TABLE OF APPENDICES

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APPENDIX A

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
JAN 30 2024
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

PEYMAN ROSHAN, an individual on behalf of himself and others similarly situated, Plaintiff-Appellant, v. MELANIE J LAWRENCE, in her official capacity as Chief Trial Counsel, and in her personal	No. 21-15771 D.C. No. 3:20-cv-04770-AGT **MEMORANDUM***

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

capacity; OFFICE OF CHIEF TRIAL COUNSEL,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of California
Alex G. Tse, Magistrate Judge, Presiding

CYRUS MARK SANAI,
Plaintiff-Appellant,

Plaintiff-Appellant,

v.

MELANIE J LAWRENCE, sued in her individual and official capacities; CYNTHIA VALENZUELA, sued in her individual and official capacities; GEORGE CARDONA, sued in his individual and official capacities; RICHARD A. HONN, sued in his official capacity; W. KEARSE MCGILL, an individual sued in his official capacity;

No. 22-56215

D.C. No. 2:21-cv-07745-JFW-KES

DOES, 1 through 10, inclusive,

Defendants-Appellees.

Appeal from the United States District Court
for the Central District of California
John F. Walter, District Judge, Presiding

CYRUS MARK SANAI,
Plaintiff-Appellant,

Plaintiff-Appellant,

v.

GEORGE CARDONA;
LEAH WILSON,

Defendants-Appellees.

No. 23-15618

D.C. No. 4:22-cv-01818-JST

Case: 21-15771, 01/30/2024, ID: 12854157, DktEntry: 123-1, Page 3 of 7

Appeal from the United States District Court
for the Northern District of California
Jon S. Tigar, District Judge, Presiding

CYRUS MARK SANAI, Plaintiff-Appellant, Plaintiff-Appellant, v. LEONDRA KRUGER, Judge; JOSHUA P. GROBAN; MARTIN J. JENKINS; KELLI M. EVANS; CAROL A. CORRIGAN; GOODWIN H. LIU; PATRICIA GUERRERO, Defendants-Appellees.	No. 23-16104 D.C. No. 3:23-cv-01057-AMO

Appeal from the United States District Court
for the Northern District of California
Araceli Martinez-Olguin, District Judge, Presiding

Argued and Submitted January 8, 2024
San Francisco, California

Before: SILER,** TASHIMA, and BRESS, Circuit Judges.

Appellants Cyrus Sanai and Peyman Roshan are California attorneys who, at relevant times, were subject to California State Bar disciplinary proceedings.[1] They filed these four lawsuits under 42 U.S.C. § 1983 against officials of the California State Bar and the Justices of the California Supreme Court, alleging that the California State Bar disciplinary process is constitutionally defective. In each case, appellants asked the district court to enjoin State Bar proceedings. The district courts concluded that *Younger* abstention applied. *See Younger v. Harris*, 401 U.S. 37 (1971). We review dismissals on the basis of *Younger* abstention de novo. *Canatella v. California*, 304 F.3d 843, 850 (9th Cir. 2002). We have jurisdiction under 28 U.S.C. §§ 1291 and 1292, and we affirm.

1. *Younger* and its progeny direct that "[a]bsent 'extraordinary circumstances,' abstention in favor of state judicial proceedings is required if the state proceedings (1) are ongoing, (2) implicate

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** The Honorable Eugene E. Siler, United States Circuit Judge for the U.S. Court of Appeals for the Sixth Circuit, sitting by designation.

[1] The four above-captioned cases (three filed by the same plaintiff) present nearly identical questions about the applicability of *Younger* abstention to California State Bar proceedings. Having previously consolidated these matters for oral argument, we now consolidate them for all purposes.

important state interests, and (3) provide the plaintiff an adequate opportunity to litigate federal claims." *Hirsh v. Justices of Supreme Ct. of Cal.*, 67 F.3d 708, 712 (9th Cir. 1995) (per curiam) (citing *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982)); *see generally Gilbertson v. Albright*, 381 F.3d 965, 969 (9th Cir. 2004) (noting that the "*Middlesex* factors . . . guide consideration of whether *Younger* extends to noncriminal proceedings"). In addition, "[t]he requested relief must seek to enjoin or have the practical effect of enjoining—ongoing state proceedings." *ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund*, 754 F.3d 754, 758 (9th Cir. 2014) (citing *AmerisourceBergen Corp. v. Roden*, 495 F.3d 1143, 1149 (9th Cir. 2007)). If each of these conditions is met, *Younger* abstention is appropriate unless "there is a 'showing of bad faith, harassment, or some other extraordinary circumstance that would make abstention inappropriate.'" *Arevalo v. Hennessy*, 882 F.3d 763, 765–66 (9th Cir. 2018) (quoting *Middlesex*, 457 U.S. at 435).

As an initial matter, we reject appellants' contention that our prior decision in *Hirsh* should not apply to these cases. "[W]e are bound by circuit precedent except 'where the reasoning or theory of our prior circuit authority is clearly irreconcilable with the reasoning or theory of intervening higher authority.'" *Lambert v. Saul*, 980 F.3d 1266, 1274 (9th Cir. 2020) (quoting *Miller v. Gammie*, 335 F.3d 889, 893 (9th Cir. 2003) (en banc)). Appellants have not identified intervening authority that is "clearly

irreconcilable" with *Hirsh*, and so *Hirsh* still governs here.

Applying *Hirsh*, we conclude that the district courts properly abstained under *Younger* in each of the four cases. Under *Hirsh*, for purposes of *Younger* abstention, California State Bar proceedings are judicial in nature and implicate important state interests. *Hirsh*, 67 F.3d at 712, 713. In addition, like the plaintiffs in *Hirsh*, Appellants asked federal courts to enjoin their ongoing State Bar disciplinary proceedings.[2] *Id.* at 712.

On the third *Middlesex* factor, our precedents indicate that attorneys subject to California State Bar disciplinary matters have an adequate opportunity to raise their federal constitutional claims in the State Bar proceedings. *Id.* at 713; *see also Rosenthal v. Justices of the Supreme Ct. of Cal.*, 910 F.2d 561 (9th Cir. 1990). Appellants raise several

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[2] In *Sanai v. Cardona*, No. 23-15618, Sanai filed his lawsuit before the State Bar initiated the relevant disciplinary proceedings. Nevertheless, the district court properly concluded that *Younger* abstention applied because the state proceedings were "initiated 'before any proceedings of substance on the merits ha[d] taken place in federal court.'" *Polykoff v. Collins*, 816 F.2d 1326, 1332 (9th Cir. 1987) (quoting *Hawaii Housing Auth. v. Midkiff*, 467 U.S. 229, 238 (1984)); *cf. Credit One Bank, N.A.v. Hestrin*, 60 F.4th 1220, 1226 (9th Cir. 2023) (concluding that state proceedings were ongoing for *Younger* purposes when "the only significant proceeding that had occurred in the federal action" at the time the state action was filed "was the denial of [a] motion to dismiss for lack of jurisdiction").

arguments about the alleged insufficiency of the State Bar process, each of which fails. Contrary to appellants' arguments, the California Supreme Court follows *In re Ruffalo*, 390 U.S. 544 (1968). *See, e.g.*, *Van Sloten v. State Bar*, 771 P.2d 1323, 1326 (Cal. 1989). And even assuming that appellants are correct that the State Bar owed some duty to provide attorneys in disciplinary proceedings with exculpatory material, appellants have not identified any plausible violation of that obligation.

Appellants relatedly argue that the State Bar proceedings provide an inadequate opportunity to litigate because appellants are precluded from raising claims of judicial bias or obtaining discovery related to suspected bias, as allegedly allowed under *Bracy v. Gramley*, 520 U.S. 899 (1994) and *Gacho v. Wills*, 986 F.3d 1067 (7th Cir. 2021). But in alleging bias by State Bar officials and state judges in favor of Thomas Girardi, appellants have not plausibly explained the relationship between Girardi and their State Bar proceedings. Appellants' wholly conjectural bias claims fail to "overcome [the] presumption of honesty and integrity in those serving as adjudicators." *Hirsh*, 67 F.3d at 713 (quoting *Kenneally v. Lungren,* 967 F.2d 329, 333 (9th Cir. 1992)).

Nor have appellants demonstrated that the "extraordinary circumstances" exception for *Younger* abstention should apply. *See Arevalo*, 882 F.3d at 765–66. Appellants have not demonstrated judicial bias in the State Bar proceedings. *See Hirsch*, 67

F.3d at 713–14. Nor have they demonstrated any other "extraordinary circumstances" justifying an exception to *Younger*.

2. In three of these cases, appellants argue that the district courts erred by denying their post-judgment motions under Federal Rules of Civil Procedure 59 and 60(b). We review the district courts' denial of these motions for abuse of discretion. *See Kaufmann v. Kijakazi*, 32 F.4th 843, 847 (9th Cir. 2022) (Rule 59 motion standard of review); *Flores v. Rosen*, 984 F.3d 720, 731 (9th Cir. 2020) (Rule 60(b) motion standard of review).

