations under *Younger v. Harris*, 401 U.S. 37 (1971), that there is no private right of action for damages for those asserted violations under *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), and Plaintiff's other claims against Defendant are barred by quasi-judicial immunity. (*Id.* at 4-10; Reply at 1-6.) In the alternative, Defendant argues this case should be transferred to the Eastern District. (Mot. at 10-11; Reply at 6-8.)

Plaintiff asserts that *Younger* does not require abstention because she is not bringing suit against the State Bar specifically and certain elements necessary for abstention are not met, her *Bivens* claim is permissible because it asserts violations of her Fifth Amendment due process right, and quasi-judicial immunity does not apply. (Opp. at 1-18.) Plaintiff disputes that this case should be transferred to the Eastern District but requests a transfer rather than dismissal if the court concludes otherwise, and seeks leave to amend if the court finds dismissal for another reason raised by Defendant is appropriate. (*Id.* at 18-22.)

A. *Younger* Abstention

In "exceptional circumstances," federal courts may decline to hear a case when parallel state proceedings are ongoing under the *Younger* abstention doctrine. *New Orleans Pub. Serv., Inc. v. Council of New Orleans (NOPSI)*, 491 U.S. 350, 368 (1989). *Younger* is "an extraordinary and narrow exception to the general rule that federal courts 'have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given.'" *Potrero Hills Landfill, Inc. v. Cnty. of Solano*, 657 F.3d 876, 882 (9th Cir. 2011) (quoting *NOPSI*, 491 U.S. at 358). The doctrine applies in three categories of proceedings: (1) "ongoing state criminal prosecutions"; (2) "certain civil enforcement proceedings"; and (3) "civil proceedings involving certain orders uniquely in furtherance of the state courts' ability to perform their judicial functions." *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 78 (2013) (citing *NOPSI*, 491 U.S. at 368) (alterations and internal quotation marks omitted).

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To warrant *Younger* abstention, a state civil action must also satisfy three factors: "the state proceeding must be (1) 'ongoing,' (2) 'implicate important state interests,' and (3) provide 'an adequate opportunity . . . to raise constitutional challenges.'" *Herrera v. City of Palmdale*, 918 F.3d 1037, 1044 (9th Cir. 2019) (quoting *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982)). If the state proceeding both falls into one of the three *NOPSI* categories and satisfies the three *Middlesex* factors, *Younger* abstention is appropriate only if the requested relief "seek[s] to enjoin—or ha[s] the practical effect of enjoining—ongoing state proceedings." *ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund*, 754 F.3d 754, 758 (9th Cir. 2014). Each of these requirements must be met. *AmerisourceBergen Corp. v. Roden*, 495 F.3d 1143, 1148 (9th Cir. 2007) (citing *Middlesex*, 457 U.S. at 423, 431-34, 437; *NOPSI*, 491 U.S. at 372-73).

The proceedings pending in California state court related to Plaintiff's disciplinary proceedings before the California State Bar are subject to *Younger* abstention. The Supreme Court has held that bar disciplinary proceedings that are "judicial in nature . . . are of a character to warrant federal-court deference" under *Younger*. *See Middlesex*, 457 U.S. at 433-34 (internal quotation marks omitted). That logic applies with equal force to California's State Bar disciplinary proceedings, given California's Supreme Court similarly recognizes that "[t]he State Bar is a constitutional entity, placed within the judicial article of the California Constitution, and thus [is] expressly acknowledged as an integral part of the judicial function." *In re Rose*, 22 Cal. 4th 430, 438 (2000) (citing, *inter alia*, CAL. CONST. art. VI, § 9).

The court concludes that each of the three *Middlesex* factors are satisfied here. With respect to the first factor, State Bar appellate proceedings were ongoing as of the date this action was filed. *See ReadyLink*, 754 F.3d at 759 ("[T]he date for determining whether *Younger* applies is the date the federal action is filed.") (citations and internal quotation marks omitted). The second *Middlesex* factor is likewise met. California has "an extremely important interest in maintaining and assuring the professional conduct of the attorneys it licenses" which "calls *Younger* abstention into play." *See Middlesex*, 457 U.S. at 434-35.

