

1 WILLIAM G. BISSELL, ESQ.  
State Bar #93527  
2 Law Offices of  
William G. Bissell  
3 14 Corporate Plaza Drive,  
Suite 120  
4 Newport Beach, CA 92660  
Telephone:(949) 719-1159  
5 Telefax No:(949) 719-1158

6 Counsel for Defendants  
GARY HUMPHREYS AND  
7 KAREN HUMPHREYS

8  
9 UNITED STATES COURT OF APPEALS  
10 FOR THE NINTH CIRCUIT  
11  
12

13 ADAM BEREKI

14 Plaintiff-Appellant

15 vs.

16 GARY HUMPHREYS, and KAREN  
17 HUMPHREYS

18 Defendants-Appellees  
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Case No. 20-55181

D.C. No. 8:19-CV-02050-CBM-  
ADS(x)

U.S. District Court for Central  
California, Los Angeles

**APPELLEE'S RESPONSE TO  
APPELLANT'S STATEMENT THAT  
APPEAL SHOULD GO FORWARD**

1 Defendants-Appellees Gary and Karen Humphreys submit the following response to  
2 Appellant's statement that the appeal in this matter should go forward.

3  
4 INTRODUCTION

5 As Appellant acknowledges in his First Amended Complaint (FAC) filed  
6 with the United States District Court for the Central District of California (the  
7 District Court), a copy of which is Exhibit AA to Appellant's Brief In Support of  
8 Motion For Appointment of Counsel and to Proceed in Forma Pauperis which is  
9 incorporated by reference into Appellant's statement that his Appeal should go  
10 forward, judgement was entered against Appellant, after trial, by the Superior  
11 Court of the State of California for the County of Orange in Orange County  
12 Superior Court action No. 30-2015-00805807. The trial involved the applicability  
13 of a California State Statute to the facts of the case as determined by the trier of fact  
14 and judgment was entered on the basis of that state statute as applied to the  
15 adjudicated facts. It is that judgment, which was upheld and confirmed  
16 unanimously by the assigned panel of the California Court of Appeal for the 4<sup>th</sup>  
17 District of California and which both the California Supreme Court and the United  
18 States Supreme Court have declined to review, which Plaintiff sought to attack  
19 through the FAC filed with the District Court. This was an avenue which simply  
20 was not available to Plaintiff and was rightly recognized as such by the District  
21 Court in entering its order of dismissal, a copy of which is attached hereto as  
22 Exhibit "A" and incorporated herein.

23  
24 DEFENDANT-APPELLEES' RESPONSIVE STATEMENT

25 As noted by the District Court in its Ruling on Defendant's motion for  
26 dismissal at pages 5 and 6. "*Here, Plaintiff seeks relief from the superior court*  
27 *judgment pursuant to Fed. R. Civ. P. 60(d) (FAC at p.13), and an order from*

1 *this Court (1) vacating the judgment entered against Plaintiff in the superior*  
 2 *court action and (2) ordering the superior court to remove the property lien*  
 3 *based on the judgment entered against Plaintiff in the superior court action (id.,*  
 4 *Prayer for Relief). The FAC also alleges the instant federal action “is a direct*  
 5 *attack on the jurisdiction of the California trial and appellate Courts in case*  
 6 *numbers – 30-2015-00805897, and G055075.” (Id. at p.17.) Therefore,*  
 7 *Plaintiff seeks relief from the state court judgment affirmed by the California*  
 8 *Court of Appeals.”*

9 In bringing their motion for dismissal of the FAC before the District Court  
 10 Defendants-Appellees raised three separate grounds, two of which the court addressed in  
 11 its ruling and the third the court found it unnecessary to address finding the first two  
 12 dispositive of the motion. The first of the two grounds on which the Court based its  
 13 ruling, was that the Court lacked subject matter jurisdiction of the action under the  
 14 Rooker-Feldman doctrine barring losing parties from seeking what in substance  
 15 would be appellate review of state court judgments in a United States district  
 16 court. The second such grounds being the doctrines of res judicata/ collateral  
 17 estoppel holding a federal court must give to a state-court judgment the same  
 18 preclusive effect as would be given that judgment under the law of the State in  
 19 which the judgment was rendered. The Court found that both doctrines as  
 20 applied to the facts of the case as alleged in the FAC barred Appellant from  
 21 bringing his action and ordered the FAC dismissed with prejudice.