Appellants' arguments are based on their mistaken view that the Supreme Court's decisions in *Banister v. Davis*, 140 S. Ct. 1698 (2020) and *Kemp v. United States*, 142 S. Ct. 1856 (2022) abrogated our precedent governing post-judgment motions under Rules 59 and 60(b). That is not correct. The district court applied the proper legal standards in denying these motions, and appellants do not identify any other basis for concluding that the district courts abused their discretion in denying the motions.

We have reviewed appellants' other assignments of error and find them without merit. Costs are taxed to appellants. The judgments of the district courts are

AFFIRMED in Case Nos. 21-15771, 23-15619, and 23-16104, and AFFIRMED IN PART AND DISMISED IN PART in Case No. 22-56215.[3]

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[3] In *Sanai v. Lawrence*, No. 22-56215, Sanai did not timely appeal the district court's dismissal of the case because he filed his notice of appeal more than 30 days after the district court entered judgment on that order. *See* Fed. R. App. P. 4(a)(1)(A). The timely filing of a notice of appeal is jurisdictional. Sanai's motion for reconsideration under Federal Rule of Civil Procedure 60(b) did not extend the time for appeal of that order, Fed. R. App. P. 4(a)(1)(A)(vi), because it was a successive motion for reconsideration and the district court did not alter its judgment in response. *See Wages v. IRS*, 915 F.2d 1230, 1233 n.3 (9th Cir. 1990). In Case No. 22-56215, we therefore dismiss for lack of jurisdiction Sanai's appeal of the district court's orders entered more than 30 days before Sanai filed his notice of appeal on December 21, 2022. *See Evans v. Synopsys, Inc.*, 34 F.4th 762, 768 (9th Cir. 2022) (noting that the deadline for filing an appeal is jurisdictional). This partial dismissal of the appeal did not affect our ability to reach the underlying issues because the *Younger* issues are also presented in Sanai's timely appeal of the district court's denial of an injunction pending appeal. As to the district court orders that Sanai has timely appealed—those entered on November 28, 2022; December 20, 2022; June 20, 2023; and August 21, 2023—we affirm.

APPENDIX B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

Case No. **CV 21-7745-JFW(KESx)**
Date: March 21, 2022

Title: Cyrus Sanai *-v-* Melanie Lawrence, et al.

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PRESENT:

HONORABLE JOHN F. WALTER,
UNITED STATES DISTRICT JUDGE

Shannon Reilly	**None**
Courtroom Deputy	**Present**
	Court
	Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:	ATTORNEYS PRESENT FOR DEFENDANTS:
None	None

PROCEEDINGS **ORDER DENYING AS**

(IN CHAMBERS):	**MOOT PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION [filed 2/7/22; Docket No. 38]; and** **ORDER GRANTING DEFENDANTS MELANIE LAWRENCE, JUDGE CYNTHIA VALENZUELA, GEORGE CARDONA, JUDGE W. KEARSE McGILL, AND JUDGE RICHARD HONN'S NOTICE OF MOTION AND MOTION TO DISMISS FIRST AMENDED COMPLAINT [filed 2/22/22; Docket No. 47**

On February 7, 2022, Plaintiff Cyrus Sanai ("Plaintiff") filed a Motion for Preliminary Injunction.[1] On February 14, 2022, Defendants

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[1] Plaintiff's Ex Parte Application to Serve Application and Motion for Temporary Restraining Order and Preliminary Injunction by Email (Docket No. 21) is **DENIED as moot**.

Melanie Lawrence ("Lawrence"), Judge Cynthia Valenzuela ("Judge Valenzuela"), George Cardona ("Cardona"), Judge W. Kearse McGill ("Judge McGill"), and Judge Richard Honn ("Judge Honn") (collectively, "Defendants") filed their Opposition. On February 24, 2022, Plaintiff filed a Reply.[2] On February 22, 2022, Defendants filed a Motion to Dismiss First Amended Complaint ("Motion to Dismiss"). On March 7, 2022, Plaintiff filed his Opposition.[3] On March 14, 2022, Defendants filed a Reply. Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds that these matters are appropriate for decision without oral argument. The hearing calendared for March 28, 2022 is hereby vacated and the matters taken off calendar. After considering the moving, opposing, and reply papers, and the arguments therein, the Court rules as follows:

I. Factual and Procedural Background

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[2] On March 14, 2022, Plaintiff filed an Amended Reply.

[3] On February 23, 2022, Plaintiff filed an Ex Parte Application to Strike and Deny on the Merits Motion to Dismiss for Violation of Standing Order (Docket No. 49), which is **DENIED**. Plaintiff also filed a Preliminary Objection and Opposition on Procedural Grounds Only to Motion to Dismiss on March 3, 2022.

Plaintiff is a licensed California attorney defending charges brought against him in ongoing disciplinary proceedings in the California State Bar Court.

The State Bar of California ("State Bar") is the California state government agency responsible for admission, regulation, and discipline of attorneys in this state. The State Bar is a state constitutional entity that serves as the administrative arm of the California Supreme Court. Cal. Const., Art. VI, § 9; Cal. Bus. & Prof. Code § 6000 et seq; *see also In re Rose*, 22 Cal. 4th 430, 438 (Cal. 2000) ("The State Bar is a constitutional entity, placed within the judicial article of the California Constitution, and thus expressly acknowledged as an integral part of the judicial function"). Cardona is the Chief Trial Counsel of the State Bar and, as a result, is the lead official responsible for

the prosecution of attorneys within the State Bar Court. In the First Amended Complaint ("FAC"), Plaintiff does not plead any specific facts or any specific allegations regarding Cardona. Lawrence formerly served as Interim Chief Trial Counsel and held that position during a portion of the time that Plaintiff's disciplinary trial was proceeding. In the FAC, Plaintiff alleges that Lawrence denied him access to confidential disciplinary files. Judge Valenzuela is the California State Bar Court Judge presiding over Plaintiff's attorney disciplinary

proceedings. In the FAC, Plaintiff alleges that Judge Valenzuela was prejudiced against Plaintiff, based on the fact that she recused herself in another matter unrelated to Plaintiff, denied his requests for discovery, and denied his motion for disclosure. Judge McGill and Judge Honn are judges of the State Bar Court Review Department. In the FAC, Plaintiff alleges that Judge McGill and Judge Honn "validated" Judge Valenzuela's allegedly biased conduct in Plaintiff's attorney disciplinary trial.

B. California's Attorney Disciplinary System

The State Bar Court hears attorney disciplinary cases and makes recommendations of discipline to the California Supreme Court. Cal. Bus. & Prof. Code § 6070. The structure and process of California's attorney disciplinary system is described by the California Supreme Court in case law as follows:

> The State Bar Court Hearing Department (Hearing Department) conducts evidentiary hearings on the merits in disciplinary matters. An attorney charged with misconduct is entitled to receive reasonable notice, to conduct discovery, to have a reasonable opportunity to defend against the charge by the introduction of evidence, to be represented by counsel, and to examine and cross-examine witnesses. The Hearing

> Department renders a written decision recommending whether the attorney should be disciplined.
>
> Any disciplinary decision of the Hearing Department is reviewable by the State Bar Court Review Department (Review Department) at the request of the attorney or the State Bar. In such a review proceeding, the matter is fully briefed, and the parties are given an opportunity for oral argument. The Review Department independently reviews the record, files a written opinion, and may adopt findings, conclusions, and a decision or recommendation at variance with those of the Hearing Department.
>
> A recommendation of suspension or disbarment, and the accompanying record, is transmitted to [the California Supreme Court] court after the State Bar Court's decision becomes final.

In re Rose, 22 Cal. 4th at 439 (internal citations omitted).

C. The State Bar Court Proceedings Against Plaintiff

On January 7, 2014, the State Bar Office of Chief Trial Counsel filed a Notice of Disciplinary Charges in State Bar Court, charging Plaintiff with nine counts of professional misconduct. *See* Notice of Disciplinary Charges (Exh. 1 to Defendants' Request for Judicial Notice ("RJN")) and State Bar Court

Docket (Exh. 2 to Defendants' RJN).[4] On August 13, 2021, Plaintiff filed a "Motion to Disclose," seeking discovery from Judge Valenzuela relating to her alleged bias. *See* Motion to Disclose (Exh. 3 to Defendants' RJN). On September 20, 2021, Judge Valenzuela denied the Motion to Disclose. *See* State Bar Court Order (Exh. 4 to Defendants' RJN). On September 27, 2021, Plaintiff filed a petition for review of the denial of the Motion to Disclose in the California Supreme Court, which was promptly denied on September 29, 2021. *See* California Supreme Court Order (Exh. 5 to Defendants' RJN).

