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E-Filed 12/9/2009

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

JUNE FOSTER,
Plaintiff
v.
KNTV TELEVISION, INC., et al.,
Defendants

Case Number C 06-5688 JF (PVT)
ORDER¹ DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION
[re: document nos. 84, 91]

On September 21, 2009, this Court dismissed Plaintiff's action with prejudice. On October 6, 2009, the Court entered judgment for Defendants. Plaintiff seeks reconsideration pursuant to Federal Rule of Civil Procedure 60(b)(6), which authorizes a court to vacate a final judgment or order for "any . . . reason that justifies relief." The Court has considered the moving and responding papers and the oral arguments presented at the hearing on November 20, 2009. For the reasons discussed below, Plaintiff's motion for reconsideration will be denied.

On November 21, 2001, Plaintiff (then represented by counsel) commenced the instant action by filing a complaint in the Santa Clara Superior Court alleging that she was terminated

¹ This order is not designated for publication in the official reports.

1 unlawfully from her employment as a newswriter for Defendant KNTV Television, Inc.
2 Plaintiff's primary claim was that Defendants terminated her unlawfully in retaliation for her
3 complaints of discriminatory and retaliatory conduct in the workplace. Plaintiff's claims were
4 tried before a jury in the superior court on December 1, 2003; the jury returned a verdict for
5 Defendants and against Plaintiff. The superior court entered judgment on the jury verdict on
6 January 20, 2004. The state appellate court affirmed the judgment and denied Foster's request
7 for rehearing. The California Supreme Court denied Foster's petition for review.

8 It was at this point that Plaintiff, proceeding *pro se*, "removed" the case to this Court. In
9 her petition for removal filed September 15, 2006, Plaintiff stated as follows: "I request the
10 District Court to review the State Court judgment upon finding cause and have case heard in
11 Federal District Court, since all State judicial remedies have been exhausted." Pet. for Rem. at 2.
12 Plaintiff then argued at length that the state courts had failed to adjudicate her claims on the
13 merits, thus depriving Plaintiff of "rights secured by the Federal Constitution and statutes [sic]." *Id.*
14 at 4. She stated specifically that "the State of California has made available Cal. Const. Art. 6
15 sec. 13 to all its citizens, rich and poor, but deliberately not to me." *Id.* at 5. She indicated that a
16 number of her claims were "taken verbatim from Petition for Review filed in California Supreme
17 Court on August 3, 2006." *Id.* at 6.

18 The right to remove an action from state court to federal district court is vested
19 exclusively in "the defendant or the defendants." 28 U.S.C. § 1441(a); *see also Southland Corp.*
20 *v. Estridge*, 456 F. Supp. 1296, 1301 (C.D. Cal. 1978) (holding that a plaintiff who chooses to
21 bring a federally cognizable action in state court may not remove the action to federal court).
22 Because there is no statutory authority for Plaintiff's purported removal, this Court lacks
23 jurisdiction over the case.

24 Moreover, the plain language of 28 U.S.C. § 1441 authorizes removal of cases "pending"²
25

26 ² "Except as otherwise expressly provided by Act of Congress, any civil action brought in
27 a State court of which the district courts of the United States have original jurisdiction, may be
28 removed by the defendant or the defendants, to the district court of the United States for the
district and division embracing the place *where such action is pending*." 28 U.S.C. § 1441(a).

1 in state court at the time the notice of removal is filed. As noted above, the state court judgment
2 was final at the time Plaintiff filed her notice of removal; thus removal was not authorized by
3 statute. Moreover, “courts have recognized that Article III prevents federal courts from
4 exercising jurisdiction over a case previously dismissed by a State court because if a case has
5 already been closed, no case or controversy exists.” *Smith v. Toyota Motor Sales*, 2007 WL
6 1585157, at *3 (D.N.J. May 31, 2007) (internal quotation marks and citations omitted).

7 Even if Plaintiff’s purported removal were not procedurally improper, her petition for
8 removal expressly requests that this Court “review” the rulings of the state courts. It is well-
9 settled that federal district courts do not have jurisdiction to review state court rulings. *District*
10 *of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482 (1983); *Rooker v. Fidelity Trust*
11 *Co.*, 263 U.S. 413, 415-16 (1923). The *Rooker-Feldman* doctrine bars “cases brought by state-
12 court losers complaining of injuries caused by state-court judgments rendered before the district
13 court proceedings commenced and inviting district court review and rejection of those
14 judgments.” *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 284 (2005).

15 The Court acknowledges that the order as to which Plaintiff now seeks reconsideration
16 may have caused some confusion. In attempting to address fully the various doctrines that
17 preclude Plaintiff’s claims, the Court discussed at length the potential *res judicata* effect of
18 Defendant Granite Broadcasting’s bankruptcy proceeding and the effect of the statute of
19 limitations. While the Court remains of the opinion that these doctrines independently would bar
20 Plaintiff’s claims even if they were otherwise cognizable by this Court, it appears that the
21 discussion of these doctrines in the dismissal order obscured the point that this Court simply
22 lacks subject matter jurisdiction over the action. Plaintiff did not have the right to remove the
23 action in the first instance; the action was not removable because it had been closed in the state
24 courts prior to the purported removal; and this Court lacks authority to review state court
25 judgments.

26 At the hearing on the instant motion for reconsideration, Plaintiff asserted that her
27 pleading contains claims that have never been adjudicated by any court. The Court has reviewed
28 the operative pleading in this case – the petition for removal and attached documents – and

1 concludes that Plaintiff in fact is requesting *review* of the judgment of the state court. However,
2 even assuming that Plaintiff has alleged new claims in her petition for removal, the petition was
3 filed improperly for the reasons discussed above, and this Court lacks jurisdiction over the
4 action.

5 Accordingly, Plaintiff's motion for reconsideration is DENIED.

6 IT IS SO ORDERED.

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10 DATED: 12/9/2009

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12  A handwritten signature in blue ink, appearing to read 'Jeremy Fogel', is written over the printed name and title of the judge.
13 JEREMY FOGEL
United States District Judge
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1 This Order has been served upon the following persons:

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June Foster
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