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The third *Middlesex* factor is also satisfied. In short, while "[t]he California Constitution precludes the Bar Court from considering federal constitutional claims . . . [,] such claims may be raised in judicial review of the Bar Court's decision. This opportunity satisfies the third requirement of *Younger*." *Hirsh v. Justices of Supreme Ct. of State of Cal.*, 67 F.3d 708, 713 (9th Cir. 1995) (citing, *inter alia*, *Ohio C.R. Comm'n v. Dayton Christian Sch., Inc.*, 477 U.S. 619, 627 (1986)); *see also Juidice v. Vail*, 430 U.S. 327, 337 (1977) ("No more" than "an opportunity to present [the] federal claims in the state proceedings" is "required to invoke *Younger* abstention"); *Albert*, 2018 WL 6092578, at *4 (C.D. Cal. Nov. 21, 2018) (finding that Plaintiff's earlier California State Bar appellate proceedings provided "an adequate opportunity to litigate federal constitutional claims" and noting the "Ninth Circuit has repeatedly held" that the opportunity to raise federal constitutional claims in judicial review of the State Bar Court's decision "is sufficient to satisfy [this] factor") (citations omitted).

With these requirements met, the remaining inquiry[9] is whether granting relief in this case would effectively enjoin the pending state court proceedings. The court finds it would. Plaintiff seeks from this court various forms of relief, all of which are dependent on the court finding Local Rules 180 and 184 are unconstitutional or "unfair business practices" under California law. As Defendant notes, Plaintiff can and does raise substantially similar arguments in her opening appellate brief, and it is undisputed that her suspension from practice was based on an application of the same Local Rules. Given the crux of the State Bar proceedings against Plaintiff is her suspension from practice in the Eastern District under Local Rules 180 and 184, a ruling from this court invalidating the same Rules would effectively nullify ongoing proceedings in Plaintiff's appeal from the State Bar Court's recommendation. *See Citizens for Free Speech, LLC v. Cnty. of Alameda*, 953 F.3d 655, 656-57 (9th Cir. 2020) (holding the plaintiff's "federal action could substantially delay the abatement proceeding, thus having the practical effect of enjoining it" where the plaintiff challenged the constitutionality of billboard

[9] Because the court finds *Younger* abstention appropriate, it does not reach Defendant's argument that Plaintiff's sought injunction and declaratory relief are premature because Plaintiff is currently permitted to practice law in California and the district courts in which she is admitted. (Mot. at 6.)

ordinances pursuant to which ongoing state abatement proceedings were brought against the plaintiff); *see also Gilbertson v. Albright*, 381 F.3d 965, 982 (9th Cir. 2004) (en banc) (holding that where the issues raised in a complaint went "to the heart of [the plaintiff's] opposition" to the defendant's assertedly unconstitutional actions challenged in the state proceeding, "a federal court's decision on the merits of [the plaintiff's] claims would have the same practical effect on the state proceeding as an injunction") (citation omitted).

Finally, the record before the court does not support a finding that the California State Bar brought the disciplinary proceedings against Plaintiff to harass or in bad faith. *See World Famous Drinking Emporium, Inc. v. City of Tempe*, 820 F.2d 1079, 1083 (9th Cir. 1987) (citing *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 611 (1975)); *see also Canatella v. California*, 404 F.3d 1106, 1112 (9th Cir. 2005) ("[A]ctual evidence [is necessary] to overcome the presumption of honesty and integrity in those serving as adjudicators . . . . We have also specifically rejected arguments . . . that the California Supreme Court has an inherent conflict of interest in considering constitutional challenges to state bar disciplinary proceedings.") (citations and internal quotation marks omitted). Therefore, the court finds *Younger* abstention appropriate as to Plaintiff's first and second claims for injunctive and declaratory relief. Because Defendant does not request abstention as to Plaintiff's damages claim, and the court finds, as stated below, Plaintiff's sought damages do not attach to a viable legal theory, the court **DISMISSES** Plaintiff's first and second claims. *See Gilbertson*, 381 F.3d at 980-82 & n.18 (discussing reasons why courts may stay instead of dismissing claims on abstention grounds, noting that "[w]hen an injunction is sought and *Younger* applies" absent a claim for damages, "it makes sense to abstain, that is, to refrain from exercising jurisdiction, *permanently* by dismissing the federal action because the federal court is only being asked to stop the state proceeding").

