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NINA RINGGOLD, et al.,
Plaintiffs,
v.
JERRY BROWN, et al.,
Defendants.

No. 2:12-cv-00717-JAM-JFM

**ORDER DENYING PLAINTIFF'S MOTION
TO VACATE AND FOR OTHER RELIEF**

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This matter is before the Court on Plaintiffs' "Motion to Vacate for Disqualification and Intercircuit Assignment; and Other Relief."¹ For the reasons set forth below, Plaintiffs' Motion is denied.

I. PROCEDURAL BACKGROUND AND RELEVANT FILINGS

Plaintiffs are the Law Offices of Nina Ringgold and all current clients thereof. Second Amended Complaint, ECF No. 72, at 1. This Court dismissed the First Amended Complaint, without prejudice, on January 22, 2013. ECF No. 65. Plaintiffs filed a Second Amended Complaint on February 13, 2013, and subsequently

¹ This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for May 16, 2017.

1 appealed the January dismissal, ECF No. 78. The Ninth Circuit
2 dismissed the appeal, taking effect February 4, 2014. ECF Nos.
3 91 & 92. The case sat for a year and a half before Defendants
4 Jerry Brown, Commission on Judicial Performance of the State of
5 California, and Kamala Harris filed a Motion to Dismiss, which
6 was followed by Defendant Elaine Howle's Motion to Dismiss. ECF
7 Nos. 93 & 99. Plaintiffs did not file any Opposition and this
8 Court granted both Motions to Dismiss with prejudice after
9 considering the merits of each. ECF No. 102 (Nov. 18, 2016).

10 On October 18, 2016—a full month before the Court dismissed
11 the case—Plaintiffs filed a Request for Appointment of a Three-
12 Judge Court. ECF No. 98. Two days later the Court struck the
13 request, instructing Plaintiffs that a request to the Court by
14 any party must be filed as a properly noticed and served motion
15 with a hearing date. ECF No. 100. Plaintiffs did not refile the
16 Request as the Court instructed.

17 Plaintiffs subsequently filed the present Motion. ECF No.
18 104 (Dec. 16, 2016). Defendants filed timely Oppositions. ECF
19 No. 112 & 113. Plaintiffs' Reply was due May 9, 2017.
20 Plaintiffs filed a Declaration omitted from their Motion due to
21 "an error in conversion" on May 10, 2017. ECF No. 115.
22 Plaintiffs then filed their Reply, Request for Judicial Notice,
23 Exhibits, and Opposition to Defendants' Request for Judicial
24 Notice on May 11, 2017. ECF Nos. 116, 117, & 118.

25 "Not less than seven (7) days preceding the date of hearing,
26 the moving party may serve and file a reply to any opposition
27 filed by a responding party." L. R. 230(d). The hearing on this
28 matter was set for May 16, 2017. Plaintiffs filed their Reply

1 two days after the deadline, without seeking the Court's leave
2 for late filing. The Court, therefore, has not considered
3 Plaintiffs' Reply or accompanying documents.

4 The Court also declines to consider Plaintiffs' late-filed
5 Declaration. The Declaration repeats the arguments in
6 Plaintiffs' Motion and does not add facts beyond those already
7 included in the other Declaration and Exhibits that were
8 submitted with the Motion. See ECF Nos. 105 & 106. Furthermore,
9 Plaintiffs' Motion contains no citations to the missing
10 Declaration, but only cites the timely-filed Exhibits.

11 12 II. OPINION

13 14 A. Legal Standard

15 Plaintiffs bring their motion to vacate under Federal Rules
16 of Civil Procedure 52, 54, 59, and 60.² Mot. at 6. Plaintiffs
17 request an order vacating the final judgment in this case,
18 vacating all orders rendered by this assigned Judge,
19 disqualifying this Court from deciding this case, and referring
20 the case to the Chief Judge of the Circuit for the appointment of
21 a three judge court. Mot. at 1. Apart from these requests, the
22 motion does not specifically seek additional findings or
23 amendment of a Court order.

24 Under Rule 52(b), a party may file a motion for amended or
25 additional findings within 28 days after the entry of judgment.
26 Upon such motion, the Court may amend its findings—or make

27 ² All further references to Rules are to the Federal Rules of
28 Civil Procedure.

1 additional findings—and may amend a judgment accordingly. As is
2 permitted under Rule 52(a)(3), the Court granted Defendants’
3 Motions to Dismiss, with prejudice, without stating findings or
4 conclusions. ECF No. 102. Plaintiffs’ request makes plain that
5 they seek an order vacating that judgment, not an amended
6 judgment or additional findings and conclusions. Plaintiffs cite
7 no authority indicating that Rule 52(b) is a vehicle for vacating
8 the judgment or other orders in these circumstances. Rule 52(b)
9 is inapplicable.

