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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
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10 GAVIN B. DAVIS,

11 Plaintiff,

12 vs.

13 JOHN GREGORY UNRUH, et al.,

14 Defendants.
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Case No.: 3:16-cv-0897-BTM-WVG

ORDER:

**1) DENYING MOTIONS TO ALTER
OR AMEND JUDGMENT
PURSUANT TO
Fed. R. Civ. P. 59(e) AND 60(b)**

[ECF Nos. 60, 76]

AND

**2) DENYING MOTIONS
REQUESTING REMOVAL OF
DEFENDANTS AND JOINDER
AS MOOT**

[ECF Nos. 64, 66]

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24 GAVIN B. DAVIS (“Plaintiff”) proceeding pro se and in forma pauperis (“IFP”),
25 has filed two motions to alter or amend this Court’s August 4, 2016 Order and Judgment
26 (ECF Nos. 55, 56) dismissing this civil action for twice failing to comply FED. R. CIV. P.
27 8(a) and for failing to state a claim upon which relief can be granted pursuant to 28 U.S.C.
28 § 1915(e)(2) (ECF Nos. 60, 76). In addition, Plaintiff has filed a “Motion Requesting

1 Removal of Defendants” (ECF No. 62), and a Motion and Notice of Joinder of additional
2 parties pursuant to FED. R. CIV. P. 19 (ECF Nos. 64, 66). Plaintiff has also submitted a
3 Memorandum, Declaration, and Lodgments in support of his opposition to a mental
4 competency examination ordered by the San Diego County Superior Court in Case Nos.
5 MH112708 and CD266332 (ECF Nos. 70, 72, 74).

6 **I. Procedural History**

7 Plaintiff filed his original Complaint in this case on April 14, 2016, together with a
8 Motion for Leave to Proceed IFP (ECF Nos. 1, 2). On May 16, 2016, after he provided
9 additional documentation in support of his IFP Motion and filed various other
10 miscellaneous motions, the Court granted Plaintiff leave to proceed IFP, but dismissed his
11 Complaint without prejudice because it failed to comply with Fed. R. Civ. P. 8(a) (ECF
12 No. 27). Plaintiff was apprised of Rule 8’s pleading requirements, and granted an
13 opportunity to amend. (*Id.* at 4.)

14 On July 21, 2016, after he was twice granted extensions of time in which to amend
15 (ECF Nos. 36, 41), Plaintiff filed a 159-page First Amended Complaint (“FAC”) (ECF No.
16 45), together with 172 pages of lodged exhibits (ECF No. 45-1.) As far as the Court could
17 tell, Plaintiff’s FAC, like his original Complaint, sought to sue several private parties,
18 including his soon-to-be-ex-wife Lindsay, the Superior Court of the County of San Diego,
19 two Judges, three attorneys, a local law firm, the San Diego Police Department, the San
20 Diego District Attorney, the San Diego County Public Defender, and a Deputy Public
21 Defender based on allegations of perjury, collusion, conspiracy and fraud related to
22 ongoing San Diego County Superior Court family and criminal law proceedings involving
23 the dissolution of his marriage, the non-disclosure of assets via family trusts, child custody,
24 visitation, support obligations, and real property disputes (ECF No. 45 at 1-2, 10-16).

25 Plaintiff’s FAC alleged federal question jurisdiction pursuant to 28 U.S.C. § 1343,
26 42 U.S.C. § 1985 (Ku Klux Klan Act), as well as a host of other miscellaneous federal civil
27 and criminal statutes, and IRS regulations. (ECF No. 45 at 17-45.) He further sought
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1 supplemental jurisdiction over state law claims pursuant to various provisions of the
2 California Government Code, and other “Iowa Statutes of Relevancy.” (*Id.* at 27-33.)

3 In addition to his FAC, Plaintiff re-filed his previously denied Motion for Summons
4 (ECF No. 48), Motion to Electronically File Documents (ECF No. 50), Motion for
5 Appointment of Counsel (ECF No. 52), and Motion for a Temporary Restraining Order
6 (ECF No. 54), in which he sought to enjoin Defendant San Diego Superior Court Judge
7 Paula Rosenstein, who is currently presiding over his family law and miscellaneous civil
8 matters, from “rubber-stamping” proposed orders submitted by Defendant McArthur, his
9 wife’s attorney, in San Diego Superior Court Case No. D555614. (*Id.* at 6-7.)