Plaintiff's State Bar Court proceedings are ongoing, and are currently in the post-trial briefing stage. *See* State Bar Court Docket. Plaintiff continues to file papers with the State Bar Court, and the State Bar Court has not yet made a final decision as to whether to recommend to the California Supreme Court that Plaintiff be disciplined in the underlying matter. *Id.* If the State Bar Court issues a final

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[4] Defendants' Request for Judicial Notice in Support of Motion to Dismiss First Amended Complaint (Docket No. 48), which is unopposed, is **GRANTED**. *U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992) (holding that courts "may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue").

recommendation of discipline, Plaintiff will be able to seek review of that recommendation in the California Supreme Court pursuant to Rule 9.13 of the California Rules of Court.

D. Procedural History

On September 29, 2021, Plaintiff filed a Complaint against Lawrence, Judge Valenzuela, and Cardona. On February 8, 2022, Plaintiff filed his FAC, which added Judge McGill and Judge Honn as defendants, and which alleges causes of action for: (1) violation of Plaintiff's rights to an impartial tribunal and discovery based on alleged judicial bias pursuant to 42 U.S.C. § 1983; (2) a constitutional violation under *Ex Parte*

Young; and (3) declaratory judgment. In his FAC, Plaintiff seeks to have this Court enjoin the ongoing California State Bar Court proceedings against him because Plaintiff has allegedly been denied due process, based on his belief that Judge Valenzuela is biased against him and that the California Supreme Court has denied Plaintiff's appeal of Judge Valenzuela's order denying Plaintiff's request to obtain discovery from Judge Valenzuela.

II. Legal Standard

A. Rule 12(b)(1)

The party mounting a Rule 12(b)(1) challenge to the Court's jurisdiction may do so either on the face of the pleadings or by presenting extrinsic

evidence for the Court's consideration. *See White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000) ("Rule 12(b)(1) jurisdictional attacks can be either facial or factual"). "In a facial attack, the challenger asserts that the allegations contained in a complaint are insufficient on their face to invoke federal jurisdiction." *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). In ruling on a Rule 12(b)(1) motion attacking the complaint on its face, the Court accepts the allegations of the complaint as true. *See, e.g., Wolfe v. Strankman*, 392 F.3d 358, 362 (9th Cir. 2004). "By contrast, in a factual attack, the challenger disputes the truth of the allegations that, by themselves, would otherwise invoke federal jurisdiction." *Safe Air*, 373 F.3d at 1039. "With a factual Rule 12(b)(1) attack . . . a court may look beyond the complaint to matters of public record without having to convert the motion into one for summary judgment. It also need not presume the truthfulness of the plaintiff['s] allegations." *White*, 227 F.3d at 1242 (internal citation omitted); *see also Thornhill Pub. Co., Inc. v. General Tel & Electronics Corp.*, 594 F.2d 730, 733 (9th Cir. 1979) ("Where the jurisdictional issue is separable from the merits of the case, the judge may consider the evidence presented with respect to the jurisdictional issue and rule on that issue, resolving factual disputes if necessary. . . '[N]o presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims.'") (quoting *Mortensen v. First Fed. Sav. & Loan Ass'n*, 549 F.2d 884, 891 (9th Cir.

1977)). "However, where the jurisdictional issue and substantive issues are so intertwined that the question of jurisdiction is dependent on the resolution of factual issues going to the merits, the jurisdictional determination should await a determination of the relevant facts on either a motion going to the merits or at trial." *Augustine v. U.S.*, 704 F.2d 1074, 1077 (9th Cir. 1983). It is the plaintiff who bears the burden of demonstrating that the Court has subject matter jurisdiction to hear the action. *See Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994); *Stock West, Inc. v. Confederated Tribes*, 873 F.2d 1221, 1225 (9th Cir. 1989).

B. Rule 12(b)(6)

A motion to dismiss brought pursuant to Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of the claims asserted in the complaint. "A Rule 12(b)(6) dismissal is proper only where there is either a 'lack of a cognizable legal theory' or 'the absence of sufficient facts alleged under a cognizable legal theory.'" *Summit Technology, Inc. v. High-Line Medical Instruments Co., nc.*, 922 F. Supp. 299, 304 (C.D. Cal. 1996) (quoting *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1988)). However, "[w]hile a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell*

Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (internal citations and alterations omitted). "[F]actual allegations must be enough to raise a right to relief above the speculative level." *Id.*

In deciding a motion to dismiss, a court must accept as true the allegations of the complaint and must construe those allegations in the light most favorable to the nonmoving party. *See, e.g., Wyler Summit Partnership v. Turner Broadcasting System, Inc.*, 135 F.3d 658, 661 (9th Cir. 1998). "However, a court need not accept as true unreasonable inferences, unwarranted deductions of fact, or conclusory legal allegations cast in the form of factual allegations." *Summit Technology*, 922 F. Supp. at 304 (citing *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981) *cert. denied*, 454 U.S. 1031 (1981)).

"Generally, a district court may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion." *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 n. 19 (9th Cir. 1990) (citations omitted). However, a court may consider material which is properly submitted as part of the complaint and matters which may be judicially noticed pursuant to Federal Rule of Evidence 201 without converting the motion to dismiss into a motion for summary judgment. *See, e.g., id.*; *Branch v. Tunnel*, 14 F.3d 449, 454 (9th Cir. 1994).

Where a motion to dismiss is granted, a district court must decide whether to grant leave to amend. Generally, the Ninth Circuit has a liberal policy favoring amendments and, thus, leave to amend should be freely granted. *See, e.g., DeSoto v. Yellow Freight System, Inc.*, 957 F.2d 655, 658 (9th Cir. 1992). However, a Court does not need to grant leave to amend in cases where the Court determines that permitting a plaintiff to amend would be an exercise in futility. *See, e.g., Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987) ("Denial of leave to amend is not an abuse of discretion where the pleadings before the court demonstrate that further amendment would be futile.").

III. Discussion

In their Motion, Defendants argue that Plaintiff's FAC should be dismissed on the grounds that: (1) the FAC is barred by the *Younger* abstention doctrine; and (2) the FAC fails to allege sufficient facts to state a claim upon which relief can be granted. In his Opposition, Plaintiff argues that *Younger* abstention does not apply because: (1) he is barred from litigating his federal constitutional issues in the State Bar Court proceedings; (2) he cannot present the evidence he wants in the State Bar Court proceedings; (3) he is alleging actual bias against Judge Valenzuela, which is an "exceptional circumstances" exception to *Younger*; and (4) the disparate treatment of respondents in State Bar

Court disciplinary proceedings constitutes bad faith harassment.

A. Legal Standard Governing Abstention Under *Younger*

Under the doctrine first articulated in *Younger v. Harris*, 401 U.S. 37 (1971), federal courts must abstain from hearing cases that would interfere with pending state court proceedings that implicate important state interests. The doctrine is justified by considerations of comity. As the Supreme Court held in *Younger*, comity requires "a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways." *Id.* at 44. As a result, federal courts must abstain from exercising jurisdiction where four requirements are met: (1) the state-initiated proceeding is ongoing; (2) the proceeding implicates important state interests; (3) the federal plaintiff is not barred from litigating federal constitutional issues in the state proceeding; and (4) the federal court action would enjoin the proceeding or have the practical effect of doing so. *Id.* In addition, the Ninth Circuit has held "that *Younger* principles apply to actions at law as well as for injunctive or declaratory relief." *Gilbertson v. Albright*, 381 F.3d 965, 968 (9th Cir. 2004) (holding that "a determination that the federal plaintiff's constitutional rights have been violated would have

the same practical effect as a declaration or injunction on pending state proceedings").

The Supreme Court has held that *Younger* applies specifically to state attorney disciplinary proceedings. *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982) ("The State . . . has an extremely important interest in maintaining and assuring the professional conduct of the attorneys it licenses"). In addition, the Ninth Circuit held that the *Younger* abstention doctrine applies to California State Bar attorney disciplinary proceedings. *See Hirsch v. Justices of the Supreme Court*, 67 F.3d 708, 712-13 (9th Cir. 1995) (holding that each of the four *Younger* factors are met in California State Bar proceedings); *see also Canatella v. State of Cal.*, 404 F.3d 1106, 1109-12 (9th Cir. 2005) (holding that the attorney's "claim that the state bar statutes are patently unconstitutional also does not, by itself, support an extraordinary circumstances exception to *Younger* abstention").

B. Application of *Younger* to the Facts of this Case

1. First Threshold Requirement

In this case, the Court concludes that the first threshold requirement to *Younger* abstention – an ongoing state court proceeding – is easily satisfied because it is undisputed that the State Bar Court proceedings against Plaintiff are ongoing. *Beltran v.*

State of Cal., 871 F.2d 777, 782 (9th Cir. 1988) (holding that State Bar Court proceedings are "ongoing" if the proceedings are pending at the time the federal action was filed).