B. Cause of Action under *Bivens*

The Supreme Court in *Bivens* recognized an implied cause of action against federal officials for "unreasonable searches and seizures" violative of the Fourth Amendment. 403 U.S. at 389-90, 397. "Since then, the Supreme Court has extended *Bivens* exactly twice." *Marquez v. C. Rodriguez*, --- F. 4th ----, 2023 WL 5733889, at *2 (9th Cir. Sept. 6, 2023); *see*

also Ziglar v. Abbasi, 582 U.S. 120, 131 (2017) ("These three cases—*Bivens*, *Davis*, and *Carlson*—represent the only instances in which the Court has approved of an implied damages remedy under the Constitution itself."). In the first instance, the Supreme Court "permitted an administrative assistant to seek a damages remedy against her former employer, a congressman, for alleged sex discrimination in violation of the Fifth Amendment." *Marquez*, --- F.4th ----, 2023 WL 5733889, at *2 (citing *Davis v. Passman*, 442 U.S. 228 (1979)); *see also Davis*, 442 U.S. at 248-49. In the second, the high Court "recognized a *Bivens* remedy in an action brought by a federal prisoner's estate contending that prison officials infringed the Eighth Amendment's Cruel and Unusual Punishment Clause by failing to provide adequate medical treatment." *Marquez*, --- F.4th ----, 2023 WL 5733889, at *2 (citing *Carlson v. Green*, 446 U.S. 14 (1980)); *see also Carlson*, 446 U.S. at 19.

The Supreme Court has since "made clear that expanding the *Bivens* remedy is now a 'disfavored' judicial activity." *Ziglar*, 582 U.S. at 135 (quoting *Iqbal*, 556 U.S. at 675); *see also Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 68 (2001) ("Since *Carlson* we have consistently refused to extend *Bivens* liability to any new context or new category of defendants."). Accordingly, courts analyze a proposed *Bivens* claims under a two-step inquiry. "First, we ask whether the case presents a new *Bivens* context—i.e., is it meaningfully different from the three cases in which the Court has implied a damages action." *Egbert v. Boule*, 142 S. Ct. 1793, 1803 (2022) (cleaned up). If a case arises in a new *Bivens* context, "a *Bivens* remedy is unavailable if there are special factors indicating that the Judiciary is at least arguably less equipped than Congress to weigh the costs and benefits of allowing a damages action to proceed." *Id.* (citation and internal quotation marks omitted). "[T]hose steps often resolve to a single question: whether there is any reason to think that Congress might be better equipped to create a damages remedy." *Id.* "In practice, the Supreme Court's stringent test will foreclose relief in all but the most extraordinary cases." *Marquez*, --- F.4th ----, 2023 WL 5733889, at *3 (citations omitted).

"If the case is different in a meaningful way from previous *Bivens* cases decided by [the Supreme] Court, then the context is new." *Ziglar*, 582 U.S. at 139. The Complaint in this case asserts Defendant violated Plaintiff's First, Fifth and Fourteenth Amendment rights by changing

her status from "active" to "inactive" without first holding a hearing or providing an order Plaintiff could appeal to the Ninth Circuit, and acting unilaterally. (Compl. ¶¶ 39-42.) Conversely, the Supreme Court's prior *Bivens* cases did not address violations of First Amendment rights, and to the extent *Davis* addressed due process rights under the Fifth Amendment, it did so in the context of gender-based discrimination. *See Davis*, 442 U.S. at 234-35, 248-49; *F.D.I.C. v. Meyer*, 510 U.S. 471, 484 n.9 (1994) (noting that "a *Bivens* action alleging a violation of the Due Process Clause of the Fifth Amendment may be appropriate in some contexts, but not in others") (citing, *inter alia*, *Schweiker v. Chilicky*, 487 U.S. 412, 429 (1988)); *see generally Bivens*, 403 U.S. 388 (unreasonable searches and seizures under the Fourth Amendment); *Carlson*, 14 U.S. 14 (cruel and unusual punishment under the Eighth Amendment). This case also "involves a new category of defendants," *Hernandez v. Mesa*, 140 S. Ct. 735, 737 (2020) (citation and internal quotation marks omitted), specifically, clerks of United States federal courts, *see generally Bivens*, 403 U.S. 388 (FBI agents); *Davis*, 442 U.S. 228 (congressional representatives); *Carlson*, 446 U.S. 14 (prison officials). Because these points of departure demonstrate this case "bear[s] little resemblance to the three *Bivens* claims the [Supreme] Court has approved in the past," the court finds it arises in a new *Bivens* context. *See Ziglar*, 582 U.S. at 140.

The remaining question is whether any "'special factors' indicat[e] that the Judiciary is at least arguably less equipped than Congress to weigh the costs and benefits of allowing a damages action to proceed" here. *Egbert*, 142 S. Ct. at 1803 (citation and some internal quotation marks omitted). As discussed below, at least a couple do. And "[i]f there is even a single reason to pause before applying *Bivens* in a new context, [the] court may not recognize a *Bivens* remedy." *Id.* So Plaintiff's third claim is not cognizable.