10 On August 4, 2016, the Court again dismissed Plaintiff’s FAC for failing to comply
11 with Rule 8, and for failing to state a claim upon which relief can be granted pursuant to
12 28 U.S.C. § 1915(e)(2) (ECF No. 55).

13 First, the Court found Plaintiff’s FAC prolix, convoluted, and peppered with
14 conclusory allegations of a vast conspiracy against him. Therefore, the Court again
15 dismissed his pleading for failing to include a “short and plain statement of the claim,” and
16 because it lacked the “simple, concise, [or] direct” allegations which might provide the
17 defendants with fair notice of the wrongs they allegedly committed. (*Id.* at 4, citing FED.
18 R. Civ. P. 8(a), (d); *McHenry v. Renne*, 84 F.3d 1172, 1178-80 (9th Cir. 1996); *Cafasso*,
19 *United States ex rel v. General Dynamics C4 Systems, Inc.*, 637 F.3d 1047, 1059 (9th Cir.
20 2011)).

21 Second, the Court found that even “regardless of its length and verbosity,” Plaintiff’s
22 FAC also required dismissal pursuant to 28 U.S.C. § 1915(e)(2) because it sought relief
23 this Court cannot provide, and therefore failed to “state a claim that is plausible on its face.”
24 (*Id.* at 3, 5, citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). Specifically, the Court
25 found that to the extent Plaintiff sought review of any final determinations made by the
26 San Diego Superior Court involving the dissolution of his marriage, division of community
27 property, or his spousal or child support rights or obligations, this Court lacked subject
28 matter jurisdiction. (*Id.* at 5-6, citing *District of Columbia Court of Appeals v. Feldman*,

1 460 U.S. 462, 483-487 & n.16 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923);
2 *Olson Farms, Inc. v. Barbosa*, 134 F.3d 933, 937 (9th Cir. 1998) (holding the *Rooker-*
3 *Feldman* doctrine is jurisdictional)). Further, the Court found that to the extent Plaintiff
4 sought to “consolidate” his ongoing state court cases in federal court, abstention under
5 *Younger v. Harris*, 401 U.S. 37 (1971) was required. (*Id.* at 6-8, citing *San Jose Silicon*
6 *Valley Chamber of Commerce Political Action Comm. v. City of San Jose*, 546 F.3d 1087,
7 1091-92 (9th Cir. 2008); *Gilbertson v. Albright*, 381 F.3d 965, 978 (9th Cir. 2004) (en
8 banc)).

9 Finally, the Court found that because Plaintiff had been previously provided with
10 notice of his pleading deficiencies with respect to Rule 8 to no avail, and his FAC made it
11 “absolutely clear” he could not cure the *Rooker-Feldman* or *Younger* abstention
12 deficiencies by amending yet again, leave to do so was denied. (*Id.* at 8, citing *Cato v.*
13 *United States*, 70 F.3d 1103, 1106 (9th Cir. 1995)).

14 **II. Plaintiff’s Motions to Alter or Amend Judgment**

15 Plaintiff has since filed two Motions seeking to alter or amend the judgment (ECF
16 Nos. 60, 76.) Plaintiff’s first Motion cites FED. R. CIV. P. 59(e), and it was filed on August
17 4, 2016—the same day the Court’s judgment was entered (ECF No. 60).¹ In this Motion,
18 Plaintiff argues that the Court “made an honest mistake” when it dismissed his FAC
19 without specifically reviewing each of his “individual causes of action” and conducting a
20 “full review of the facts” as pleaded and “clearly identified” in his FAC, the organization
21 of which took “considerable time and thought,” and which Plaintiff contends “is consistent
22 in essence with the substantive matter of law before the land under Federal Rule 8.” (*Id.* at
23 8-9, 12, 14.)

24 Before the Court could rule on his first Motion, Plaintiff filed a second Motion on
25 August 26, 2016 (ECF No. 76), and also within the time provided by Rule 59(e). This
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28 ¹ FED. R. CIV. P. 59(e) provides that “[a] motion to alter or amend a judgment must be
filed no later than 28 days after the entry of the judgment.”

