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4 **UNITED STATES DISTRICT COURT**
5 **NORTHERN DISTRICT OF CALIFORNIA**
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7 **JOSEPH ALEJANDRO ORTEGA,**

8 **Plaintiff,**

9 **vs.**

10 **KURT RODENSPIEL *et al.*,**

11 **Defendants.**

Case No.: C-10-3239-YGR

ORDER DENYING MOTION TO VACATE

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14 Now before the Court is Plaintiff's Motion to Vacate. (Dkt. No. 118.) That Motion asks the
15 Court to vacate its May 24, 2013 Order denying Plaintiff's earlier motion to alter a judgment entered
16 against Plaintiff on March 7, 2013. (Dkt. Nos. 107 & 115 ["May 24 Order"].) Plaintiff appealed that
17 judgment to the Ninth Circuit on June 12, 2013. (Dkt. No. 124.)

18 On June 17, 2013, the Court held a conference call with counsel for both sides. On that call,
19 counsel agreed to provide the Court with a plan for orderly resolution of the pending Motion to
20 Vacate, given both the Ninth Circuit appeal and the pendency of a habeas petition before the San
21 Mateo County Superior Court. Plaintiff represents that the parties met and conferred pursuant to the
22 Court's instructions but were unable to agree on a resolution. (Dkt. No. 127 ["Pl. Reply"] at 1 n.1.)

23 Pursuant to Federal Rule of Civil Procedure 78(b) and Civil Local Rule 7-1(b), the Court finds
24 that this motion is appropriate for decision without oral argument. Accordingly, the Court **VACATES**
25 the hearing set for July 16, 2013.

26 Having carefully considered the parties' papers, the Court **DENIES** Plaintiff's Motion to
27 Vacate. As this Court's May 24 Order explained, unless and until the Superior Court grants his
28 habeas petition, his ground for altering the judgment is "speculative." (May 24 Order at 3.) After this

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Court issued the May 24 Order, the Superior Court ordered Defendants to show cause why Plaintiff's habeas petition should not be granted. (Dkt. No. 119, Ex. A.) As Plaintiff recognizes (*see* Pl. Reply at 2-3), the order to show cause does not grant his habeas petition. Consequently, there still exists no ground to alter the judgment.

This Order terminates Dkt. No. 118.

IT IS SO ORDERED.

Dated: July 12, 2013


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE