

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 26 2019

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 19-50130

Plaintiff-Appellee,

D.C. No. 2:03-cr-01257-RSWL-1

v.

DANNY FABRICANT, AKA Daniel  
Joseph Fabricant, AKA Danny Joseph  
Fabricant,

MEMORANDUM\*

Defendant-Appellant.

Appeal from the United States District Court  
for the Central District of California  
Ronald S.W. Lew, District Judge, Presiding

Submitted November 18, 2019\*\*

Before: CANBY, TASHIMA, and CHRISTEN, Circuit Judges.

Danny Fabricant appeals pro se from the district court's order denying his motion to vacate the order declaring him a vexatious litigant and imposing a pre-filing restriction on him. We have jurisdiction under 28 U.S.C. § 1291, and we

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\* 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).

affirm.

The district court treated Fabricant's motion as arising under Federal Rule of Civil Procedure 60(b)(5), which Fabricant does not challenge on appeal. We review the district court's denial of a Rule 60(b)(5) motion for abuse of discretion. *See SEC v. Coldicutt*, 258 F.3d 939, 941 (9th Cir. 2001). Fabricant argues that the district court abused its discretion in denying his motion because the vexatious litigant/pre-filing order is a "scarlet letter" that is no longer warranted, prejudices him in civil litigation, and prevents him from challenging his conviction and sentence. The district court did not abuse its discretion because Fabricant has not demonstrated any significant change in either factual conditions or the law, nor has he demonstrated that any changed circumstances have made his compliance with the order substantially more onerous, unworkable because of unforeseen obstacles, detrimental to the public interest, or legally impermissible. *See id.* at 942 (discussing conditions under which a district court may modify a court order under Rule 60(b)(5)).

**AFFIRMED.**