

APPENDIX

A

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 17 2026

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

STEVEN ERIC WALKER,

No. 23-55525

Plaintiff-Appellant,

D.C. No. 3:20-cv-00031-DMS-AGS

v.

MEMORANDUM*

UNITED STATES OF AMERICA; STATE
OF CALIFORNIA; DOES, 1 through 100,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of California
Dana M. Sabraw, District Judge, Presiding

Submitted March 16, 2026**

Before: SILVERMAN, NGUYEN, and HURWITZ, Circuit Judges.

Steven Eric Walker appeals pro se from the district court's order dismissing his constitutional challenge to firearms restrictions for persons convicted of a felony. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under 28 U.S.C. § 1915(e)(2). *Watison v. Carter*, 668 F.3d 1108, 1112

* 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).

(9th Cir. 2012). We affirm.

The district court properly dismissed Walker's action because Walker failed to allege facts sufficient to state any plausible claim. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (to avoid dismissal, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face" (citation and internal quotation marks omitted)); *see also New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 24 (2022) (setting forth the standard for evaluating Second Amendment claims); *United States v. Duarte*, 137 F.4th 743, 761 (9th Cir. 2025) (en banc) (explaining that the Second Amendment permits "permanent and categorical disarmament of felons").

The district court did not abuse its discretion in denying Walker's motions to vacate dismissal and judgment because Walker failed to set forth any basis for relief. *See Sch. Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262-63 (9th Cir. 1993) (setting forth standard of review and grounds for reconsideration under Federal Rules of Civil Procedure 59 and 60).

Walker's request to exceed the page limit in his fourth motion to lift abeyance (Docket Entry No. 31) is granted. All other pending motions and requests are denied.

AFFIRMED.

UNITED STATES COURT OF APPEALS

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FOR THE NINTH CIRCUIT

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

STEVEN ERIC WALKER,

No. 23-55525

Plaintiff-Appellant,

D.C. No. 3:20-cv-00031-DMS-AGS
Southern District of California,
San Diego

v.

UNITED STATES OF AMERICA; et al.,

ORDER

Defendants-Appellees.

Before: SILVERMAN, NGUYEN, and HURWITZ, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 40.

The petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 41) are denied.

The motion (Docket Entry No. 44) for a preliminary injunction is denied.

This court will not entertain further filings in this closed case.

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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 STEVEN ERIC WALKER,

12 Plaintiff,

13 v.

14 UNITED STATES OF AMERICA;
15 THE STATE OF CALIFORNIA,
16 And All Actors, Agents and Elected
Officials Thereof, and Does 1
through 100, Respectively,

17 Defendants.
18

Case No: 20-CV-31-DMS-AGS

**ORDER GRANTING MOTION TO
REOPEN CASE AND MOTION TO FILE
AMENDED COMPLAINT; AND
DISMISSING FIRST AMENDED
COMPLAINT WITH PREJUDICE FOR
FAILURE TO STATE A CLAIM**

19 On October 17, 2022, Defendant Steven Walker filed a “Request to Reopen Case
20 Pursuant to Federal Rules of Civil Procedure, Rule 60” and a “Request to File Amended
21 Complaint for Declaratory and Injunctive Relief; Breach of Contract; Facial Challenge to
22 Unconstitutional Laws.” (ECF Nos. 14, 15.) The Court construes these requests as a motion
23 to reopen his case and a motion to file an amended complaint, respectively. Defendant also
24 submitted an “Amended Complaint for Declaratory and Injunctive Relief; Breach of
25 Contract; General Challenge to Unconstitutional Laws; Request for Class Action
26 Certification” as part of his motion to file an amended complaint. (ECF No. 15.)
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28

1 Plaintiff's motions to reopen his case and bring an amended complaint rely on the
2 Supreme Court's recent decision in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142
3 S. Ct. 2111 (2022). Based on *Bruen*, Plaintiff requests declaratory judgment, injunctive
4 relief, and class certification. (ECF No. 15, First Amended Complaint, 52.) Defendant's
5 motion to reopen his case and motion to file an amended complaint are hereby **GRANTED**.
6 The Court accepts the First Amended Complaint ("FAC"), as filed as part of his motion.
7 (ECF No. 15.)