10 Plaintiffs also cite Rule 54(b) for the proposition that the
11 Court may reconsider non-final judgments. However, the Rule
12 states that “any order or other decision, however designated,
13 that adjudicates fewer than all the claims or the rights and
14 liabilities of fewer than all the parties does not end the action
15 as to any of the claims or parties and may be revised at any time
16 before the entry of a judgment adjudicating all the claims and
17 all the parties’ rights and liabilities.” Fed. R. Civ. P. 54(b)
18 (emphasis added). The Court entered judgment by its Order on
19 November 18, 2016. Therefore, this rule cannot provide
20 Plaintiffs the relief they seek.

21 Rules 59 and 60 are more suited to Plaintiffs’ request.
22 Under Rule 59(e), a party may file a motion to alter or amend the
23 judgment within twenty-eight days of the judgment order.
24 Plaintiffs filed their Motion twenty-eight days after judgment
25 order and thus met the deadline. Relief under this Rule is
26 limited, however. “Since specific grounds for a motion to amend
27 or alter are not listed in [Rule 59(e)], the district court
28 enjoys considerable discretion in granting or denying the

1 motion." Allstate Ins. Co. v. Herron, 634 F.3d 1101, 1111 (9th
2 Cir. 2011) (citation omitted). "[A]mending a judgment after its
3 entry remains an extraordinary remedy which should be used
4 sparingly." Id. (citation and quotation marks omitted). "In
5 general, there are four basic grounds upon which a Rule 59(e)
6 motion may be granted: (1) if such motion is necessary to correct
7 manifest errors of law or fact upon which the judgment rests;
8 (2) if such motion is necessary to present newly discovered or
9 previously unavailable evidence; (3) if such motion is necessary
10 to prevent manifest injustice; or (4) if the amendment is
11 justified by an intervening change in controlling law." Id. The
12 motion "may *not* be used to raise arguments or present evidence
13 for the first time when they could reasonably have been raised
14 earlier in the litigation." Kona Enters., Inc. v. Estate of
15 Bishop, 229 F.3d 877, 890 (9th Cir. 2000) (emphasis in original).

16 Rule 60 also provides an avenue to challenge a final
17 judgment or order. "On motion and just terms, the court may
18 relieve a party or its legal representative from a final
19 judgment, order, or proceeding for . . . (1) mistake,
20 inadvertence, surprise, or excusable neglect; (2) newly
21 discovered evidence that, with reasonable diligence, could not
22 have been discovered in time to move for a new trial under Rule
23 59(b); (3) fraud (whether previously called intrinsic or
24 extrinsic), misrepresentation, or misconduct by an opposing
25 party; (4) the judgment is void; (5) the judgment has been
26 satisfied, released or discharged; it is based on an earlier
27 judgment that has been reversed or vacated; or applying it
28 prospectively is no longer equitable; or (6) any other reason

1 that justifies relief." Plaintiffs cite Rule 60(b) broadly in
2 delineating the "Legal Standard," but only specifically reference
3 Rule 60 (b)(5) and (6) in their argument; even then, Plaintiffs
4 only provide a legal basis for vacating judgment under Rule
5 60(b)(6). Plaintiffs do not explain how Rule 60(b)(5) would
6 apply in this case and the Court does not discern a basis for
7 vacating under that subsection. This Order, therefore, evaluates
8 the merits only under Rule 60(b)(6).

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10 B. Analysis

11 Plaintiffs ask the Court to vacate its final judgment in
12 this case because the assigned Judge should be disqualified under
13 28 U.S.C. § 455 and because the Court lacked authority to strike
14 Plaintiffs' request for a three judge court.

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16 1. Disqualification

17 Federal law provides two means by which a judge may be
18 disqualified from a case. Under 28 U.S.C. § 144 a party may file
19 an "affidavit that the judge before whom the matter is pending
20 has a personal bias or prejudice either against him or in favor
21 of any adverse party[.]" If the affidavit is legally sufficient
22 then the motion must be referred to another judge to determine
23 the merits. Id. In contrast, 28 U.S.C. § 455 imposes an
24 obligation on the judge sitting on the case to recuse himself in
25 any proceeding in which his impartiality might reasonably be
26 questioned or if he is aware of grounds for recusal under
27 § 455(b), whether or not a party files an affidavit. U.S. v.
28 Sibla, 624 F.2d 864, 868 (1980).

1 Plaintiffs make their motion under § 455 and not § 144.
2 Thus, Plaintiffs are not entitled to have the matter referred to
3 a different judge, see Sibla, 624 F.2d at 868, much less the
4 intercircuit panel Plaintiffs request, Mot. at 8. Still,
5 Plaintiffs' motion should "prompt the judge to whom the motion is
6 directed to determine independently whether all the circumstances
7 call for recusal under the self-enforcing provisions of § 455(a)
8 & (b)(1), a matter which rests within the sound discretion of the
9 judge." Id. at 868.