One reason for hesitation, to borrow from the Supreme Court's language, is that "'Congress is in a far better position than a court to evaluate the impact of a new species of litigation' against those who act on the public's behalf." *Wilkie v. Robbins*, 551 U.S. 537, 562 (2007) (quoting *Bush v. Lucas*, 462 U.S. 367, 389 (1983)). Notably, "Congress can tailor any remedy to the problem perceived, thus lessening the risk of raising a tide of suits threatening legitimate initiative on the part of the Government's employees." *Id.* (citing, *inter alia*, *Bush*,

462 U.S. at 389). Accordingly, in the court's view, the Legislature, and not this court, is in a better position to evaluate whether private causes of action seeking damages against federal court clerks based on asserted errors in court admission processes should be authorized.

Another reason for the court's pause is that, as noted, Plaintiff has raised her challenges to Eastern District Local Rules 180(c) and 184(b) in the pending state court proceedings. There is thus a "alternative, existing process for protecting the interest[s]" Plaintiff seeks to vindicate in this action, which itself "amounts to a convincing reason for the Judicial Branch to refrain from providing a new and freestanding remedy in damages" by extending *Bivens*. *See Wilkie*, 551 U.S. at 550 (citation omitted); *see also Ziglar*, 582 U.S. at 137 ("[I]f there is an alternative remedial structure present in a certain case, that alone may limit the power of the Judiciary to infer a new *Bivens* cause of action."); *cf. Davis*, 442 U.S. at 245 ("For Davis, as for Bivens, 'it is damages or nothing.'") (quoting *Bivens*, 403 U.S. at 410) (Harlan, J., concurring in the judgment).

In sum, the court concludes this case arises in a new *Bivens* context and special factors indicate Congress is better suited to determining the merits and demerits of recognizing a cause of action in like circumstances. Therefore, binding precedent forecloses the court's ability to recognize a cause of action under *Bivens* against Defendant. Accordingly, Plaintiff's third claim seeking damages for alleged violations of her First and Fifth Amendment rights is **DISMISSED**.

C. Quasi-Judicial Immunity

Absolute judicial immunity "insulates judges from charges of erroneous acts or irregular action," *In re Castillo*, 297 F.3d 940, 947 (9th Cir. 2002) (citing *Forrester v. White*, 484 U.S. 219, 227-28 (1988)), and "is not reserved solely for judges, but extends to nonjudicial officers for 'all claims relating to the exercise of judicial functions,'" *id.* (quoting *Burns v. Reed*, 500 U.S. 478, 499 (1991) (Scalia, J., concurring in part and dissenting in part)). The "touchstone for its applicability is 'performance of the function of resolving disputes between parties, or of authoritatively adjudicating private rights.'" *Burton v. Infinity Cap. Mgmt.*, 862 F.3d 740, 747

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(9th Cir. 2017) (quoting *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 435-36 (1993)). Therefore, "to determine whether a nonjudicial officer is entitled to absolute quasi-judicial immunity, courts must look to the nature of the function performed and not to the identity of the actor performing it." *In re Castillo*, 297 F.3d at 947 (citations omitted). Quasi-judicial immunity applies to "judicial act[s] with 'a sufficiently close nexus to the adjudicative process.'" *Burton*, 862 F.3d at 748 (quoting *In re Castillo*, 297 F.3d at 948). In the case of nonjudicial officers, "it is only when the judgment of an official other than a judge involves the exercise of discretionary judgment that judicial immunity may be extended to that nonjudicial officer." *Id.* (quoting *In re Castillo*, 297 F.3d at 949).

"Court clerks have absolute quasi-judicial immunity from damages for civil rights violations when they perform tasks that are an integral part of the judicial process." *Mullis v. U.S. Bankr. Ct. for Dist. of Nevada*, 828 F.2d 1385, 1390 (9th Cir. 1987) (citations omitted); *Coulter v. Roddy*, 463 F. App'x 610, 611 (9th Cir. 2011) (same). The Ninth Circuit has "extended absolute quasi-judicial immunity . . . to court clerks and other non-judicial officers for purely administrative acts—acts which taken out of context would appear ministerial, but when viewed in context are actually a part of the judicial function." *In re Castillo*, 297 F.3d at 952 (citation omitted).