8 **I.**

9 **BACKGROUND**

10 Plaintiff is a non-prisoner proceeding *pro se*. On January 6, 2020, Plaintiff filed a
11 Complaint against the United States, State of California, "And All Actors, Agents, and
12 Elected Officials Thereof; And Does 1 Through 100" and a motion to proceed *In Forma*
13 *Pauperis*. (ECF Nos. 1, 2.) The Court granted Plaintiff's motion to proceed in *In Forma*
14 *Pauperis* and dismissed the Complaint for failure to state a claim. (ECF No. 3.) On May
15 18, 2020, Plaintiff submitted a motion for reconsideration of summary dismissal of the
16 Complaint, which the Court denied. (ECF Nos. 6, 11.) Plaintiff appealed the Court's denial,
17 and on July 19, 2021, the Ninth Circuit affirmed the decision of the Court. (ECF No 13.)
18 The matter presently before the Court is Plaintiff's First Amended Complaint, which
19 contains the same or substantially similar allegations as those Plaintiff had brought in his
20 original Complaint. As an initial matter, considering Plaintiff's IFP status, the Court
21 conducts a *sua sponte* screening of the FAC, per 28 U.S.C. § 1915(e)(2).

22 **II.**

23 **DISCUSSION**

24 Notwithstanding payment of any filing fee or portion thereof, a complaint filed by
25 any person proceeding IFP pursuant to 28 U.S.C. § 1915(a) is subject to a mandatory and
26 *sua sponte* review and dismissal by the court to the extent it is frivolous, malicious, fails to
27 state a claim upon which relief may be granted, or seeks monetary relief from a defendant
28 immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *Calhoun v. Stahl*, 254 F.3d 845, 845

(9th Cir. 2001) (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners.”); *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (*en banc*). Prior to its amendment by the Prison Litigation Reform Act, the former 28 U.S.C. § 1915(d) permitted *sua sponte* dismissal of only frivolous and malicious claims. *Id.* at 1130. 28 U.S.C. § 1915(e)(2), however, mandates that the court reviewing a complaint filed pursuant to the IFP provisions of section 1915 make and rule on its own motion to dismiss before directing that the complaint be served by the U.S. Marshal pursuant to Fed. R. Civ. P. 4(c)(2). *Lopez*, 203 F.3d 1127 (“[S]ection 1915(e) not only permits, but requires a district court to dismiss an in forma pauperis complaint that fails to state a claim.”); *see also Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (noting the “the language of § 1915(e)(2)(B)(ii) parallels the language of Federal Rule of Civil Procedure 12(b)(6).”).¹

In the First Amended Complaint, Plaintiff alleges violations of his rights under the Second, Ninth, and Tenth Amendments, and breaches of purported contracts implied by the same amendments and constitutional oaths taken by various government officials. Plaintiff argues that “when a person earns their freedom from confinement or is discharged (cleared) from the penalty imposed for *a previous* conviction of crime . . . they have constitutionally satisfied their debt to society” and “are no longer ‘criminals’ or ‘felons.’” (ECF No. 15, First Amended Complaint, ¶ 13.) Plaintiff argues that Defendants, “when enforcing weapons control laws, have exercised powers which are not delegated by the Constitution and, in doing so, have breached their contractual obligations under the Constitution, and encroached upon, denied, or disparaged the constitutionally secured powers and rights of the people.” (ECF No. 15, First Amended Complaint, ¶ 15.)

¹ A motion to dismiss under Rule 12(b)(6) should be granted if a plaintiff’s complaint fails to contain “enough facts to state a claim to relief that is plausible.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556).