22 Appellant appears to base his statement that the appeal should go forward  
 23 on the argument that the Court misapplied the Rooker-Feldman doctrine and that  
 24 an exception to the doctrine applies if there was an alleged fraud on the court.  
 25 (Appellant’s Brief In Support of Motion For Appointment of Counsel and to  
 26 Proceed in Forma Pauperis at pg 38 et seq.) What the alleged “fraud on the  
 27 court” consisted of, was both the trial court’s entering judgment based on

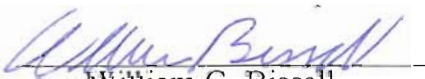
1 evidence which Appellant contested at trial and the State Appellate Court  
2 upholding that judgment. If there is any authority anywhere which would in any  
3 way suggest much less support Appellant's claim that a judgment entered on  
4 evidence which was controverted at trial constitutes a fraud on the court, such  
5 authority has not been cited. The simple reason of course being that the entry of  
6 judgment on evidence which the losing party had disagreed with and contested  
7 at trial describes the outcome of virtually every trial. If this constituted fraud on  
8 the court no judgment would stand.

9 Appellant, after fully participating in the trial at the State Superior Court  
10 level lost. He appealed that defeat to the 4<sup>th</sup> Appellate District of California and  
11 lost there. Raising virtually the same grounds as Appellant does here, he  
12 invoked the appellate jurisdiction of the California Supreme Court and was  
13 denied relief by that court and finally he invoked the appellate jurisdiction of the  
14 U.S. Supreme Court seeking review of that state court judgment and was denied  
15 relief by that Court.

16 Appellant has had his day in court on this matter and his continued  
17 attempts to litigate the matter in defiance of the laws of finality, full faith and  
18 credit and comity is an abuse of process and vexatious. As recognized by the  
19 Court, the appeal is frivolous and should not be allowed to proceed.

20  
21 Respectfully Submitted,

22  
23 Dated: May 4, 2020

24   
25 William G. Bissell  
26 Counsel For  
27 Karen Humphreys and Gary Humphreys  
28

## **Exhibit A**

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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
10

11 Adam Bereki,  
12 Plaintiff,  
13 v.  
14 Gary Humphreys;  
15 Karen Humphreys,  
16 Defendants.  
17  
18

Case No.: CV 19-2050-CBM-ADS(x)  
**ORDER RE: DEFENDANTS’  
MOTION TO DISMISS THE FIRST  
AMENDED COMPLAINT  
PURSUANT TO RULE 12(B)(1), (6)  
& (7) OF THE FEDERAL RULES  
OF CIVIL PROCEDURE AND  
REQUEST FOR JUDICIAL  
NOTICE [JS-6]**

19 The matter before the Court is Defendants Gary Humphreys and Karen  
20 Humphreys’ (collectively, “Defendants” or “The Humphreys”) “Motion to  
21 Dismiss the First Amended Complaint Pursuant to Rule 12(b)(1), (6), & (7) of the  
22 Federal Rules of Civil Procedure and Request for Judicial Notice.” (Dkt. No. 9  
23 (the “Motion”).)<sup>1</sup>

24 **I. BACKGROUND**

25 This action arises from a state court judgment in favor of Defendants and  
26

27 <sup>1</sup> Following the hearing on the Motion, Plaintiff filed a document entitled  
28 “Additional Authorities and Corrected Testimony To Be Considered By the Court  
re: Defendants Motion to Dismiss Filed 11/19/19,” which has been reviewed by  
the Court. (Dkt. No. 30 (hereinafter, “Additional Authorities”).)

1 against Plaintiff in connection with remodeling work performed by Plaintiff. On  
2 April 20, 2017, following a bench trial, the Superior Court, County of Orange,  
3 entered judgment in favor of The Humphreys and against Plaintiff in the amount  
4 of \$848,000 (plus costs).<sup>2</sup> (FAC Exs. D, G.) The Superior Court found Plaintiff  
5 (as opposed to his company Spartan Associates) was the contractor who  
6 performed the remodel work for The Humphreys, and found Plaintiff was not a  
7 licensed contractor. Accordingly, the superior court awarded The Humphreys  
8 disgorgement of all compensation paid by The Humphreys to Plaintiff for the  
9 remodel work pursuant to Cal. Bus. & Prof. Code § 7031.<sup>3</sup> Plaintiff appealed the  
10 state court judgment. The California Court of Appeals affirmed the judgment in  
11 favor of The Humphreys. Plaintiff's request for review by the California Supreme  
12 Court was denied, and Plaintiff's writ for certiorari with the United States  
13 Supreme Court was also denied.