As noted, the Complaint alleges Defendant, after receiving Plaintiff's request for a certificate of good standing, "unilaterally" changed Plaintiff's status in the Eastern District from "active" to "inactive." (Compl. ¶¶ 9-11, 13, 17, 34.) Per the Complaint, Defendant did so because she found Plaintiff was listed as "not eligible" to practice law on the California State Bar's website. (*Id.* ¶ 34.) The court concludes Defendant's actions—namely reviewing Plaintiff's standing with the California State Bar and determining whether that impacted Plaintiff's "active" status as an admitted practitioner in the Eastern District—are an integral part of the judicial process. *See Fischer v. United States*, 2003 WL 21262103, at *4 (C.D. Cal. May 30, 2003) (finding "alleged violations of the federal Clerk's Manual Code of Conduct and Attorney Admissions Procedures" amounted to "alleged misconduct by the defendant clerks and other court employees concern tasks that are 'an integral part of the judicial process.'"), *aff'd sub nom. Fischer v. Admin. Off. of U.S. Cts.*, 80 F. App'x 606 (9th Cir. 2003).

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Accordingly, Defendant is entitled to quasi-judicial immunity as to Plaintiff's asserted civil rights cause of action; though, as discussed above, the court finds it improper to extend *Bivens* to this case in the first instance.

The court next turns to Plaintiff's fourth and final claim under the UCL. The UCL broadly prohibits "unfair competition," i.e., "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code." Cal. Bus. & Prof. Code § 17200. The class of persons with standing to bring suit under the UCL is limited "to persons who 'ha[ve] suffered injury in fact and ha[ve] lost money or property as a result of the unfair competition.'" *Hinojos v. Kohl's Corp.*, 718 F.3d 1098, 1103 (9th Cir. 2013) (quoting Cal. Bus. & Prof. Code § 17204).

The court finds no principled reason to, on one hand, apply quasi-judicial immunity to Plaintiff's civil rights claim but then, on the other, refrain from finding Plaintiff's UCL claim is barred for the same reason. Plaintiff's UCL claim is based on the same factual circumstances as her *Bivens* claim. (*See* Compl. ¶¶ 47-59.) Framing the Complaint's factual allegations as constituting a fraudulent, unlawful, or unfair business practice in the context of this claim provides no meaningful point of departure. *Cf. Forrester*, 484 U.S. at 227 ("[A]cting to disbar an attorney as a sanction for contempt of court, by invoking a power 'possessed by all courts which have authority to admit attorneys to practice,' does not become less judicial by virtue of an allegation of malice or corruption of motive.") (quoting *Bradley v. Fisher*, 13 Wall. 335, 354 (1871)). In short—and in spite of the UCL's breadth—the court is not persuaded the statute permits Plaintiff to circumvent the bar imposed by quasi-judicial immunity. *See Cel-Tech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal. 4th 163, 182 (1999) ("A bar against an action 'may not be circumvented by recasting the action as one under Business and Professions Code section 17200.'") (quoting *Rubin v. Green*, 4 Cal. 4th 1187, 1202 (1993)); *see also Rubin*, 4 Cal. 4th at 1201 (noting California courts have "rejected the claim that a plaintiff may, in effect, 'plead around' absolute barriers to relief by relabeling the nature of the action as one brought under the unfair competition statute"); *cf. Cel-Tech*, 20 Cal. 4th at 182 ("Although the

unfair competition law's scope is sweeping, it is not unlimited.") Therefore, Plaintiff's fourth claim alleging violations of the UCL is **DISMISSED**.

IV. Disposition

For the reasons stated, the court **GRANTS** the Motion.[10] The Complaint is **DISMISSED**. Defendant's alternative argument that the court should transfer this case to the Eastern District of California is **DENIED AS MOOT**.

Because the court finds Plaintiff's requested relief is either properly dismissed under *Younger* (as to Plaintiff's first and second claims seeking declaratory and injunctive relief relating to Eastern District Local Rules 180 and 184) or barred as a matter of law (as to Plaintiff's third (*Bivens*) and fourth (UCL) claims), leave to amend is **DENIED** as futile. *See Barke v. Banks*, 25 F.4th 714, 721 (9th Cir. 2022) ("While it is black-letter law that a district court must give plaintiffs at least one chance to amend a deficient complaint, that presumption can be overcome where there has been a clear showing that amendment would be futile.") (cleaned up); *Newland v. Dalton*, 81 F.3d 904, 907 (9th Cir. 1996) ("While Fed. R. Civ. P. 15(a) encourages leave to amend, district courts need not accommodate futile amendments.").