1 Plaintiff describes himself as a “free, law-abiding, ordinary, tax-paying citizen of the
2 State of California and United States of America,” who “does not currently own a firearm
3 (weapon), but seeks to acquire a weapon to keep and bear for in-home and personal self-
4 defense and security, and other lawful purposes of personal safety.” (ECF No. 15, First
5 Amended Complaint, ¶ 22.) He continues, “[b]ut for California’s and the Federal
6 Governments’ encroachments and chilling restrictions on weapons and his reasonable fear
7 of criminal prosecution and penalties for exercising his fundamental right to self-security
8 and safety,” he would “immediately acquire and continuously possess a weapon for lawful
9 purposes, including in-home personal security, personal safety, and self-defense.” (ECF
10 No. 15, First Amended Complaint, ¶ 22.) Plaintiff seeks to represent a “very large class of
11 citizens (approximately 330 million people) who are subject to the same encroachments,
12 infringements, penalties, and chilling restrictions alleged herein.” (ECF No. 15, First
13 Amended Complaint, ¶ 22.)

14 Plaintiff neglects to plead standing in the FAC. Notwithstanding, the Court is
15 familiar with Plaintiff’s criminal history and status as a felon, which he had raised himself
16 in the original Complaint and which the Court discussed in its prior Order Dismissing the
17 Complaint. (ECF No. 3.) Plaintiff was convicted by a jury for the criminal offense of
18 premeditated attempted murder, with use of a firearm. In the FAC, Plaintiff requests that
19 the Court address his “facial challenge to the constitutional validity of the laws in question,”
20 divorced from his status as a felon.² (ECF No. 15, Motion to File Amended Complaint, 2.)
21 Plaintiff claims the Court did not previously address his more general challenge in its prior
22 order, but he is incorrect. Both in its Order Dismissing Plaintiff’s Complaint (ECF No. 3)
23 and its Order Denying Plaintiff’s Motion for Reconsideration (ECF No. 11), the Court
24 addressed Plaintiff’s general claims regarding the validity of all firearms laws and his
25 request to restore the right not of felons, but law-abiding citizens more generally, to bear
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28 ² Simultaneously, Plaintiff’s request amounts to a petition for the Court to restore his
personal right to bear arms, even though he is a felon.

1 arms. (ECF No. 3 at 3; ECF No. 11 at 5.) The Court made clear that the distinction does
2 not assist Plaintiff.

3 Today, Plaintiff essentially sets forth the same arguments. He contends that the
4 Constitution guarantees his right to bear arms, and congressionally enacted laws or court
5 decisions which limit this right are unconstitutional. Specifically, Plaintiff argues that
6 *Bruen* “brings to question the continued validity of this court’s summary dismissal and sole
7 reliance on unsubstantiated *dicta* to support its reasoning, which impermissibly relieved the
8 defendants of their constitutional burden to demonstrate how their overreaching regulations
9 as applied generally, or even to plaintiffs current law-abiding conduct, are historically
10 justified.” (ECF No. 15, Motion to File Amended Complaint, 2-3.) Plaintiff’s arguments
11 ultimately amount to the same claims he raised, and which the Court previously dismissed,
12 in the original Complaint. Plaintiff again seeks to vindicate the constitutional right for
13 himself to bear arms, even though he is a felon, and for individuals, including but not limited
14 to individuals with a felony conviction.

15 In support of his argument today, Plaintiff argues that *Bruen* should change the result
16 of the Court’s prior dismissal. Plaintiff misinterprets *Bruen*. Unfortunately for Plaintiff,
17 *Bruen* still focuses on the right of law-abiding, responsible citizens to use arms for self-
18 defense. 142 S. Ct. 2111, 2118 (2022) (citing *District of Columbia v. Heller*, 554 U.S. at
19 635, 128 S.Ct. 2783. Pp. 2129 - 2131. While Plaintiff alleges he is presently law-abiding,
20 his status as a felon precludes him from possessing a firearm. Furthermore, *Bruen* neither
21 overturns a long line of precedent nor offers blanket protection for any and all individuals,
22 irrespective of criminal history, against laws and statutes that restrict the Second
23 Amendment. Plaintiff also suggests that the Second Amendment does not limit the right to
24 bear arms to citizens who are law-abiding. (ECF No. 15, First Amended Complaint, ¶ 33,
25 n. 24.) The Court rejects this argument. Both *D.C. v. Heller* and *Bruen* make clear that the
26 right secured by the Second Amendment is not unlimited and longstanding prohibitions on
27 the possession of firearms by felons are not only lawful, but constitutional. See 554 U.S.
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1 570, 626, 128 S. Ct. 2783, 2816 (2008); *see also* 142 S. Ct. 2111, 2162 (2022) (Kavanaugh,
2 J., concurring).