2. Second Threshold Requirement

With respect to the second threshold requirement, the Court must consider if the state court proceedings implicate important state interests. As the Ninth Circuit has held, this requirement measures "[t]he importance of the [state's] interest . . . by considering its significance broadly, rather than by focusing on the state's interest in the resolution of an individual case." *AmerisourceBergen*, 495 F.3d at 1150 ("The goal of *Younger* abstention is to avoid federal court interference with uniquely state interests such as preservation of these states' peculiar statutes, schemes, and procedures. [The defendant] cites no case, nor could he, holding that federal courts should abstain in favor of state courts when a universal judicial interest – such as the prompt resolution of cases – is at stake"). In this case, the Court concludes that the second threshold requirement is easily satisfied because the Supreme Court has expressly held that states have "an extremely important interest in maintaining and assuring the professional conduct of the attorneys it licenses." *Middlesex*, 457 U.S. at 434; *see also Hirsch*, 67 F.3d at 712 ("California's attorney disciplinary proceedings implicate important state interests").

3. Third Threshold Requirement

With respect to the third threshold requirement, the Court must consider whether the State Bar Court proceedings provide Plaintiff with an adequate opportunity to litigate his federal claims. However, as the Supreme Court has held, to satisfy the third requirement of *Younger* abstention, a party "need be accorded only an opportunity to pursue their constitutional claims in the ongoing state proceedings . . . and their failure to avail themselves of such opportunities does not mean that the state procedures were inadequate." *Moore v. Sims*, 442 U.S. 415, 431 n. 12 (1979).
Thus, for purposes of *Younger* abstention, federal courts "must assume that state procedures afford an adequate remedy, in the absence of unambiguous authority to the contrary." *Baffert v. Cal. Horse Racing Bd.*, 332 F.3d 613, 619 (9th Cir. 2003); *see also Hirsh*, 67 F.3d 708, 713 (9th Cir. 1995) ("Refusing to abstain would require presuming that the California Supreme Court will not adequately safeguard federal constitutional rights, a presumption the U.S. Supreme Court squarely rejected in *Middlesex*, 457 U.S. at 431").

In addition, Plaintiff has the opportunity to raise his purported constitutional challenges when the outcome of his State Bar Court proceedings is reviewed by the California Supreme Court, and the Ninth Circuit has held that this opportunity satisfies the third threshold requirement of *Younger* abstention. *Hirsch*, 67 F.3d at 713. Specifically, the Ninth Circuit in *Hirsch* held that:

The California Constitution precludes the Bar Court from considering federal constitutional claims. See Calif. Const. Art. III, § 3.5. However, such claims may be raised in judicial review of the Bar Court's decision. This opportunity satisfies the third requirement of *Younger*. *Id.*; *see also Kay v. State Bar of California*, 2009 WL 1456433 (N.D. Cal. May 21, 2009) (holding that federal constitutional claims "may be raised in judicial review of the Bar Court's decision. Thus, the State Bar's procedures are fully consistent with federal due process"); *Dickstein v. State Bar of California*, 2012 WL 6553973 (N.D. Cal. Dec. 14, 2012) (holding that "as explained in *Hirsch*, Dickstein may raise his federal claims by seeking from the California Supreme Court judicial review of any adverse decision by the Bar Court").

Moreover, despite Plaintiff's argument to the contrary, California case law, including *People v. Guerra*, 37 Cal. 4th 1067 (2006), does not prohibit a party from entering "a trial court's rulings or in-court statements as evidence to prove bias." FAC, ¶ 19. Although the California Supreme Court in *Guerra* held that "a trial court's numerous rulings against a party – even when erroneous – do not establish a charge of judicial bias, especially when they are subject to review," it did not hold that a party is prohibited from presenting such evidence. *Guerra,* 37 Cal. 4th at 1112. Indeed, in *Guerra*, the defendant introduced, and the court considered, the trial judge's statements and prior rulings. *Id.*

In this case, as Plaintiff acknowledges in his Opposition, he "sought to force disclosure [of Judge Valenzuela's alleged bias against him] by motion all the way up to the California Supreme Court" (Opposition, 21:25-26), and Plaintiff will have another opportunity to raise these claims in the California Supreme Court if the State Bar Court recommends discipline in the underlying proceedings. Although the California Supreme Court concluded that Plaintiff was not entitled to the discovery that he sought in his disciplinary proceedings, the mere fact that Plaintiff disagrees with the California Supreme Court's decision does not overcome the presumption that "California's attorney disciplinary proceedings provide [attorneys] with an adequate opportunity to litigate [their] federal constitutional rights. *Canatella*, 404 F.3d at 1111; *see also Dubinka v. Judges of Sup. Ct. Of State of Cal. For County of Los Angeles,* 23 F.3d 218, 224-25 (9th Cir. 1994) (holding that "when federal plaintiffs are permitted to raise their challenge in the state proceedings, the fact that the state supreme court has previously rejected an identical argument does not make *Younger* abstention inappropriate").

Therefore, the Court concludes that the third threshold requirement is easily satisfied.

4. Fourth Threshold Requirement

Finally, the Court concludes that the fourth requirement – that this action would enjoin the State Bar Court proceedings or have the practical effect of

doing so – is easily satisfied because Plaintiff is seeking injunctive relief "against conducting the remainder of his state bar court proceedings until the facts necessary to determine the nature and scope of bias that applies to him" are discovered. FAC, ¶ 47.

Accordingly, the Court concludes that all of the threshold requirements for *Younger* abstention are easily met in this case.

5. Plaintiff's Purported Exceptions to *Younger* Do Not Apply

The Court also concludes that Plaintiff has failed to plead facts demonstrating that an exception to *Younger* abstention applies in this case. For example, in his FAC, Plaintiff alleges, relying on *Gibson v. Berryhill*, 411 U.S. 564 (1973), that *Younger* does not apply because he has raised an issue "that relates to [the] question of whether the State Bar is biased in the constitutional sense." FAC, ¶ 43. In *Gibson*, the Supreme Court found that where, due to pervasive bias-in-fact, an administrative board is incompetent to adjudicate a matter, a district court does not need to abstain from fashioning appropriate judicial relief. *Id.* at 577. Specifically, in *Gibson*, optometrists sought to enjoin hearings before the Board of Optometry involving charges based on their employment by a corporation. *Id.* The district court concluded it was not required to abstain under *Younger* because the district court had made factual findings that the Board's bias rendered it incompetent to adjudicate the issues. *Id.* The

district court's findings included: (1) that the board acted as prosecutor and judge and had previously brought charges against the plaintiffs, indicating that the board may have preconceived opinions; (2) that the board, comprised of private practitioners, had a pecuniary interest in the suspension of the corporation for which the charged optometrists worked; and (3) that optometrists such as the plaintiffs were excluded from membership on the Board. *Id.* at 571. As a result, the district court concluded that "the administrative process was so defective and inadequate as to deprive the plaintiffs of due process of law." *Id.* at 570. The Supreme Court agreed that the administrative process was an "exceptional circumstance that established an exception to *Younger*." *Flangas v. State Bar of Nevada*, 655 F.2d 946, 949-950 (9th Cir. 1981) (finding district court had abused its discretion in enjoining disciplinary proceedings where there was no showing of exceptional circumstances warranting exception to *Younger*).

In this case, Plaintiff fails to plead any facts that even suggest that the State Bar Court proceedings are so defective and inadequate that there is the slightest possibility that Plaintiff would be deprived of his due process rights. Instead, Plaintiff merely pleads conclusory allegations. For example, Plaintiff alleges that Judge Valenzuela had "some sort of relationship" with a disciplinary respondent unrelated to Plaintiff's underlying disciplinary proceedings and that the relationship is "such that she is hostile against any respondent who

claims that improper judge and lawyer relationships are valid defenses in state bar disciplinary cases. *See, e.g.*, FAC, ¶¶ 27 and 38. Plaintiff also alleges in conclusory fashion that Defendants have denied him access to "his file and the files of" other respondents, which he alleges contain unidentified information relevant to the issue of his right to an impartial tribunal. FAC, ¶ 43. Therefore, the Court concludes that the "exceptional circumstance" exception does not save Plaintiff's claims.

Plaintiff has also alleged that *Younger* abstention does not apply in this case because of the "bad faith harassment" exception based on the purported disparate treatment of respondents in State Bar disciplinary proceedings. In the *Younger* abstention context, bad faith "generally means that a prosecution has been brought without a reasonable expectation of obtaining a valid conviction" (*Kugler v. Helfant*, 421 U.S. 117, 126 n. 6 (1975)), and requires "evidence of bad faith, such as bias against Plaintiff, or of a harassing motive." *Baffert v. California Horse Racing Bd.*, 332 F.3d 613, 621 (9th Cir. 2003). In this case, Plaintiff has failed to allege any facts that the State Bar pursued disciplinary charges against Plaintiff without reasonable expectation of success, or solely to harass him. In the absence of any such facts, "no exception to the application of *Younger* abstention is warranted." *Beffert*, 332 F.3d at 621. Therefore, this exception does not save Plaintiff's claims.