1 Motion also seeks reconsideration of the Court’s decision to sua sponte dismiss Plaintiff’s
2 FAC for failing to state a claim pursuant to 28 U.S.C. § 1915(e)(2) because he “disagrees”
3 with this “notion” and believes it to be a “prejudicial judgment.” (*Id.* at 3-4.) Plaintiff also
4 seeks reconsideration of the Court’s certification that an appeal would not be taken in good
5 faith pursuant to 28 U.S.C. § 1915(a)(3), on grounds that it constitutes “opinion” and “bias
6 against a self-litigant.” (*Id.* at 4-5.)

7 **III. Standard of Review**

8 “A Rule 59(e) motion may be granted if ‘(1) the district court is presented with newly
9 discovered evidence, (2) the district court committed clear error or made an initial decision
10 that was manifestly unjust, or (3) there is an intervening change in controlling law.’”
11 *Ybarra v. McDaniel*, 656 F.3d 984, 998 (9th Cir. 2011) (quoting *Zimmerman v. City of*
12 *Oakland*, 255 F.3d 734, 737 (9th Cir. 2001)). This type of motion seeks “a substantive
13 change of mind by the court,” *Tripati v. Henman*, 845 F.2d 205, 206 n.1 (9th Cir. 1988)
14 (quoting *Miller v. Transamerican Press, Inc.*, 709 F.2d 524, 526 (9th Cir. 1983)), and “is
15 an extraordinary remedy which should be used sparingly.” *McDowell v. Calderon*, 197
16 F.3d 1253, 1254 n.1 (9th Cir. 1999). Rule 59(e) may not be used to ““relitigate old matters,
17 or to raise arguments or present evidence that could have been raised prior to the entry of
18 judgment.”” *Stevo Design, Inc. v. SBR Mktg. Ltd.*, 919 F. Supp. 2d 1112, 1117 (D. Nev.
19 2013) (quoting 11 Charles Alan Wright et al., Federal Practice and Procedure § 2810.1 (2d
20 ed. 1995)).

21 Neither of Plaintiff’s Motions seek reconsideration based on newly discovered
22 evidence or any intervening change in controlling law. *See Ybarra*, 656 F.3d at 998.
23 Instead, Plaintiff appears to seek reconsideration on grounds that the Court committed
24 “clear error” when it dismissed his FAC pursuant to Rule 8 and 28 U.S.C. § 1915(e)(2) and
25 that therefore, its decision was “manifestly unjust.” *Id.*

26 First, Plaintiff suggests the Court erred by “only reviewing the Introduction on page
27 10 of the [FAC] as grounds for dismissal,” and failing to conduct “a full review of the
28 facts” as pleaded (ECF No. 60 at 12). Plaintiff appears to believe that because the Court

1 cited only to the “Introduction” portion of his 159-page pleading when it summarized the
2 bases of his claims, (*see* ECF No. 55 at 2), that it necessarily failed to thoroughly review
3 and liberally construe the remainder of his pleading, including all 172-pages of the exhibits
4 he attached in support, before concluding that his FAC failed to comply with Rule 8(a).

5 The “policy of construing pleadings liberally does not justify the conclusion that any
6 document filed in a court giving some notice of a claim satisfies the requirements of the
7 Federal Rules.” *In re Marino*, 37 F.3d 1354, 1357 (9th Cir. 1994). Moreover, as the Court
8 noted in both its May 16, 2016 and its August 4, 2016 Orders, Rule 8 specifically requires
9 that a pleading “must contain” a “short and plain statement” of the grounds for jurisdiction
10 and the claim, as well as a demand for relief sought. FED. R. CIV. P. 8(a). “Violations of
11 this Rule warrant dismissal, but there are multiple ways that it can be violated.” *Knapp v.*
12 *Hogan*, 738 F.3d 1106, 1109 (9th Cir. 2013). Some pleadings says too little. *See, e.g., Iqbal*,
13 556 U.S. at 678. Rule 8 is also violated, however, “when a pleading says too much.” *Knapp*,
14 738 F.3d at 1109 (citing *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d
15 1047, 1058 (9th Cir. 2011); *McHenry v. Renne*, 84 F.3d 1172, 1179–80 (9th Cir. 1996)
16 (affirming a dismissal under Rule 8, and recognizing that “[p]rolix, confusing complaints
17 such as the ones plaintiffs filed in this case impose unfair burdens on litigants and judges”).