3 Finally, courts in this District have considered the same or similar arguments raised
4 by Plaintiff and have arrived at the same outcome. For example, Plaintiff's FAC sets forth
5 similar arguments to those raised in a motion filed in this District by Defendant David
6 Lemont Hill, in *U.S. v. Hill*, Case No. 21cr0107-WHQ, 2022 WL 4361917 (S.D. Cal. Sept.
7 20, 2022). There, Judge William Q. Hayes denied defendant Hill's motion in an order
8 issued September 20, 2022. Having considered Plaintiff's arguments in his motion to file
9 an amended complaint and First Amended Complaint, the Court adopts the thorough and
10 well-reasoned analysis and conclusion issued by Judge Hayes in the *Hill* case, which
11 determined that binding Ninth Circuit precedent was not overruled by *Bruen*, and that the
12 federal felon-in-possession law does not violate the Second Amendment. 2022 WL
13 4361917, at *2-3.

14 The Court also directs Plaintiff to its prior Order Dismissing the Complaint and Order
15 Denying Plaintiff's Motion for Reconsideration. (ECF No. 11.) There is still no dispute
16 that Plaintiff has suffered a felony conviction and individuals who have a prior felony
17 conviction like Plaintiff's, cannot restore their Second Amendment rights under existing
18 law, except in limited circumstances not present here, even if they become law-abiding
19 citizens.³

20 II.

21 CONCLUSION

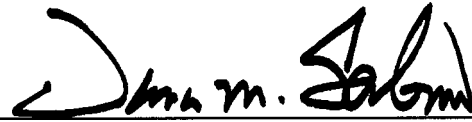
22 The crux of Plaintiff's FAC has not changed. Plaintiff claims that state and federal
23 governments improperly deny his right to bear arms under the Second Amendment because
24 of his status as a felon and that convicted felons who abide by the law post-conviction have
25 the right to possess firearms. The Ninth Circuit and the Supreme Court have both
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27 ³ Generally, a person sentenced to prison on a felony cannot restore their right to bear arms
28 under the Second Amendment unless they get a Certificate of Rehabilitation and a Pardon
by the Governor's Office. *See* California Penal Code § 4852.01.

1 recognized the validity of laws curtailing the right of a felon to possess firearms and *Bruen*
2 has not changed the result. Consequently, the FAC is hereby **DISMISSED**, with prejudice,
3 for failure to state a claim, and Plaintiff's requests for declaratory judgment, class
4 certification, and injunctive relief are **DENIED** as moot.

5 **IT IS SO ORDERED.**

6 Dated: October 28, 2022

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8 Hon. Dana M. Sabraw, Chief Judge
9 United States District Court
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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 STEVEN WALKER,

11 Plaintiff,

12 v.

13 ROB BONTA, in his official capacity as
14 Attorney General of the State of
15 California; MERRICK B. GARLAND, in
16 his official capacity as Attorney General
of the United States of America; and
DOES 1-100,

17 Defendants.
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19

Case No.: 20-CV-00031-DMS-AGS

**ORDER DENYING PLAINTIFF'S
MOTION FOR RECUSAL;
DENYING PLAINTIFF'S MOTION
TO ALTER OR AMEND
JUDGMENT**

20 Before the Court is Plaintiff's motion requesting that the Court (1) "vacate" its Order
21 dated October 28, 2022 dismissing Plaintiff's First Amended Complaint with prejudice
22 (ECF No. 16); (2) grant leave to amend his Complaint to name Judge Dana Sabraw and
23 others as defendants; and (3) grant recusal of Judge Dana Sabraw from all proceedings in
24 this Action.¹ (Pl.'s Mot. at 1-2, ECF No. 17.) The Court first considers Plaintiff's request
25 for recusal. The Court **DENIES** Plaintiff's request for recusal for the reasons explained
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28 ¹ Plaintiff's motion also includes a request for judicial notice. Plaintiff's request for judicial notice is
GRANTED.

