

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHARLES KINNEY,
Plaintiff,

v.

ROGER W. BOREN, et al.,
Defendants.

Case No. 16-cv-06505-VC

**ORDER DENYING APPLICATION
FOR A TEMPORARY RESTRAINING
ORDER AND DISMISSING
COMPLAINT SUA SPONTE**

Re: Dkt. Nos. 1, 3, 7

Kinney's ex parte application for a temporary restraining order seeks in effect to reverse a California Court of Appeal decision requiring that Kinney post a security as a vexatious litigant.¹ *See Kempton v. Clarke*, No. B266125 (Cal. Ct. App. Oct 12, 2016); Cal. Civ. Pro. Code § 391.1. Kinney has also filed a complaint, which rests on the same allegedly "erroneous decision by a state court." *Noel v. Hall*, 341 F.3d 1148, 1164 (9th Cir. 2003). Neither action is proper in a federal district court, which doesn't sit in appeal of state-court decisions. *Id.*; *see also Cooper v. Ramos*, 704 F.3d 772, 779 (9th Cir. 2012). Accordingly, Kinney's request for a restraining order is denied, and Kinney's complaint is dismissed with prejudice sua sponte. *See Franklin v. State of Or., State Welfare Div.*, 662 F.2d 1337, 1342 (9th Cir. 1981).

Kinney is cautioned against filing frivolous or bad-faith actions. Based on his history in the Northern District, Kinney should be well aware of the reasons claims of this kind can't

¹ Kinney has been declared a vexatious litigant in California Superior Court and at the California Court of Appeal. *Kempton v. Clark*, No. B248713, 2014 WL 4772269, at *1 (Cal. Ct. App. Sept. 25, 2014), *reh'g denied* (Oct. 14, 2014), *review denied* (Dec. 17, 2014); *In re Kinney*, 201 Cal. App. 4th 951, 960 (2011). He has also been declared a vexatious litigant in the U.S. District Court for the Central District of California. Order (Dkt. 70), *Kinney v. Cooper*, No. 15-cv-8910 (C.D. Cal. May 13, 2016).

proceed – lack of jurisdiction, sovereign immunity, and preclusion chief among them. *See* Order (Dkt. 33), *Kinney v. State Bar of Cal.*, No. 16-cv-02277-MMC (N.D. Cal. Aug. 29, 2016); Order (Dkt. 9), *Kinney v. Lavin*, No. C 14-3817 PJH (N.D. Cal. Aug 22, 2014). Kinney has already been disbarred for his abusive litigation practices. *See In the Matter of Charles Gadsden Kinney*, Case Nos. 09-O-18100 (09-O-18760), at 14-15 (State Bar Ct. of Cal. Dec. 12, 2014). But even as a private pro se litigant, he may still be sanctioned under Rule 11 and 28 U.S.C. § 1927. *Wages v. I.R.S.*, 915 F.2d 1230, 1235-36 (9th Cir. 1990).

IT IS SO ORDERED.

Dated: November 10, 2016



VINCE CHHABRIA
United States District Judge