18 This was the case with Plaintiff’s FAC. And just because the Court cited to relevant
19 portions of his pleading in its Order in an attempt to concisely summarize the bases of
20 Plaintiff’s claims does not mean it ignored the rest. While not required to “waste[] half a
21 day in chambers preparing the ‘short and plain statement’ which Rule 8 obligate[s] [the]
22 plaintiff[] to submit,” *McHenry*, 84 F.3d at 1179-80, that *is* what the Court attempted to do
23 in order to simply and clearly describe the nature of his suit, and to determine the basis of
24 its jurisdiction. The Court is not further required to comb through a pleading that violates
25 Rule 8 in order to fish for a viable claim. *United States ex rel. Garst v. Lockheed-Martin*
26 *Corp.*, 328 F.3d 374, 378 (7th Cir. 2003).

27 Moreover, to the extent Plaintiff implies that the Court has failed to liberally construe
28 his pleadings, “[p]ro se litigants must follow the same rules of procedure that govern other

litigants.” *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987); *see also Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir. 1995) (per curiam); *Carter v. Comm’r*, 784 F.2d 1006, 1008 (9th Cir. 1986). “The hazards which beset a layman when he seeks to represent himself are obvious. He who proceeds pro se with full knowledge and understanding of the risks does so with no greater rights than a litigant represented by a lawyer, and the trial court is under no obligation to become an ‘advocate’ for or to assist and guide the pro se layman through the trial thicket.” *Jacobsen v. Filler*, 790 F.2d 1362, 1365 n.5 (9th Cir. 1986) (quoting *United States v. Pinkey*, 548 F.2d 30, 311 (10th Cir. 1977)).

“A motion for reconsideration may not be used to get a second bite at the apple.” *Campion v. Old Repub. Home Protection Co., Inc.*, No. 09-CV-00748-JMA(NLS), 2011 WL 1935967, at *1 (S.D. Cal. May 20, 2011). The purpose of Rule 59(e) is not to “give an unhappy litigant one additional chance to sway the judge. [A]rguments and evidence [that] were previously carefully considered by the Court, [] do not provide a basis for amending the judgment,” *Kilgore v. Colvin*, No. 2:12-CV-1792-CKD, 2013 WL 5425313 at *1 (E.D. Cal. Sept. 27, 2013) (internal quotations omitted), and “[m]ere doubt[] or disagreement about the wisdom of a prior decision” is insufficient to warrant granting a Rule 59(e) motion. *Campion*, 2011 WL 1935967 at *1 (quoting *Hopwood v. Texas*, 236 F.3d 256, 273 (5th Cir. 2000)). For a decision to be considered “clearly erroneous” it must be “more than just maybe or probably wrong; it must be dead wrong.” *Id.* A “movant must demonstrate a ‘wholesale disregard, misapplication, or failure to recognize controlling precedent.’” *Id.* (quoting *Oto v. Metro. Life Ins. Co.*, 224 F.3d 601, 606 (7th Cir. 2000)); *see also Garcia v. Biter*, No. 1:13-CV-00599-LJO-SKO-PC, 2016 WL 3879251, at *2 (E.D. Cal. July 18, 2016).

Here, neither of Plaintiff’s Motions to Alter or Amend demonstrate that this Court disregarded, misapplied, or failed to recognize any controlling precedent when it dismissed his FAC without further leave to amend. *Id.* In fact, Plaintiff does not argue how or why the Court was mistaken, let alone “dead wrong,” in determining that that his FAC violated Rule 8, or that his claims – all “inextricably intertwined” with San Diego Superior Court

1 family court and criminal law proceedings that were and remain ongoing – are *not* barred
2 by *Rooker-Feldman* or *Younger*. *See id*; *Olson Farms, Inc. v. Barbosa*, 134 F.3d 933, 937
3 (9th Cir. 1988) (federal court lacks jurisdiction over claims barred by *Rooker-Feldman*);
4 *San Jose Silicon Valley Chamber of Commerce*, 546 F.3d at 1092 (*Younger* abstention
5 applies not only where a federal action would interfere with a state criminal proceeding,
6 but also to “state civil cases and state administrative proceedings”).²

7 Plaintiff also seeks reconsideration of the Court’s decision to deny him leave to
8 amend on grounds that he is “still awaiting feedback from attorneys, the Institute of Justice
9 and the ACLU regarding representation,” (ECF No. 60 at 15), but he has failed to show
10 why further amendment would not be futile. *See Schreiber Distrib. Co. v. Serv-Well*
11 *Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986) (denial of leave to amend is appropriate
12 when court has “determine[d] that the allegation of other facts consistent with the
13 challenged pleading could not possibly cure the deficiency.”); *see also Lopez v. Smith*, 203
14 F.3d 1122, 1127 (9th Cir. 2000).

15 Finally, Plaintiff objects to the Court’s decision to revoke his IFP status for purposes
16 of appeal on grounds that one would not be taken in good faith pursuant to 28 U.S.C.
17 § 1915(a)(3) (ECF No. 76 at 4-5). He does not show, however, why an appeal would not
18 be frivolous. *See Hooker v. American Airlines*, 302 F.3d 1091 (9th Cir. 2002) (revocation
19 of IFP status is appropriate where district court finds an appeal would be frivolous); *Neitzke*
20 *v. Williams*, 490 U.S. 319, 328-30 (1989) (defining “frivolous” under § 1915 as “lack[ing]
21 any arguable basis in fact or law.”); *Guti v. INS*, 908 F.2d 495, 496 (9th Cir. 1990)
22 (complaint or appeal lacks an arguable basis in law if “controlling authority requires a
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25 ² To the extent Plaintiff “disagrees” with the “notion” that 28 U.S.C. § 1915(e)(2) “not
26 only permits but requires” the court to sua sponte dismiss an in forma pauperis complaint
27 that fails to state a claim, because it represents a “prejudicial judgment” (ECF No. 76 at 3-
28 4), the Ninth Circuit has noted that “Congress inserted § 1915(e)(2) into the in forma
pauperis statute, and we must follow this clear statutory direction.” *Lopez*, 203 F.3d at 1129
n.10.

1 finding that the facts alleged failed to establish even an “arguable legal claim”).

2 Thus, because Plaintiff has failed to offer any valid basis upon which the Court might
3 find its August 4, 2016 Order and Judgment of dismissal was clearly erroneous or
4 manifestly unjust, relief is not warranted under FED. R. CIV. P. 59(e).

5 **IV. Conclusion and Order**

6 Based on the foregoing, the Court:

7 1) **DENIES** Plaintiff’s Motions to Alter or Amend Judgment pursuant to FED. R.
8 Civ. P. 59(e) (ECF Nos. 60, 76), and re-affirms its August 4, 2016 Order and Judgment
9 dismissing this civil action pursuant to FED. R. CIV. P. 8(a) and 28 U.S.C. § 1915(e)(2);

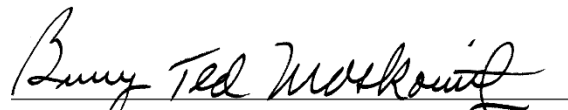
10 2) **DENIES** Plaintiff’s Motions Requesting Removal of Defendants and Joinder
11 of parties pursuant to FED. R. CIV. P. 19 as moot (ECF Nos. 62, 64, 66);

12 3) **RE-CERTIFIES** that an IFP appeal from either the August 4, 2016
13 Judgment, or this Order, would be frivolous and therefore, would not be taken in good faith
14 pursuant to 28 U.S.C. § 1915(a)(3). *See Coppedge v. United States*, 369 U.S. 438, 445
15 (1962); *Gardner v. Pogue*, 558 F.2d 548, 550 (9th Cir. 1977) (indigent appellant is
16 permitted to proceed IFP on appeal only if appeal would not be frivolous); and

17 4) **DIRECTS** the Clerk of Court to terminate this action and to accept no further
18 filings, except a Notice of Appeal, for filing in this case.

19 **IT IS SO ORDERED.**

20 Dated: September 6, 2016

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22 Barry Ted Moskowitz, Chief Judge
23 United States District Court
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