1 below. The Court then interprets Plaintiff's two remaining requests as a motion to alter or
2 amend pursuant to Federal Rule of Civil Procedure 59(e) and **DENIES** the motion for the
3 reasons stated below.

4 **I. Background**

5 On January 6, 2020, Plaintiff filed a Complaint alleging that certain federal and state
6 firearm regulations, which prohibit Plaintiff from possessing firearms due to his status as
7 a convicted felon, violate the Second Amendment. (Compl. at ¶ 1, ECF No. 1.) On April
8 24, 2020, this Court sua sponte dismissed the complaint for failure to state a claim. (Order,
9 ECF No. 3.) Plaintiff appealed the dismissal to the Ninth Circuit, which affirmed dismissal.
10 *Walker v. United States*, 848 F. App'x 744 (9th Cir. 2021) (ECF No. 13). On October 17,
11 2022, Plaintiff moved to reopen the case (Req. to Reopen Case, ECF No. 14) and filed an
12 amended complaint (ECF No. 15) following the Supreme Court's decision in *New York*
13 *State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022). The Court granted the motion
14 to reopen, granted leave to file an amended complaint, and sua sponte dismissed the claim
15 again pursuant to 28 U.S.C. § 1915(a). (Order, Oct. 28, 2022, ECF No. 16.) Plaintiff then
16 filed the instant motion requesting, among other things, that this Judge be recused from the
17 case, that the Court "vacate" its Order dated October 28, 2022, and leave to file an amended
18 complaint in order to name this Judge and others as defendants. (Pl.'s Mot. at 1.)

19 **II. Motion to Recuse**

20 Plaintiff has failed to show why recusal is warranted here. A federal judge must
21 "disqualify himself in any proceeding in which his impartiality might reasonably be
22 questioned," and "[w]here he has a personal bias or prejudice concerning a party, or
23 personal knowledge of disputed evidentiary facts concerning the proceeding." 28 U.S.C.
24 § 455(a), (b)(1). Recusal is required "only when a reasonable person with knowledge of
25 all the facts would conclude that the judge's impartiality might reasonably be questioned."
26 *United States v. Winston*, 613 F.2d 221, 222 (9th Cir. 1990).

27 Plaintiff argues that recusal is warranted because Judge Sabraw "cannot reasonably
28 exercise fairness or impartiality" (Pl.'s Mot. at 2) and that Judge Sabraw "attacks Plaintiff's

1 character, classifies him, discriminates against him, and then prejudices him . . . by
2 concluding that his status falls outside the Second Amendment’s unqualified command.”
3 (*Id.* at 9.) In short, Plaintiff argues that the previous orders issued in this case warrant
4 Judge Sabraw’s recusal because those Orders have been unfavorable to Plaintiff. This is
5 not a sufficient ground for recusal. *See Liteky v. United States*, 510 U.S. 540, 555 (1994)
6 (“[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality
7 motion.”). Disfavorable rulings are “proper grounds for *appeal*, not for recusal.” *Id.*
8 (emphasis added). Plaintiff is free to appeal an adverse ruling.

9 Plaintiff further argues that Judge Sabraw “has a personal bias or prejudice toward
10 Plaintiff where he questions the truth of the material allegations that Plaintiff is a free,
11 independent, ordinary, responsible, law-abiding, tax-paying citizen, by assuming that he is
12 a ‘felon.’” (Pl.’s Mot. at 2–3.) But it is true that Plaintiff was convicted of a felony in 1990.
13 Plaintiff admits this. (Compl. at ¶ 3, ECF No. 1, “Walker states that on August 9, 1990, he
14 was convicted by a jury of the criminal offense of Premeditated Attempted Murder, with
15 use of a firearm”) Plaintiff has failed to show grounds for recusal.