14 Plaintiff then commenced this action on October 28, 2019. On November  
15 8, 2019, Plaintiff filed a First Amended Complaint ("FAC") as a matter of right  
16 naming only The Humphreys as defendants. (Dkt. No. 11.) The FAC alleges this  
17 action is "an Independent Action in Equity to relieve a party from a judgment,  
18 order or proceeding pursuant to FRCP Rule 60(d)" (FAC at p.13), and that this  
19 action "is a direct attack on the jurisdiction of the California trial and appellate  
20 Courts in case numbers – 30-2015-00805897, and G055075" (*id.* at p.17).

## 21 II. STATEMENT OF THE LAW

### 22 A. Fed. R. Civ. Proc. 12(b)(1)

23 On a Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction,

24 <sup>2</sup> While the superior court judgment reflects judgment entered against Plaintiff in  
25 the amount of \$848,000, the FAC alleges Plaintiff was "fined \$930,000 for  
26 allegedly doing remodel construction work without a contractor's license." (FAC  
at p.16.)

27 <sup>3</sup> California Business & Professions Code § 7031 provides: "[A] person who  
28 utilizes the services of an unlicensed contractor may bring an action in any court  
of competent jurisdiction in this state to recover all compensation paid to the  
unlicensed contractor for performance of any act or contract."

1 the party asserting jurisdiction bears the burden of proving jurisdiction exists.  
2 *Sopak v. Northern Mountain Helicopter Serv.*, 52 F.3d 817, 818 (9th Cir. 1995).  
3 A motion under Rule 12(b)(1) may challenge the court's jurisdiction facially,  
4 based on the legal sufficiency of the claim, or factually, based on the legal  
5 sufficiency of the jurisdictional facts. *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir.  
6 2000). Where the Rule 12(b)(1) motion attacks the complaint on its face, the court  
7 considers the complaint's allegations to be true, and draws all reasonable  
8 inferences in the plaintiff's favor. *Doe v. Holy See*, 557 F.3d 1066, 1073 (9th Cir.  
9 2009) (citation omitted). Where the Rule 12(b)(1) motion challenges the  
10 substance of jurisdictional allegations, the court does not presume the factual  
11 allegations to be true, and may consider evidence such as affidavits and testimony  
12 to resolve factual disputes regarding jurisdiction. *McCarthy v. United States*, 850  
13 F.2d 558, 560 (9th Cir. 1988).

14 **B. Fed. R. Civ. Proc. 12(b)(6)**

15 Federal Rule of Civil Procedure 12(b)(6) allows a court to dismiss a  
16 complaint for "failure to state a claim upon which relief can be granted."  
17 Dismissal of a complaint can be based on either a lack of a cognizable legal theory  
18 or the absence of sufficient facts alleged under a cognizable legal theory.  
19 *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). To survive  
20 a motion to dismiss, the complaint "must contain sufficient factual matter,  
21 accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft*  
22 *v. Iqbal*, 556 U.S. 662, 663, (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550  
23 U.S. 544, 570 (2007)). A formulaic recitation of the elements of a cause of action  
24 will not suffice. *Twombly*, 550 U.S. at 555. To conform to Federal Rule of Civil  
25 Procedure 8, the plaintiff must make more than "an unadorned, the-defendant-  
26 harmed me" accusation. *Iqbal*, 556 U.S. at 678. Labels and conclusions are  
27 insufficient to meet the Plaintiff's obligation to provide the grounds of his or her  
28 entitlement to relief. *Twombly*, 550 U.S. at 555. "Factual allegations must be

1 enough to raise a right to relief above the speculative level.” *Id.* If a complaint  
 2 cannot be cured by additional factual allegations, dismissal without leave to  
 3 amend is proper. *Id.* On a motion to dismiss for failure to state a claim, courts  
 4 accept as true all well-pleaded allegations of material fact and construes them in a  
 5 light most favorable to the non-moving party. *Manzarek v. St. Paul Fire &*  
 6 *Marine Ins. Co.*, 519 F.3d 1025, 1031–32 (9th Cir. 2008). A court may only  
 7 consider the allegations contained in the pleadings, exhibits attached to or  
 8 referenced in the complaint, and matters properly subject to judicial notice.  
 9 *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007).