Accordingly, because the threshold requirements for *Younger* abstention have been met and there is no exception to *Younger* abstention that can save Plaintiff's claims, the Court concludes that *Younger* abstention is appropriate in this case and that *Younger* abstention "requires dismissal of the federal action." *Beltran*, 871 F.2d at 782; *see also Gilbertson*, 381 F.3d at 981 (holding that "[w]hen an injunction is sought, and *Younger* applies, 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").

C. Leave to Amend Would Be Futile

The Ninth Circuit has instructed that "a district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts." *See, e.g., Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (*en banc*) (*quoting Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995)). However, "[a] district court may dismiss a complaint without leave to amend if amendment would be futile." *Airs Aromatics, LLC v. Opinion Victoria's Secret Stores Brand Mgmt., Inc.*, 744 F.3d 595, 600 (9th Cir. 2014) (citation and quotation marks omitted); *Gardner v. Martino*, 563 F.3d 981 (9th Cir. 2009) (finding no abuse of discretion in denying leave to amend when amendment would be futile); *Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987)

("Denial of leave to amend is not an abuse of discretion where the pleadings before the court demonstrate that further amendment would be futile").

The Court concludes that this is a case where it would be futile and, thus, unnecessary to provide Plaintiff yet another opportunity to amend. *See, e.g., Chaset v. Fleer/Skybox Int'l*, 300 F.3d 1083, 1087-88 (9th Cir. 2002) ("The basic underlying facts have been alleged by plaintiffs and have been analyzed by the district court and us. We conclude that the plaintiffs cannot cure the basic flaw in their pleading. Because any amendment would be futile, there is no need to prolong the litigation by permitting further amendment"); *Lipton v. Pathogenesis Corp.*, 284 F.3d 1027, 1039 (9th Cir. 2002) ("Because any amendment would be futile, there was no need to prolong the litigation by permitting further amendment"); *Klamath–Lake Pharmaceutical Ass'n v. Klamath Med. Serv. Bureau*, 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that "futile amendments should not be permitted"). The Court has concluded that *Younger* abstention clearly applies to this case, and Plaintiff has had two opportunities to allege an exception to *Younger* abstention and has failed to do so.

IV. Conclusion

For all the foregoing reasons, Defendants' Motion to Dismiss is **GRANTED**. Plaintiff's FAC is **DISMISSED without leave to amend**, and this action is **DISMISSED without prejudice**.

Plaintiff's Motion for Preliminary Injunction is **DENIED as moot**.

IT IS SO ORDERED.

APPENDIX C

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CYRUS SANAI, Plaintiff, v. GEORGE CARDONA, et al., Defendants.	Case No. 22-cv-01818-JST **ORDER DENYING EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER** Re: ECF No. 52

Before the Court is Plaintiff Cyrus Sanai's application for a temporary restraining order against Defendants George Cardona and Leah Wilson. ECF No. 52. The Court will deny the motion.

I. BACKGROUND

Plaintiff, an attorney admitted to practice in California, initiated this action for declaratory and

injunctive relief in March 2022. ECF No. 1. Plaintiff generally alleges various constitutional deficiencies in California's rules and procedures for attorney discipline. Defendant Cardona is the State Bar Chief Trial Counsel, while Defendant Wilson is the State Bar Executive Director. Defendants moved to dismiss the original complaint, ECF No. 14, and Plaintiff subsequently filed the operative First Amended Complaint, ECF No. 28. Defendants then filed another motion to dismiss, ECF No. 30, now pending before the Court.

Plaintiff is the subject of a pending State Bar disciplinary proceeding. ECF No. 52-1 ¶ 6 ("I was the subject of one of these out-of-control prosecutions, in which eight of the ninth [sic] charges were dismissed when the Defendants rested; he [sic] is still fighting the other charge in state and federal court."); *accord* ECF No. 30 at 8-9. On March 22, 2022, Plaintiff received a letter from the State Bar notifying him that it planned to file a new Notice of Disciplinary Charges ("NDC"). ECF No. 28 ¶ 30. The filing of an NDC initiates an attorney disciplinary action in California. *See* Rules of Procedure of the State Bar of California, Rule 41(A) ("A notice of disciplinary charges is the initial pleading in a disciplinary proceeding."); *Canatella v. State of California*, 304 F.3d 843, 851-52 (finding that a state bar disciplinary action is not "ongoing" for the purposes of abstention under *Younger v. Harris*, 401 U.S. 37 (1971), until an NDC has been issued).

On January 3, 2023, the State Bar notified Plaintiff of his right to an Early Neutral Evaluation

Conference, which was scheduled for 1:30 p.m. on February 21, 2023. ECF No. 52-1 ¶ 6. On February 14, Plaintiff received a copy of the draft NDC the State intended to file. *Id.* ¶ 7. On February 17, Plaintiff filed the instant application for a temporary restraining order to issue by noon on February 21, 2023.[1] ECF No. 52. Plaintiff asks this Court to enjoin Defendants from "taking any action to advance the disciplinary matter or matters docketed as 17-0-0572 and 20-0- 14956 or any other disciplinary action based on the same or similar facts," including filing an NDC. *Id.* at 2. Plaintiff thus asks this Court to enjoin the State Bar from pursuing disciplinary action against him.

II. LEGAL STANDARD

Injunctive relief is an "extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 22 (2009). A plaintiff seeking a temporary restraining order or preliminary injunction "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the

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[1] Plaintiff's amended reply requests relief by 8 a.m. "tomorrow, February 2, 2023, as that is the date that the State Bar has stated it will file the Notice of Disciplinary charges." ECF No. 56 at 3. Because the amended reply was filed on February 21, 2023, the Court presumes that Plaintiff intended to refer to February 22 as the NDC filing date. Plaintiff's amended reply, *id.*, otherwise appears identical to his first reply, ECF No. 54.

balance of equities tips in his favor, and that an injunction is in the public interest." *Am. Trucking Ass'ns, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009) (quoting *Winter*, 555 U.S. at 20). To grant preliminary injunctive relief, a court must find that "a certain threshold showing [has been] made on each factor." *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011) (per curiam). The plaintiff must demonstrate that irreparable injury is likely, not merely possible, in the absence of injunctive relief. *Winter*, 555 U.S. at 22. Assuming that this threshold has been met, "'serious questions going to the merits' and a balance of hardships that tips sharply towards the plaintiff can support issuance of [preliminary injunctive relief], so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011).

III. DISCUSSION

Having reviewed Plaintiff's motion and complaint, the Court finds that Plaintiff has failed to make the necessary threshold showing on three of the four factors, such that the Court cannot grant injunctive relief.

Plaintiff argues that, absent injunctive relief, he will be subjected to unconstitutional attorney disciplinary procedures. The Ninth Circuit has recognized that "[a]n alleged constitutional infringement will often alone constitute irreparable harm." *Associated Gen. Contractors of Cal., Inc. v.*

Coal. for Econ. Equity, 950 F.2d 1401, 1412 (9th Cir. 1991). The complaint raises facial challenges to the State Bar's rules, policies, and practices, many of which Plaintiff alleges violate attorneys' rights under the First Amendment and the Due Process Clause of the Fourteenth Amendment.[2] The vast majority of Plaintiff's complaint is devoted to procedural due process claims, including lack of notice. In his application for injunctive relief, Plaintiff does not suggest the filing of an NDC – the immediate action he seeks to enjoin – would amount to a constitutional injury. Assuming for the sake of argument that the State Bar rules, as written, permit pleadings which fall short of the constitutional standard, Plaintiff

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[2] While the complaint cites the First Amendment, Plaintiff does not explain how any of the rules he challenges violate the First Amendment. The sole allegation that directly addresses the First Amendment seeks "[a] declaratory judgment that all State Court proceedings and all appellate proceedings arising out of State Bar Court proceedings are violations of the First Amendment . . . and the Fourteenth Amendment's due process protections because a party may not utilize the statements and actions of a State Bar Court [H]earing [D]epartment judge or Review Department judge or Justice of the California Supreme Court to obtain disqualification of such judge or justice." ECF No. 28 at 21. Plaintiff does not further articulate how the described rule violates the First Amendment rights of individuals subject to such proceedings.

does not suggest he is likely to be subject to a constitutionally deficient pleading.[3] In short, Plaintiff has failed to show that, absent this Court's intervention, irreparable harm is likely, rather than merely possible. Plaintiff also does not show that the balance of equities "tips sharply" in his favor. *All. for the Wild Rockies*, 632 F.3d at 1135. In determining whether plaintiff has met this burden, courts must consider "the interests of all parties and weigh the damage to each." *L.A. Mem'l Coliseum Comm'n v. Nat'l Football League*, 634 F.2d 1197, 1203 (9th Cir.1980). Plaintiff asserts that he "will suffer irreparable injury from violation of constitutional rights[] and the expenditure of time and resources to defend himself." ECF No. 52 at 20. However, as discussed above, Plaintiff does not show that he is likely to suffer any constitutional injury absent injunctive relief, and the Court is not persuaded that Plaintiff's time and costs outweigh Defendants' interest in this matter. As the Supreme Court has observed, "[t]he State . . . has an extremely important interest in maintaining and assuring the professional conduct of the attorneys it licenses." *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 434 (1982). The Court does not find that the balance of equities tips sharply in Plaintiff's favor.

Plaintiff additionally does not show that an injunction would be in the public interest. Plaintiff's argument regarding this factor consists entirely of discussion of the State Bar's failure to investigate Tom Girardi, an issue of no relevance to Plaintiff's application to enjoin the State Bar from disciplining Plaintiff. Plaintiff particularly seeks to enjoin

Defendants from filing an NDC, which will reveal to the public the nature of the allegations against Plaintiff. Plaintiff does not address how enjoining his own disciplinary proceeding would further the public interest. To the contrary, the Court finds that, in this instance, denying injunctive relief would further the public's recognized interest in regulating attorney conduct. *See Middlesex*, 457 U.S. at 434 ("The judiciary as well as the public is dependent upon professionally ethical conduct of attorneys and thus has a significant interest in assuring and maintaining high standards of conduct of attorneys engaged in practice.").

Absent a threshold showing on each factor, the Court cannot grant the extraordinary remedy of injunctive relief. Accordingly, Plaintiff's application for injunctive relief is denied.

IT IS SO ORDERED.

Dated: February 22, 2023

JON S. TIGAR
United States
District Judge

APPENDIX D

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CYRUS SANAI, Plaintiff, v. GEORGE CARDONA, et al., Defendants.	Case No. 22-cv-01818-JST **ORDER DENYING MOTION FOR INJUNCTION PENDING APPEAL** Re: ECF No. 81

Before the Court is Plaintiff Cyrus Sanai's motion seeking the entry of a temporary restraining order and issuance of an order to show cause why an injunction pending appeal should not issue. ECF No. 81. The Court will deny the motion.

I. BACKGROUND

Sanai, a California lawyer, initiated this action for declaratory and injunctive relief against Defendants George Cardona, the State Bar Chief Trial Counsel, and Leah Wilson, the State Bar Executive Director, in March 2022, shortly after receiving a letter notifying him that the State Bar would initiate disciplinary proceedings against him. ECF No. 1; ECF No. 28 ¶ 30; ECF No. 77 ¶ 30. Sanai is now the subject of a pending State Bar disciplinary proceeding; the Notice of Disciplinary Charges ("NDC"), which initiates the proceeding, was filed on February 23, 2023. *See* ECF No. 81-7 at 4; Rules of Procedure of the State Bar of California, Rule 5.351(A) ("A proceeding begins when a notice of disciplinary charges is filed and served on the attorney.").

Before the NDC was filed—but after he had received a copy of the draft NDC—Sanai filed an application for a temporary restraining order and request for an order to show cause why a preliminary injunction should not issue to prevent Defendants from "taking any action to advance the disciplinary matter or matters docketed as 17-0-0572 and 20-0-14956 or any other disciplinary action based on the same or similar facts," including by filing the NDC. ECF No. 52. On February 22, 2023, the Court denied the application. ECF No. 58.

Sanai filed a notice of appeal of the Court's February 22 order and a motion for leave to file a motion for reconsideration. ECF Nos. 68, 69. The Court denied leave to file a motion for reconsideration, concluding that the notice of appeal

divested it of jurisdiction to reconsider its February 22 order. ECF No. 75.

Sanai now requests that the Court issue a temporary restraining order and an order to show cause why Defendants should not be enjoined from "taking any action to advance the disciplinary matter or matters docketed as 17-0-0572 and 20-0-14956 or any other disciplinary action based on the same or similar facts pending appeal of the Court's denial of a motion for preliminary injunction." ECF No. 81 at 2.

II. LEGAL STANDARD

"The standard for evaluating an injunction pending appeal is similar to that employed by district courts in deciding whether to grant a preliminary injunction." *Feldman v. Ariz. Sec'y of State's Off.*, 843 F.3d 366, 367 (9th Cir. 2016). "[P]laintiffs must make a 'threshold showing' of four factors." *E. Bay Sanctuary Covenant v. Garland*, 994 F.3d 962, 975 (9th Cir. 2020) (quoting *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011) (per curiam)). They must "demonstrate[] that they are likely to succeed on the merits, that they are likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in their favor, and that an injunction is in the public interest." *S. Bay United Pentecostal Church v. Newsom*, 959 F.3d 938, 939 (9th Cir. 2020). The Ninth Circuit also permits an alternative balancing test, under which "'serious questions going to the merits' and a hardship balance that tips sharply toward the plaintiff can support issuance of an injunction, assuming the other two

elements are also met." *All. for the Wild Rockies v. Cottrell*, 532 F.3d 1127, 1132 (9th Cir. 2011).

III. DISCUSSION

Reviewing the motion and the Court's February 22 order, the Court concludes that Sanai is unlikely to succeed on appeal because *Younger* abstention applies to this action.

The abstention doctrine first articulated in *Younger v. Harris*, 401 U.S. 37 (1971), reflects the "strong federal policy against federal-court interference with pending state judicial proceedings absent extraordinary circumstances." *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 431 (1982). "*Younger* abstention may be raised sua sponte at any point in the appellate process." *H.C. ex rel. Gordon v. Koppel*, 203 F.3d 610, 613 (9th Cir. 2000). "Absent 'extraordinary circumstances,' abstention in favor of state judicial proceedings is required if the state proceedings (1) are ongoing, (2) implicate important state interests, and (3) provide the plaintiff an adequate opportunity to litigate federal claims." *Hirsh v. Justs. of Sup. Ct. of State of Cal.*, 67 F.3d 708, 712 (9th Cir. 1995).

Sanai's attorney discipline proceeding is an ongoing state judicial proceeding. "California's attorney discipline proceedings are 'judicial in character' for purposes of *Younger* abstention." *Canatella v. California*, 404 F.3d 1106, 1110 (9th Cir. 2005) (quoting *Hirsh*, 67 F.3d at 712). "*Younger* abstention is required . . . when state court

proceedings are initiated 'before any proceedings of substance on the merits have taken place in federal court.'" *Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229, 238 (1984) (quoting *Hicks v. Miranda*, 422 U.S. 332, 349 (1975)). While "[a] federal proceeding may be deemed to have passed beyond the 'embryonic stage' if the federal court has conducted extensive hearings on a motion for a preliminary injunction or granted such a motion," the "denial of a temporary restraining order is not considered a proceeding of substance on the merits." *Polykoff v. Collins*, 816 F.2d 1326, 1332 (9th Cir. 1987) (internal citations omitted). Though this case was filed a year ago, no proceedings of substance on the merits have yet taken place. Other than its February 22 order denying a temporary restraining order, the Court has not issued any substantive orders in this case.[1] Because the NDC was filed prior to proceedings of substance on the merits in this case, the attorney discipline proceeding is an ongoing state judicial proceeding under *Younger*.

Attorney discipline proceedings implicate important state interests. *Canatella*, 404 F.3d at 1110-11 ("[The Ninth Circuit] ha[s] clearly stated that 'California's attorney discipline proceedings implicate important state interests.'" (quoting *Hirsh*, 67 F.3d at 712)); *Middlesex*, 457 U.S. at 434 (holding that the state "has an extremely important interest

[1] The Court has not even had the opportunity to evaluate the sufficiency of the pleadings; though Defendants have filed two motions to dismiss, each was mooted by the filing of or notice of intent to file an amended complaint.

in maintaining and assuring the professional conduct of the attorneys it licenses").

The California attorney discipline process provides an adequate opportunity for Sanai to litigate his federal constitutional claims. "Federal constitutional rights may be asserted in [California attorney] discipline proceedings, and on judicial review of such proceedings." *Canatella*, 404 F.3d at 1111 (internal citation omitted). "Although judicial review is wholly discretionary, its mere availability provides the requisite opportunity to litigate." *Id.; see also Hirsh*, 67 F.3d at 713 ("The fact that review is discretionary does not bar presentation of appellants' federal claims—appellants can raise the claims in a petition for review."). Because Sanai can raise his federal constitutional claims in the attorney discipline proceeding, *Younger* abstention is appropriate. That his claims concern the constitutionality of the attorney discipline proceedings themselves does not affect this outcome. *See Hirsh*, 67 F.3d at 713 ("Refusing to abstain would require presuming that the California Supreme Court will not adequately safeguard federal constitutional rights, a presumption the U.S. Supreme Court square rejected in *Middlesex*, 457 U.S. at 431."); *Baffert v. Cal. Horse Racing Bd.*, 332 F.3d 613, 619 (9th Cir. 2003) ("The Supreme Court has 'repeatedly rejected the argument that a constitutional attack on state procedures themselves automatically vitiates the adequacy of those procedures for purposes of the *Younger-Huffman* line of cases.'" (quoting *Ohio C.R. Comm'n v. Dayton Christian Schs, Inc.*, 477 U.S. 619, 628 (1986))).