16 The fact that Plaintiff seeks leave to amend his complaint in order to name this Judge
17 as a defendant does not change this conclusion. Plaintiff seeks to bring claims against
18 Judge Sabraw on the basis of his previous adverse rulings. (*See, e.g.*, Pl.’s Mot. at 2–3.)
19 Such claims would be frivolous due to judicial immunity. *See Mireles v. Waco*, 502 U.S.
20 9, 12 (1991) (explaining that a judge is immune from suit when acting in a judicial
21 capacity). As explained, the standard for recusal is whether a reasonable person might
22 question a judge’s impartiality in this situation. “The patently frivolous claims presented”
23 here against Judge Sabraw “leave no room for any rational person to imagine that any bias
24 could underlie” this Court’s denial of Plaintiff’s motion to recuse. *Swan v. Barbadoro*, 520
25 F.3d 24, 26 (1st Cir. 2008); *see also Wiesner v. Pro*, No. 13-cv-315, 2013 WL 5308258
26 (D. Nev. Sept. 18, 2013) (judge dismissing frivolous claim sua sponte without recusing
27 himself despite being a named defendant in the suit). A judge’s decision on a motion to
28 recuse must also reflect “the need to prevent parties from too easily obtaining the

1 disqualification of a judge, thereby potentially manipulating the system . . . to obtain a
2 judge more to their liking.” *In re Allied-Signal Inc.*, 891 F.2d 967, 970 (1st Cir. 1989).
3 And although federal law states that a judge “shall disqualify himself” when “[h]e . . . [i]s
4 a party to the proceeding,” 28 U.S.C. § 455(b)(5)(i), this Judge is *not* a party to the
5 proceeding at present. Accordingly, Plaintiff’s request for recusal is **DENIED**.

6 **III. Motion to Alter or Amend**

7 Next, Plaintiff seeks leave to amend his complaint to name Judge Sabraw as
8 defendant, along with other Doe defendants, and requests for the Court to “vacate” its
9 previous “erroneous Order and Judgment.” (Pl.’s Mot. at 1–2.) The Court interprets these
10 requests together as a motion to alter or amend judgment pursuant to Federal Rule of Civil
11 Procedure 59(e) specifically asking the Court to revise its earlier decision denying Plaintiff
12 leave to file an amended complaint.

13 Rule 59(e) allows a party to file a “motion to alter or amend a judgment” within “28
14 days after the entry of the judgment.” Fed. R. Civ. P. 59(e). A Rule 59(e) motion is an
15 “extraordinary remedy, to be used sparingly in the interests of finality and conservation of
16 judicial resources.” *Kaufmann v. Kijakazi*, 32 F.4th 843, 850 (9th Cir. 2022) (quoting
17 *Wood v. Ryan*, 759 F.3d 1117, 1121 (9th Cir. 2014) (per curiam)). A district court may
18 grant a Rule 59(e) motion if it is “presented with newly discovered evidence, committed
19 *clear error*, or if there is an intervening change in the controlling law.” *Id.* (quoting *Wood*,
20 759 F.3d at 1121). Although Plaintiff believes that the Court’s earlier Order was erroneous,
21 he has not pointed to any intervening change in the controlling law, newly discovered
22 evidence, or any *clear error* in the Order.

23 “Clear error” for the purposes of a Rule 59(e) motion is a “very exacting standard.”
24 *Campion v. Old Republic Home Prot. Co.*, No. 09-CV-748, 2011 WL 1935967 (S.D. Cal.
25 May 20, 2011). “Mere doubts or disagreement about the wisdom of” a court’s decision
26 will not suffice to show clear error. *Id.* (quoting *Hopwood v. Texas*, 236 F.3d 256, 272 (5th
27 Cir. 2000)). “To be clearly erroneous, a decision must . . . [be] more than just maybe or
28 probably wrong; it must be dead wrong.” *Id.* (quoting *Hopwood*, 236 F.3d at 272–73). For

1 example, in *Kaufmann v. Kijazaki*, a case involving denial of social security benefits, the
2 district court granted a Rule 59(e) motion and acknowledged clear error for failing to read
3 and consider “all” pages of the administrative law judge’s decisions when it reached its
4 original contrary decision. 32 F.4th at 851. Plaintiff points to no such obvious clear error
5 here. Plaintiff’s assertions of error amount to “mere . . . disagreement about the wisdom
6 of” this Court’s earlier Order. *Hopwood*, 236 F.3d at 272.