### 10 **C. Fed. R. Civ. Proc. 12(b)(7)**

11 Rule 12(b)(7) permits a party to move to dismiss the case for “failure to join  
 12 a party under Rule 19.” Fed. R. Civ. Proc. 12(b)(7). Rule 19 requires “[a] person  
 13 who is subject to service of process and whose joinder will not deprive the court  
 14 of subject-matter jurisdiction” to be joined as a party if:

15 (A) in that person’s absence, the court cannot accord complete relief  
 16 among existing parties; or

17 (B) that person claims an interest relating to the subject of the action  
 18 and is so situated that disposing of the action in the person’s absence  
 may:

19 (i) as a practical matter impair or impede the person's ability to  
 protect the interest; or

20 (ii) leave an existing party subject to a substantial risk of  
 21 incurring double, multiple, or otherwise inconsistent  
 obligations because of the interest.

22 Fed. R. Civ. P. 19. If “a person who is required to be joined if feasible cannot be  
 23 joined, the court must determine whether, in equity and good conscience, the  
 24 action should proceed among the existing parties or should be dismissed.” Fed. R.  
 25 Civ. Proc. 19(b).

## 26 **III. DISCUSSION**

### 27 **A. Request for Judicial Notice**

28 Defendants request that the Court take judicial notice of the following:

1. Judgment entered against Plaintiff in Orange County Superior Court, Case No. 30-2015-00805807 (Ex. A);
2. Plaintiff's opening brief filed with the California Court of Appeals appealing the superior court judgment (Ex. B);
3. California Court of Appeals' opinion affirming superior court judgment (Ex. C);
4. Plaintiff's Petition for Review Filed with the Supreme Court of California, Case No. S252954 (Ex. D);
5. California Supreme Court's denial of Plaintiff's Petition for Review (Ex. E);
6. Plaintiff's Petition for Writ of Certiorari filed with the United States Supreme Court, Case No. 18-1416 (Ex. F); and
7. United State Supreme Court's denial of Plaintiff's Petition for Writ of Certiorari (Ex. G).<sup>4</sup>

(Hereinafter, "RJN".) The Court grants Defendants' request for judicial notice because the accuracy of Exhibits A-G can be "readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201.

#### **B. Rooker-Feldman Doctrine**

Defendants move to dismiss the FAC for lack of subject matter jurisdiction pursuant to the Rooker-Feldman doctrine. The Rooker-Feldman doctrine bars losing parties "from seeking what in substance would be appellate review of the state judgment in a United States district court." *Johnson v. De Grandy*, 512 U.S. 997, 1006-07 (1994). "The purpose of the doctrine is to protect state judgments from collateral federal attack." *Doe & Assocs. Law Offices v. Napolitano*, 252 F.3d 1026, 1030 (9th Cir. 2001). For the *Rooker-Feldman* "to apply, a plaintiff must seek not only to set aside a state court judgment; he or she must also allege a legal error by the state court as the basis for that relief." *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1140 (9th Cir. 2004).

Here, Plaintiff seeks relief from the superior court judgment pursuant to Fed. R. Civ. P. 60(d) (FAC at p.13), and an order from this Court (1) vacating the

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<sup>4</sup> Plaintiff did not oppose Defendants' request for judicial notice.

1 judgment entered against Plaintiff in the superior court action and (2) ordering the  
2 superior court to remove the property lien based on the judgment entered against  
3 Plaintiff in the superior court action (*id.*, Prayer for Relief). The FAC also alleges  
4 the instant federal action “is a direct attack on the jurisdiction of the California  
5 trial and appellate Courts in case numbers – 30-2015-00805897, and G055075.”  
6 (*Id.* at p.17.) Therefore, Plaintiff seeks relief from the state court judgment  
7 affirmed by the California Court of Appeals.

8 The FAC also alleges a legal error by the superior court and California  
9 Court of Appeals on the ground that the superior court and appellate court entered  
10 and affirmed the judgment against Plaintiff without supporting evidence, and erred  
11 in holding disgorgement pursuant to Cal. Bus. & Proc. § 7031 is an equitable  
12 remedy rather than a penalty, thereby “resulting in a void judgment.” (FAC at  
13 p.82, 90.)