The court's dismissal of Plaintiff's first and second claims under *Younger* is **WITHOUT PREJUDICE**. *See Wasson v. Riverside Cnty.*, 234 F. App'x 529, 530 (9th Cir. 2007) (holding amendment of the complaint "would have been futile" where action was barred by *Younger* but noting "the district court should have abstained under *Younger* and dismissed the [] action without prejudice"). The court's dismissal of Plaintiff's third (*Bivens*) and fourth (UCL) claims is **WITH PREJUDICE**. *See generally Hampton v. Pac. Inv. Mgmt. Co. LLC*, 869 F.3d 844, 846 (9th Cir. 2017) (distinguishing from dismissals under Rule 12(b)(6) and those necessarily without prejudice based on a lack of jurisdiction).

[10] To the extent other arguments are raised in the parties' papers, the court does not address them separately because they are either irrelevant to the foregoing analysis or without merit.

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In light of the foregoing, **the clerk is respectfully directed to close the case file**.

IT IS SO ORDERED.

Initials of Deputy Clerk: mku

Constitutional and Statutory Provisions

XIV Amend. U.S. Constitution Sect. 1

Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. 2071(a)

The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed under section 2072 of this title.

28 U.S.C. 2072(a)(b)

(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals.

(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

E.D.C.A. Local Rule 180 (2017)

(c) Notice of Change in Status. An attorney who is a member of the Bar of this Court or who has been permitted to practice in this Court under (b) shall promptly notify the Court of any change in status in any other jurisdiction that would make the attorney ineligible for membership in the Bar of this Court or ineligible to practice

in this Court. In the event an attorney appearing in this Court under (b) is no longer eligible to practice in any other jurisdiction by reason of suspension for nonpayment of fees or enrollment as an inactive member, the attorney shall forthwith be suspended from practice before this Court without any order of Court until becoming eligible to practice in another jurisdiction.

E.D.C.A. Local Rule 184 (2017)

(b) Notice of Change in Status. An attorney who is a member of the Bar of this Court or who has been permitted to practice in this Court shall promptly notify the Court of any disciplinary action or any change in status in any jurisdiction that would make the attorney ineligible for membership in the Bar of this Court or ineligible to practice in this Court. If an attorney's status so changes with respect to eligibility, the attorney shall forthwith be suspended from practice before this Court without any order of Court until becoming eligible to practice. Upon written motion to the Chief Judge, an attorney shall be afforded an opportunity to show cause why the attorney should not be suspended or disbarred from practice in this Court.

Bus. & Prof. Code §6124

There is no § 6124 as charged.

Bus. & Prof. Code, § 6125

No person shall practice law in California unless the person is an active licensee of the State Bar.

Bus. & Prof. Code, § 6126

(a) Any person advertising or holding himself or herself out as practicing or entitled to practice law or otherwise practicing law who is not an active licensee of the State Bar, or otherwise authorized pursuant to statute or court rule to practice law in this state at the time of doing so, is guilty of a misdemeanor punishable by up to one year in a county jail or by a fine of up to one thousand dollars ($1,000), or by both that fine and imprisonment. Upon a second or subsequent conviction, the person

shall be confined in a county jail for not less than 90 days, except in an unusual case where the interests of justice would be served by imposition of a lesser sentence or a fine. If the court imposes only a fine or a sentence of less than 90 days for a second or subsequent conviction under this subdivision, the court shall state the reasons for its sentencing choice on the record.

(b) Any person who has been involuntarily enrolled as an inactive licensee of the State Bar, or whose license has been suspended, or has been disbarred, or has resigned from the State Bar with charges pending, and thereafter practices or attempts to practice law, advertises or holds himself or herself out as practicing or otherwise entitled to practice law, is guilty of a crime punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code or in a county jail for a period not to exceed six months. However, any person who has been involuntarily enrolled as an inactive licensee of the State Bar pursuant to paragraph (1) of subdivision (e) of Section 6007 and who knowingly thereafter practices or attempts to practice law, or advertises or holds himself or herself out as practicing or otherwise entitled to practice law, is guilty of a crime punishable by imprisonment pursuant

to subdivision (h) of Section 1170 of the Penal Code or in a county jail for a period not to exceed six months.

(c) The willful failure of a licensee of the State Bar, or one who has resigned or been disbarred, to comply with an order of the Supreme Court to comply with Rule 9.20 of the California Rules of Court, constitutes a crime punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code or in a county jail for a period not to exceed six months.

(d) The penalties provided in this section are cumulative to each other and to any other remedies or penalties provided by law.