7 In essence, Plaintiff reasserts his argument that the Supreme Court’s recent decision
8 in *New York State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111 (2022), compels this Court
9 to reach a different conclusion than the one it did. But *Bruen* did not overrule binding
10 Ninth Circuit precedent upholding felon-in-possession laws such as those Plaintiff
11 challenges. This issue has come up before. In *United States v. Hill*, defendant was charged
12 with being a felon in possession of a firearm under 18 U.S.C. §§ 922(g)(1) & 924(a)(2).
13 *United States v. Hill*, No. 21-cr-107, 2022 WL 4361917, at *1 (S.D. Cal. Sept. 20, 2022).
14 Defendant filed a motion to dismiss arguing that 18 U.S.C. § 922(g)(1) (making it a crime
15 for a person convicted of a felony to possess a firearm) is unconstitutional in light of *Bruen*
16 because “the government cannot ‘meet [its] burden to identify an American tradition’ that
17 prohibited people with felonies from possessing firearms.” Defendant’s Motion to Dismiss
18 at 24, *Hill*, 2022 WL 4361917 (No. 21-cr-107), ECF No. 65 (quoting *Bruen*, 142 S. Ct. at
19 2138 (alteration in original)). The court concluded that “*Bruen* did not ‘effectively
20 overrule’” Ninth Circuit precedent upholding the constitutionality of such laws and denied
21 defendant’s motion to dismiss. *Hill*, 2022 WL 4361917, at *3.

22 In *District of Columbia v. Heller*, the Supreme Court explained: “nothing in our
23 opinion should be taken to cast doubt on longstanding prohibitions on the possession of
24 firearms by felons” 554 U.S. 570, 626 (2008). The Court reiterated this point in
25 *McDonald v. Chicago* two years later, saying: “We made it clear in *Heller* that our holding
26 did not cast doubt on such longstanding regulatory measures as ‘prohibitions on the
27 possession of firearms by felons’” 561 U.S. 742, 786 (2010) (quoting *Heller*, 554 U.S.
28 at 626). Relying on *Heller* and *McDonald*, the Ninth Circuit repeatedly held that felon-in-

1 possession laws are constitutionally valid. *See, e.g., United States v. Phillips*, 827 F.3d
2 1171, 1175–76 (9th Cir. 2016) (affirming Ninth Circuit precedent that 18 U.S.C. §
3 922(g)(1) is constitutional); *United States v. Vongxay*, 594 F.3d 1111, 1116, 1118 (9th Cir.
4 2010) (concluding that an “examination . . . of historical gun restrictions” supports
5 upholding 18 U.S.C. § 922(g)(1) as constitutional); *cf. Fisher v. Kealoha*, 855 F.3d 1067,
6 1071 (9th Cir. 2017) (upholding 18 U.S.C. § 922(g)(9), which bars a person with a
7 *misdemeanor* domestic violence conviction from possessing a gun, as constitutional).
8 *Bruen* explained that its holding was “[i]n keeping with *Heller*.” 142 S. Ct. at 2126.

9 As Judge Hayes wrote in *Hill*, this Court is “bound by . . . Ninth Circuit precedent
10 unless that precedent is ‘effectively overruled.’” 2022 WL 4361917, at *2 (quoting *Miller*
11 *v. Gammie*, 335 F.3d 889, 890 (9th Cir. 2003) (en banc)). Precedent is “effectively
12 overruled” when “the reasoning or theory of . . . prior circuit authority is clearly
13 irreconcilable with the reasoning or theory of intervening higher authority.” *Miller*, 335
14 F.3d at 890, 893. *Bruen* was silent on the question of felon-in-possession laws. And
15 *Bruen*’s reasoning is far from being “clearly irreconcilable” with Ninth Circuit authority
16 upholding felon-in-possession laws as constitutional. *See Bruen*, 142 S. Ct. at 2162
17 (opinion of Kavanaugh, J., concurring) (explaining that *Bruen* should not “be taken to cast
18 doubt on longstanding prohibitions of firearms by felons” which *Heller* characterized as
19 “presumptively lawful regulatory measures” (quoting *Heller*, 554 U.S. at 626, 627 n.26));
20 *id.* at 2189 (opinion of Breyer, J., dissenting) (“[I] understand the Court’s opinion today to
21 cast no doubt on that aspect of *Heller*’s holding [that laws barring felons from possessing
22 firearms are presumptively lawful].”). Circuit precedent is not overruled or “clearly
23 irreconcilable” just because an intervening Supreme Court case like *Bruen* is in “some
24 tension” with it. *Close v. Sotheby’s, Inc.*, 894 F.3d 1061, 1073 (9th Cir. 2018).