#### 14 **(1) Extrinsic Fraud on the Court**

15 Where the federal plaintiff does not complain of a legal injury caused by a  
16 state court judgment, but rather of a legal injury caused by an adverse party,  
17 Rooker-Feldman does not bar jurisdiction. *Noel v. Hall*, 341 F.3d 1148, 1163 (9th  
18 Cir. 2003). Therefore, the Rooker-Feldman doctrine does not apply where the  
19 plaintiff alleges extrinsic fraud on a state court and seeks to set aside a state court  
20 judgment obtained by that fraud. *Kougasian*, 359 F.3d at 1141.

21 Plaintiff contends this action is not barred because this Court has the power  
22 to set aside or enjoin state-court judgments procured by fraud. The FAC alleges  
23 Defendants committed “fraud in the procurement of jurisdiction” in the superior  
24 court action because Defendants took one position during summary judgment (i.e.,  
25 that they had contracted with Spartan (Plaintiff’s company) to perform the work)  
26 and then took a contrary position during trial (i.e., that they believed they  
27 contracted with Plaintiff to perform the work). (FAC at 94-97.) Such alleged  
28 conduct does not constitute “extrinsic” fraud on the court since such evidence was

presented by Defendants before the superior court, nor constitute a legal injury caused by Defendants. Rather, the FAC alleges the superior court erred in entering judgment despite Defendants taking contrary positions throughout the state court litigation. Therefore, the extrinsic fraud exception to the Rooker-Feldman doctrine does not apply. *Kougasian*, 359 F.3d at 1141.

## (2) Constitutional Challenge

Plaintiff also argues the Rooker-Feldman doctrine does not bar this action because the FAC raises a constitutional challenge to California Business & Professions Code §§ 7071.17 and 7031. While the FAC raises a “facial” and “as applied” challenge to the constitutionality of Sections §§ 7071.17 and 7031, the relief sought by Plaintiff is an order vacating or voiding the state court judgment. Moreover, the basis for Plaintiff’s constitutional challenge is that the Superior Court and California Court of Appeals lacked subject matter jurisdiction to enter and affirm the judgment against Plaintiff because (1) there is no evidence supporting the judgment; and (2) disgorgement pursuant to Cal. Bus. & Prof. Code § 7031 is a penalty and an excessive fine, and therefore unconstitutional. The California Court of Appeals, however, found there was evidence supporting the Superior Court’s judgment and held disgorgement pursuant to Cal. Bus. & Prof. Code § 7031 is an equitable remedy, not a penalty or fine. (RJN, Ex. C.) Thus, despite purporting to raise a “constitutional” challenge in his FAC, Plaintiff seeks relief from the state court judgment in this action and asserts legal errors by the Superior Court and California Court of Appeals. Therefore, the Rooker-Feldman doctrine applies to bar Plaintiff’s instant action.

\* \* \*

Accordingly, the Court finds Plaintiff’s action is barred pursuant to the Rooker-Feldman doctrine because Plaintiff seeks relief from the state court judgment and alleges legal errors by the state trial and appellate court. *See Bell v. City of Boise*, 709 F.3d 890, 897 (9th Cir. 2013).

1 **C. Res Judicata / Collateral Estoppel**

2 Defendants also move to dismiss the FAC as barred by the res judicata /  
3 collateral estoppel doctrines.<sup>5</sup>

4 Issue preclusion, or collateral estoppel, bars relitigation of issues that have  
5 been adjudicated in a prior action. *DKN Holdings LLC*, 61 Cal. 4th at 824.  
6 Pursuant to the doctrine of collateral estoppel, “a federal court must give to a  
7 state-court judgment the same preclusive effect as would be given that judgment  
8 under the law of the State in which the judgment was rendered.” *Migra v. Warren*  
9 *City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 81 (1984); *see also* 28 U.S.C. § 1738.  
10 Under California law, collateral estoppel/issue preclusion applies: “(1) after final  
11 adjudication (2) of an identical issue (3) actually litigated and necessarily decided  
12 in the first suit and (4) asserted against one who was a party in the first suit or one  
13 in privity with that party.” *DKN Holdings LLC*, 61 Cal. 4th at 825.

14 Here, the FAC alleges the superior court lacked jurisdiction and violated  
15 Plaintiff’s due process rights because there was no evidence supporting the  
16 judgment. The FAC, however, alleges Plaintiff challenged the jurisdiction of the  
17 superior court in a motion to vacate the judgment, which was denied. (FAC at 97-  
18 98.)