Even where *Younger* applies, federal courts may exercise jurisdiction where "state proceedings are conducted in bad faith or to harass the litigant, or other extraordinary circumstances exist." *Baffert*, 332 F.3d at 621; *see also Gibson v. Berryhill*, 411 U.S. 564, 577-79 (1973) (rejecting abstention where state administrative board had a pecuniary interest in the outcome of the proceedings); *Younger*, 401 U.S. at 53-54 (explaining that extraordinary circumstances could exist where a statute is "flagrantly and patently violative of express constitutional prohibitions in *every* clause, sentence and paragraph, and in *whatever manner and against whomever* an effort might be made to apply it" (emphasis added) (quoting *Watson v. Buck,* 313 U.S. 387, 402 (1941))). Sanai alleges widespread corruption throughout the State Bar, generally relating to Tom Girardi, and argues that various aspects of California's attorney discipline system are unconstitutional. These are not extraordinary circumstances that justify rejecting abstention. *See Canatella*, 404 F.3d at 1112 (extraordinary circumstances exception did not apply where plaintiff argued that "the California Supreme Court has an inherent conflict of interest in considering constitutional challenges to state bar disciplinary proceedings" and "the state bar statutes are patently unconstitutional"); *Hirsh*, 67 F.3d at 713 (extraordinary circumstances exception did not apply where plaintiff argued that California Supreme Court justices and Bar Court judges are biased and the attorney discipline system is unconstitutional); *Pavone v. Cardona*, No. 3:21-cv-1743-BTM-BLM,

2022 WL 1060440, at *5 (S.D. Cal. Mar. 7, 2022) (extraordinary circumstances exception did not apply where plaintiff argued California State Bar is corrupt, "primarily referencing the example of Thomas Girardi"); *Kinney v. State Bar of Cal.*, No. C-13-1396 MMC, 2013 WL 1331971, at *2 (N.D. Cal. Mar. 29, 2013) (extraordinary circumstances exception did not apply where plaintiff argued his federal rights would be violated during attorney discipline proceedings because, "if plaintiff is subjected to an adverse decision by the State Bar in violation of his constitutional rights, 'such claims may be raised in judicial review of the Bar Court's decision'" (quoting *Hirsh*, 67 F.3d at 712)).

Because *Younger* abstention applies, Sanai is unlikely to succeed on the merits of his appeal. Where a party fails to "establish[] serious questions going to the merits . . ., [courts] need not consider the remaining factors for" injunctive relief. *Doe v. San Diego Unified Sch. Dist.*, 19 F.4th 1173, 1181 (9th Cir. 2021). Absent the necessary "threshold showing" of a likelihood of success on the merits, this Court cannot grant an injunction pending appeal. *E. Bay Sanctuary*, 994 F.3d at 975 (quoting *Leiva-Perez*, 640 F.3d at 966).

CONCLUSION

The Court concludes that Sanai has failed to make a sufficient showing to justify the entry of a temporary restraining order or to demonstrate a basis for an order to show cause regarding the

issuance of an injunction pending appeal. Sanai's motion is therefore denied.

IT IS SO ORDERED.

Dated: June 8, 2023

JON S. TIGAR
United States District Judge

APPENDIX E

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CYRUS SANAI, Plaintiff, v. LEONDRA KRUGER, et al., Defendants.	Case No. 23-cv-01057-AMO **AMENDED ORDER DISMISSING CASE WITHOUT PREJUDICE; DENYING PENDING MOTIONS AS MOOT** Dkt. Nos. 32, 33, 34

Currently before the Court are Plaintiff Cyrus Sanai's (1) amended ex parte motion for entry of default judgment, ECF No. 32, (2) ex parte motion for leave to file an overlength motion for default judgment, ECF No. 33, and (3) emergency ex parte motion for temporary restraining order, declaratory judgment, and preliminary injunction, ECF No. 34. For the reasons set forth below, the Court DISMISSES the action WITHOUT PREJUDICE. In light of the dismissal, the Court DENIES all pending motions AS MOOT.

I. BACKGROUND

On March 9, 2023, Mr. Sanai commenced this action for violation of 42 U.S.C. § 1983 and declaratory and injunctive relief against the Justices of the California Supreme Court. ECF No. 1 at 2-3. Following the Clerk's entry of default, ECF No. 20, on July 10, 2023, Mr. Sanai filed an amended ex parte motion for entry of default judgment and an ex parte motion for leave to file an overlength motion for default judgment. ECF Nos. 32, 33. On July 11, 2023, Mr. Sanai filed an emergency ex parte motion for temporary restraining order, declaratory judgment, and preliminary injunction. ECF No. 34.

Mr. Sanai seeks a declaratory judgment that:

a. under *Bracy*,[1] Sanai and anyone similarly situated to him has the right to obtain documentary evidence and conduct depositions and have testify at trial members of the judicial branch regarding bias;

b. the California Supreme Court's holding in *Guerra*, [2][] is unconstitutional and that the rulings and actions of a state court tribunal on their own may be used to prove actual bias or bias under the federal standard;

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[1] *Bracy v. Gramely*, 520 U.S. 899 (1997).

[2] *People v. Guerra*, 37 Cal. 4th 1067 (2006).

c. the State Bar Court Rules of Procedure are unconstitutional in that they do not provide for constitutionally adequate discovery and rights to call witnesses;
d. the California Supreme Court's authority barring discovery against appellate justices and filing recusal motions is unconstitutional and no further proceedings may be conducted at the appellate level until such rights are acknowledged and codified by rule; and
e. the prosecution of Sanai [by the Office of Chief Trial Counsel] was unconstitutional under *Bracy*.

ECF No. 1 at 22-23, 24, 26-28.

Mr. Sanai also seeks a temporary restraining order, preliminary injunction, and permanent injunction ordering that:

a. all disciplinary proceedings against Sanai are enjoined;[3]

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[3] Specifically, Mr. Sanai seeks to enjoin further disciplinary proceedings against him "until the facts necessary to determine the nature and scope of bias under *Bracy* that applies to him and persons not related to Thomas Girardi, his firm, and his colleagues in other firms who continue to enjoy the fruits of his corruption of the State Bar and California Supreme Court." ECF No. 1 at 25.

b. the trial may only be re-opened in front of a new State Bar Court judge with Sanai entitled to have full discovery and witnesses that would be available in a civil trial, criminal trial, or both;
c. that the California Supreme Court's *Guerra* decision is unconstitutional and that a state court jurist[']s statements and rulings may be entered as proof of bias; and
d. that the California Supreme Court's authority barring discovery against appellate justices and filing recusal motions is unconstitutional and no further proceedings may be conducted at the appellate level until such rights are acknowledged and codified by rule.

Id. at 23, 25-26.

II. DISCUSSION

Younger abstention mandates dismissal of Mr. Sanai's claims, which challenge ongoing state bar disciplinary proceedings as unconstitutional. *See Younger v. Harris*, 401 U.S. 37, 40-41 (1971). "Absent 'extraordinary circumstances', abstention in favor of state judicial proceedings is required if the state proceedings (1) are ongoing, (2) implicate important state interests, and (3) provide the plaintiff an adequate opportunity to litigate federal claims." *Hirsh v. Justices of the Supreme Court of the State of*

Cal., 67 F.3d 708, 712 (9th Cir. 1995) (citing *Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982)).

Each element is met here. The state bar disciplinary proceedings pending at the time Mr. Sanai commenced this action, *see* ECF No. 1 at 17, satisfy the first element. *See Hirsh*, 67 F.3d at 712 (applying *Younger* abstention where appellants faced ongoing disciplinary proceedings at the time of filing suit in federal court). The second element is satisfied because "California's attorney disciplinary proceedings implicate important state interests." *See id.* at 712-13 (citing *Middlesex*, 457 U.S. at 434). The third element is likewise met: "the California Supreme Court's rules relating to Bar Court decisions provide for an adequate opportunity for a plaintiff to present federal constitutional claims." *See Robertson v. Honn*, No. 17-CV-01724-JD, 2018 WL 2010988, at *2 (N.D. Cal. Apr. 30, 2018), *aff'd*, 781 F. App'x 640 (9th Cir. 2019), *cert. denied*, 141 S. Ct. 948 (2020). "Refusing to abstain would require presuming that the California Supreme Court will not adequately safeguard federal constitutional rights, a presumption the U.S. Supreme Court rejected in *Middlesex*." *Hirsh*, 67 F.3d at 713 (citing *Middlesex*, 457 U.S. at 431).