25 Lastly, the Court stands by its decision to dismiss without leave to amend. Because
26 Plaintiff’s claim is squarely foreclosed by binding Ninth Circuit precedent, leave to amend
27 would be futile. *See Klamath-Lake Pharm. Ass’n v. Klamath Med. Serv. Bureau*, 701 F.2d
28 1276, 1293 (9th Cir. 1983) (“[F]utile amendments should not be permitted.”). Plaintiff is

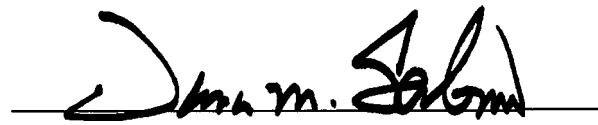
1 free to make his arguments on appeal, but they are not a proper basis for a Rule 59(e)
2 motion in this Court. Therefore, Plaintiff's motion to alter or amend is **DENIED**.

3 **V. Conclusion and Order**

4 For the foregoing reasons, the Court orders as follows: (1) Plaintiff's motion to
5 recuse is **DENIED**; (2) Plaintiff's motion to vacate judgment and for leave to file an
6 amended complaint, which the Court interprets as a motion to alter or amend under Rule
7 59(e), is **DENIED**. This is a final judgment in this matter. The Clerk is directed to close
8 this case.

9 **IT IS SO ORDERED.**

10
11 Dated: April 6, 2023

A handwritten signature in black ink, appearing to read "Dana M. Sabraw", is written over a horizontal line.

Hon. Dana M. Sabraw, Chief Judge
United States District Court

APPELLEE'S NOTICE — WAIVER OF RESPONSE

(DktEntry 12 — December 21, 2023)

Case: 23-55525, 12/21/2023, ID: 12840425, DktEntry: 12, Page 1 of 1

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December 21, 2023

Office of the Clerk
James R. Browning Courthouse
U.S. Court of Appeals
P.O. Box 193939
San Francisco, CA 94119-3939

Subj.: Steven Eric Walker I v. United States of America, et al.
Ninth Circuit Court of Appeal Case No. 23-55525

To the Clerk of the Court:

Pursuant to Ninth Circuit Rule 31-2.3, please accept this letter as formal notice that Appellee United States of America ("Appellee") hereby elects against filing a responsive brief in this matter. Appellee's election is based on the following:

1. On October 28, 2022, the district court dismissed Plaintiff-Appellant Steven Walker's First Amended Complaint. See Order [ECF #16]. Appellee was never served with

A-010

the First Amended Complaint and made no appearance in the underlying action in response to the First Amended Complaint, because it was never properly brought into the case.

2. On November 22, 2022, Appellant filed a motion before the district court seeking an order vacating the dismissal order and “disqualifying” the district court judge from further proceedings. See Motion [ECF #17]. On December 13, 2022, the district court 05

issued an order construing Appellant’s motion to disqualify “as a Motion to Recuse” and directing Appellee to respond only to the motion to recuse. See Order [ECF #18]. On January 27, 2023, Appellee appeared for the limited purpose of responding to the Motion to Recuse. See Response [ECF #23].

3. On April 6, 2023, the district court denied Appellant’s Motion to Recuse. See Order [ECF #25]. Appellant’s Opening Brief raises no express challenge to this order; Appellant’s only challenge is to the order of dismissal. See Opening Brief [Dkt 6-1], p. 14 of 43.

Sincerely,

/s/ Glen F. Dorgan
Glen F. Dorgan
Assistant United States Attorney

A-011

**Additional material
from this filing is
available in the
Clerk's Office.**