10 Although § 455 does not authorize the reopening of closed
11 litigation, a court may vacate judgment for a violation of
12 § 455(a) under the procedure provided by Rule 60(b). Liljeberg
13 v. Health Serv. Acquisition Corp., 486 U.S. 847, 863 (1988). The
14 Supreme Court has determined that Rule 60(b)(6), in particular,
15 may provide an appropriate remedy for such violations. Id. at
16 863-64. The Rule "provides courts with authority adequate to
17 enable them to vacate judgments whenever such action is
18 appropriate to accomplish justice," but it "should only be
19 applied in extraordinary circumstances." Id. (citations and
20 quotation marks omitted). "[I]n determining whether a judgment
21 should be vacated for a violation of § 455(a), it is appropriate
22 to consider the risk of injustice to the parties in the
23 particular case, the risk that the denial of relief will produce
24 injustice in other cases, and the risk of undermining the
25 public's confidence in the judicial process." Id. at 864.

26 Defendant Howle argues that this motion is untimely because
27 Plaintiffs could have raised the issue prior to judgment. See
28 Howle Opp. at 6. The Court is also skeptical of Plaintiffs'

1 ignorance of the facts now raised. Indeed, Plaintiffs' Request
2 for Appointment of a Three Judge Court demonstrates that they
3 were concerned that "a substantial number of federal judges in
4 this court and Circuit have direct financial and general
5 interests in the case due to the fact that they were former state
6 judges." ECF No. 98 at 2. Plaintiffs filed that request a full
7 month before entry of judgment. Although Plaintiffs argue that
8 they were not under a duty to investigate the Judge's background,
9 they do not attest that they were not aware of this Court's
10 former employment prior to entry of judgment.³ However, because
11 this Court takes its responsibility under § 455(a) seriously, it
12 will address Plaintiffs' concern irrespective of timeliness.

13 Recusal is not warranted or appropriate. Neither this Judge
14 nor his family has an interest, financial or otherwise, in the
15 outcome of the litigation. Despite Plaintiffs' argument to the
16 contrary, this Judge is no longer employed by or receiving
17 benefits from the Superior Court of California and/or Sacramento
18 County and has not for a number of years. This Judge resigned
19 from the Sacramento County Superior Court in April, 2008 upon his
20 appointment to this Federal District Court. In response to
21 Plaintiffs' specific allegations, this Judge has absolutely no
22 interest in continued benefit payments from his past employment
23 as a Superior Court Judge and no interest in the fines and
24 penalties prayed for by Plaintiffs under the California Political
25 Reform Act. Further, although Plaintiffs vaguely refer to this

26 ³ Even Plaintiffs' untimely Declaration fails to assert such a
27 fact concretely. ECF No. 115-1 at ¶ 5a ("Plaintiffs did not have
28 an obligation to investigate the judge and did not initiate any
investigation of the judge[.]").

1 Judge's "personal knowledge of disputed evidentiary facts
2 concerning the proceedings," Mot. at 10, this Judge is unaware of
3 any such facts. The Court also does not find the Recusal Orders
4 Plaintiffs cite helpful. See Plaintiffs' Exhibits Vol. 1, Exh.
5 13. The exhibits do not indicate the substance or details of the
6 complaint in those matters or the remedy sought. Moreover, there
7 is no information that would enable the Court to determine
8 whether those particular district judges were similarly situated
9 to this Judge at this time. The Court, after viewing the issues
10 in this case and considering its own situation, is fully
11 satisfied that Rule 60 is not implicated. For the same reasons,
12 there has been no Due Process violation. See Mot. at 5-6; 11.
13 The Court need not and will not vacate its final judgment or any
14 other order on this basis.

15
16 2. Request for a Three Judge Court

17 Plaintiffs argue that the Court lacked authority to strike
18 Plaintiffs' request for a three judge court and that this act,
19 too, is grounds to vacate the Court's judgment. Mot. at 11-12.
20 Plaintiffs claim the strike was a "prejudicial error." Mot. at
21 11. The Court does not find, however, that any prejudice or
22 injustice flowed from that ruling. The Court struck Plaintiffs'
23 request on October 20, 2016, and instructed that any such request
24 must be filed as a motion. ECF No. 100. Plaintiffs had nearly a
25 month between that Order and the Court's final judgment to re-
26 file their request as a motion. See ECF No. 102. Furthermore,
27 Plaintiffs failed to file any Opposition to Defendants' Motions
28 to Dismiss, which were due eighteen days before the Court entered

1 its judgment on the merits. Even now, Plaintiffs do not dispute
2 the dismissal on the merits. Plaintiffs own neglect in
3 responding to this Court's order and adhering to standard rules
4 of procedure led to the outcome they now ask the Court, in its
5 discretion, to vacate. The requested relief is neither required
6 nor justified under either Rule 59(e) or Rule 60(b).

7 III. ORDER

8 For the reasons set forth above, the Court DENIES
9 Plaintiff's Motion to Vacate and for Other Relief.

10 IT IS SO ORDERED.

11 Dated: May 18, 2017

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13 JOHN A. MENDEZ,
14 UNITED STATES DISTRICT JUDGE
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