Though there are exceptions to *Younger* abstention, they do not compel a different result here. "If state proceedings are conducted in bad faith or to harass the litigant, or other extraordinary circumstances exist, the district court may exercise

jurisdiction even when the criteria for *Younger* abstention are met." *Baffert v. Cal. Horse Racing Bd.*, 332 F.3d 613, 621 (9th Cir. 2003) (citations omitted). In an unsuccessful attempt to invoke the bias exception, Mr. Sanai alleges:

> Sanai has a due process right to an impartial tribunal in the actual constitutional sense, and, under *Bracy*, the right to obtain information relevant to that issue. The State Bar Court and the California Supreme Court have denied Sanai the right to obtain such information as to both the State Bar Court and the California Supreme Court. This denial violates Sanai's right to due process. Because this is an issue that relates to question of whether the California Supreme Court is biased in the constitutional sense, *Younger* abstention does not apply. *Gibson v. Berryhill* (1973) 411 U.S. 564. Perhaps more important, there is no *Younger* abstention because the defendants have explicitly contended, and the state courts have ruled, that Sanai has no right to obtain evidence necessary to show constitutional bias under *Bracy*. *See Middlesex County Ethics Comm. v. Garden State*

> *Bar Assn* (1982) 457 U.S. 423, 432 (1982) [*sic*]. There are no state court procedures available to Sanai to vindicate his constitutional arguments, because he is not allowed the evidence in his file or to obtain discovery against the judicial branch.

ECF No. 1 at 20-21.

To make a showing of bias, Mr. Sanai "must overcome a presumption of honesty and integrity in those serving as adjudicators," with "evidence." *Hirsh*, 67 F.3d at 713-14 (citations and internal quotations omitted). Mr. Sanai has proffered only mere conjecture, not evidence, of alleged bias. This falls short of the required showing. *See Robertson*, 2018 WL 2010988, at *2. Mr. Sanai's complaint that there is no procedural mechanism to seek recusal of presiding justices, *see* ECF No. 1 at 21, does not relieve him of his burden of proof. "The absence of a mandatory statutory recusal mechanism applicable to justices of the California Supreme Court does not make a showing of bias unnecessary." *See Hirsh*, 67 F.3d at 714.

Mr. Sanai's allegations that *Younger* abstention doesn't apply because "these proceedings follow a pattern of bad faith harassment," *see* ECF No. 1 at 21, fare no better. "In the *Younger* abstention context, bad faith 'generally means that a prosecution has been brought without a reasonable

expectation of obtaining a valid conviction.'" *Baffert*, 332 F.3d at 621 (quoting *Kugler v. Helfant,* 421 U.S. 117, 126 n.6 (1975)). Mr. Sanai's state bar attorney profile shows that he is ineligible to practice law. The docket from the review of that disciplinary action by the California Supreme Court, *Sanai on Discipline*, No. S276140, shows that the matter has culminated in revocation of Mr. Sanai's eligibility to practice law in California.[4] Those proceedings "provide[] attorneys subject to discipline with more than constitutionally sufficient

Finding no exception to *Younger* abstention, the Court must dismiss this action. *See Everett v. Justices of Cal. Supreme Court*, No. 20-cv-03504-EMC, 2021 WL 6424652 (9th Cir. 2021), *cert. denied* Cal. July 7, 2020), *appeal dismissed as frivolous*, 142 S. Ct. 1238 (2022).

IV . CONCLUSION

For the reasons set forth above, the Court DISMISSES this case WITHOUT PREJUDICE. All pending motions are DENIED AS MOOT. The Clerk shall enter Judgment against Plaintiff and close the file.

IT IS SO ORDERED.

Dated: August 24, 2023

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[4] Pursuant to Fed. R. Evid. 201(c)(1), the Court takes judicial notice of Mr. Sanai's state bar online attorney profile and the docket in S276140.

E-9

ARACELI MARTÍNEZ-OLGUÍN

United States District Judge

APPENDIX F

SUPREME COURT OF CALIFORNIA
JORGE E. NAVARRETE
CLERK AND EXECUTIVE DIRECTOR
OF THE SUPREME COURT
EARL WARREN BUILDING
350 MCALLISTER STREET
SAN FRANCISCO, CA 94102
(415) 865-7000

June 16, 2023

SENT VIA USPS AND EMAIL

Cyrus Sanai
9440 Santa Monica Boulevard, Suite 301
Beverly Hills, California 90210

Re: S276140 — In re Cyrus Mark Sanai on Discipline

Dear Mr. Sanai:

This will acknowledge receipt of your "second petition for rehearing", which we received electronically on June 15, 2023. The court is unable to file your submission as there is no provision in the Rules of Court to file a rehearing of the denial of a rehearing. This case is now closed and cannot be

reconsidered or reinstated. Thereby, we return, unfiled, your submission.

Very truly yours,

JORGE E. NAVARRETE
Clerk and
Executive Officer of the Supreme Court

By: F. Jimenez,, Assistant Deputy Clerk

cc: Rec.

Enclosure

APPENDIX G

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

FILED

APRIL 17 2024
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

PEYMAN ROSHAN, an individual on behalf of himself and others similarly situated,

Plaintiff-Appellant,

v.

MELANIE J LAWRENCE, in her official capacity as Chief Trial Counsel, and in her personal capacity; OFFICE OF CHIEF TRIAL COUNSEL,

Defendants-Appellees.

No. 21-15771

D.C. No. 3:20-cv-04770-AGT

ORDER

CYRUS MARK SANAI, Plaintiff-Appellant, Plaintiff-Appellant, v. MELANIE J LAWRENCE, sued in her individual and official capacities; CYNTHIA VALENZUELA, sued in her individual and official capacities; GEORGE CARDONA, sued in his individual and official capacities; RICHARD A. HONN, sued in his official capacity; W. KEARSE MCGILL, an individual sued in his official capacity; DOES, 1 through 10, inclusive, Defendants-Appellees.	No. 22-56215 D.C. No. 2:21-cv-07745-JFW-KES

CYRUS MARK SANAI, Plaintiff-Appellant, Plaintiff-Appellant,	No. 23-15618 D.C. No. 4:22-cv-01818-JST

v.

GEORGE CARDONA; LEAH WILSON,

Defendants-Appellees.

CYRUS MARK SANAI,
Plaintiff-Appellant,

Plaintiff-Appellant,

v.

LEONDRA KRUGER, Judge; JOSHUA P. GROBAN; MARTIN J. JENKINS; KELLI M. EVANS; CAROL A. CORRIGAN; GOODWIN H. LIU; PATRICIA GUERRERO,

Defendants-Appellees.

No. 23-16104

D.C. No. 3:23-cv-01057-AMO

Before: SILER,* TASHIMA, and BRESS, Circuit Judges.

* The Honorable Eugene E. Siler, United States Circuit Judge for the U.S. Court of Appeals for the Sixth Circuit, sitting by designation.

The panel unanimously voted to deny Appellants' petitions for panel rehearing.. No. 21-15771, Dkts. 145, 146, 147, 148. Judge Bress voted to deny the petitions for rehearing en banc and Judges Siler and Tashima so recommended. The full court has been advised of the petitions for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. Appellants' petitions for panel rehearing and rehearing en banc are **DENIED.**

APPENDIX H

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

FILED

SEP 4 2024
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

PEYMAN ROSHAN, an individual on behalf of himself and others similarly situated,

Plaintiff-Appellant,

v.

MELANIE J LAWRENCE, in her official capacity as Chief Trial Counsel, and in her personal capacity; OFFICE OF CHIEF TRIAL COUNSEL,

Defendants-Appellees.

No. 21-15771

D.C. No. 3:20-cv-04770-AGT

ORDER

CYRUS MARK SANAI, Plaintiff-Appellant, Plaintiff-Appellant, v. MELANIE J LAWRENCE, sued in her individual and official capacities; CYNTHIA VALENZUELA, sued in her individual and official capacities; GEORGE CARDONA, sued in his individual and official capacities; RICHARD A. HONN, sued in his official capacity; W. KEARSE MCGILL, an individual sued in his official capacity; DOES, 1 through 10, inclusive, Defendants-Appellees.	No. 22-56215 D.C. No. 2:21-cv-07745-JFW-KES

CYRUS MARK SANAI, Plaintiff-Appellant, Plaintiff-Appellant,	No. 23-15618 D.C. No. 4:22-cv-01818-JST

v.

GEORGE CARDONA; LEAH WILSON,

Defendants-Appellees.

CYRUS MARK SANAI,
Plaintiff-Appellant,

Plaintiff-Appellant,

v.

LEONDRA KRUGER, Judge; JOSHUA P. GROBAN; MARTIN J. JENKINS; KELLI M. EVANS; CAROL A. CORRIGAN; GOODWIN H. LIU; PATRICIA GUERRERO,

Defendants-Appellees.

No. 23-16104

D.C. No. 3:23-cv-01057-AMO

Before: SILER,* TASHIMA, and BRESS, Circuit Judges.

* The Honorable Eugene E. Siler, United States Circuit Judge for the U.S. Court of Appeals for the Sixth Circuit, sitting by designation.

Appellants' motion to recall the mandate, No. 21-15771, Dkt. 165, is denied.

APPENDIX I

Relevant Statutes and Constitutional Provisions

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. §1983.

> It is the duty of an attorney to do all of the following:
>
> ...
>
> (g) Not to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest.

Bus. & Prof. Code §6068(g)

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. V

> 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.

U.S. Const. amend. XIV, §1