19 Plaintiff appealed the state court judgment. In his appeal, Plaintiff argued  
20 the Superior Court committed due process violations and lacked subject matter  
21 jurisdiction, and argued Cal. Bus. & Prof. Code § 7031 was unconstitutional  
22 because it is penal in nature. (RJN, Ex. B.) The California Court of Appeals  
23 affirmed the Superior Court’s judgment, and found Plaintiff’s arguments on  
24 appeal had “no merit.” (*Id.* Ex. C; *see also* FAC at p.19 (alleging California Court  
25 of Appeal held the superior court judgment against Plaintiff was a “non-punitive”

26  
27 <sup>5</sup> “Res judicata” refers to claim preclusion. *Henrichs v. Valley View Dev.*, 474  
28 F.3d 609, 615 (9th Cir. 2007) Since the claims asserted by Plaintiff in this action  
were not asserted in the state court action, res judicata would not apply to bar  
Plaintiff’s claims here.

1 “equitable remedy”).)

2 Plaintiff filed a petition for review with the California Supreme Court  
3 wherein Plaintiff argued the superior court and California Court of Appeals lacked  
4 jurisdiction and violated Plaintiff’s due process rights, and argued Cal. Bus. &  
5 Prof. Code §§ 7031 and 7071.17 were unconstitutional and authorize imposition  
6 of penalties. (RJN, Ex. D.) The California Supreme Court denied Plaintiff’s  
7 petition for review. (*Id.* Ex. E.) On April 23, 2019, Plaintiff filed a petition for  
8 writ of certiorari with the United States Supreme Court, which was denied. (*Id.*  
9 Exs. F, G.)

10 Therefore, the issues raised by Plaintiff in this federal action regarding the  
11 Superior Court and California Court of Appeal’s lack of jurisdiction and violation  
12 of Plaintiff’s due process rights, the unconstitutionality of Cal. Bus. & Prof. Code  
13 §§ 7031 and 7071.17, Plaintiff’s contention that disgorgement pursuant to Cal.  
14 Bus. & Prof. Code § 7031 is a penalty/fine rather than an equitable remedy, and  
15 the lack of evidence supporting the Superior Court’s judgment and California  
16 Court of Appeals decision affirming the judgment, were actually litigated by  
17 Plaintiff in the state court action and necessarily decided in a final judgment. *See*  
18 *DKN Holdings LLC*, 61 Cal. 4th at 825; *Rodriguez v. City of San Jose*, 930 F.3d  
19 1123, 1132 (9th Cir. 2019).

20 Thus, even if the instant action was not barred pursuant to the Rooker-  
21 Feldman doctrine, the Court finds Plaintiff is collaterally estopped from bringing  
22 this action. *See Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 750 (9th  
23 Cir. 2006).

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#### IV. CONCLUSION

Accordingly, the Court **GRANTS** Defendants' Motion to Dismiss, and dismisses the action with prejudice because Plaintiff is collaterally stopped from bringing this action.<sup>6</sup> The Court also finds this action is barred pursuant to the Rooker-Feldman doctrine.<sup>7</sup>

**IT IS SO ORDERED.**

DATED: February 6, 2020.



CONSUELO B. MARSHALL  
UNITED STATES DISTRICT JUDGE

<sup>6</sup> Because Plaintiff's claims are barred on collateral estoppel grounds, leave to amend would be futile. See *Tait v. Asset Acceptance, LLC*, 2013 WL 3811767 (C.D. Cal. July 22, 2013).

<sup>7</sup> Defendants also move to dismiss the FAC on the ground Plaintiff fails to join the superior court and California Court of Appeals which are "indispensable parties." Because the Court dismisses this action pursuant to the Rooker-Feldman doctrine, and finds collateral estoppel would bar Plaintiff from bringing this action, it does not reach the issue of whether the superior court and California Court of Appeals are indispensable parties.

PROOF OF SERVICE

I am employed in the County of Orange, State of California.

I am over the age of 18 and not a party to the within action; my business address is 14 Corporate Plaza Drive Suite 120, Newport Beach, CA 92660.

May 4, 2020, I served the within:

**Appellee's Response to Appellant's Statement  
that Appeal Should Go Forward**

by placing an envelope containing the above document postage prepaid for collection in a United States Postal Service mail collection box addressed to :

Adam Bereki  
818 Spirit  
Costa Mesa, CA 92626

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on May 4, 2020, at Newport Beach, California.



William Bissell