17-35202

UNITED STATES COURT OF APPEALS FOR THE NINTH FEDERAL CIRCUIT

William Scheidler,
Plaintiff/Appellant
v
State of Washington, and Kevin Hull, individually and in any official capacity; Jesse Young, individually and in any official capacity; Michelle Caldier, individually and in any official capacity; Jan Angel, individually and in any official capacity; and
Jane and John Does, 1-100.
Defendants/Appellees

APPEAL FROM THE FEDERAL DISTRICT COURT, TACOMA, WA
CASE 3:16-cv-06016-BHS

PETITION FOR REHEARING EN BANC (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

William Scheidler
Appellant/Plaintiff Pro Per
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I. REASONS FOR EN BANC REVIEW

A. **The panel's unreasoned decision conflicts with the directive of the US Supreme Court: *Schlagenhauf v. Holder*, 379 US 104, 111 (1964) – re addressing issues of first impression; *Goldberg v. Kelly* 397 US 254 (1970) – to state reasons and evidence and of course must be impartial; and *Lapides v. Bd. of Regents of Univ. Sys. of Ga.*, 535 U.S. 613, 122 S.Ct. 1640, 152 L.Ed.2d 806 (2002) – re removal per 28 USC 1441. State laws are at issue and implicates the US 10th amendment and 28 USC 1652; 28 USC 2072; and 28 USC 455 and ignored by the district court and the appellate panel.**

The laws and facts argued below and presented for appeal concern matters of first impression -- a Washington State Bar Association (WSBA) scam to delegate a bar task to Scheidler for which Scheidler was then punished with a $119,373.23 sanction. To further the scam, WSBA members (defendant Judge Hull (even district court judge Benjamin Settle)), sit in judgment of their own scam. This unlawful monopoly, enjoyed by WSBA associates, together with those government officials, Angel, Caldier and Young, who aid and abet the WSBA scam, claim privileges and immunities no other person can claim to assure they are not held accountable – also prohibited by the state's constitution unless everyone enjoys the privilege of being "unaccountable". The appellate panel has ignore it all under the label that it is a "tax" matter. Such an unreasoned opinion collides with the above authorities.

State law governs the state's public servants (defendants) as the 10th amendment and 28 USC 1652 provide and require. The district court's dismissal on

the pleadings, upheld by the appellate panel, without any rationale, under federal common law and federal court rules, which have no preemptive authority over state law, results in an unlawful consequence -- judges-judging-judges -- prohibited by 28 USC 2072(b) and 28 USC 455(a) and (b)(3). Also an issue raised below ignored by the appellate panel.

En banc review should be granted to address these issues that collide with the above authorities and collide with state law.

B. **This matter is of exceptional importance as it involves misconduct by officers of the court, public officials, and the agency, the WSBA, under the judicial branch.**

The courts have a legal and fiduciary obligation to hold themselves, their colleagues, the other branches of government, and lawyers, to the laws and their respective codes of conduct – so "public confidence" in our legal institutions is maintained. En banc review should be granted to address this scam operating within the courts by officers of the courts implicating the courts legal and fiduciary obligations that are ignored by the appellate panel.

II. INTRODUCTION

This matter stems from a WSBA grievance Scheidler filed against his lawyer (an 'officer of the court'), Scott Ellerby, who was extorted from Scheidler's case by the Kitsap County Prosecutor, Cassandra Noble, also a bar associate and 'officer of the court'. (See CP 12-15; 93-94)

The WSBA dismissed the grievance with the caveat that the grievance would be reopened if Scheidler obtains "a judicial finding of impropriety". (See CP 93-94) Scheidler filed a lawsuit to obtain "a judicial finding of impropriate". A jury trial was demanded. Defendant, Judge Kevin Hull, (a WSBA associate) was reassigned the case as the sitting judge retired abruptly. Hull, coincidentally, is a former Kitsap County prosecutor, never presided over the case so his only "legal" action is to begin anew. Hull denied a new trial and denied a jury – his only legal options. Furthermore, Hull, in retaliation against Scheidler, sanctioned Scheidler $119,373.23 for seeking the WSBA's delegated "judicial finding of impropriety".

Scheidler has constitutional, statutory and common law protections from Hull's retaliatory $119,373.23 sanction. Scheidler notified his legislators via phone, emails, and face-to-face meetings about the WSBA's scam and Hull's retaliation – they did nothing. (See CP 45-61) Scheidler notified the State of Washington via 'tort claims' and via grievances filed with the Commission on Judicial Conduct and Legislative Ethics board re Hull's unauthorized and unlawful sanction, and the legislators' 'breach of duty'. These entities did nothing as all decision-makers are WSBA associates.(CP 158-208)

Scheidler filed this lawsuit against these public servants in State Superior Court, as RCW 4.92 provides. Scheidler again demanded a jury trial.

Defendant Hull, without answering the allegations or addressing the evidence, removed the lawsuit to federal court per 28 USC 1441. The State defendants (State, Young, Caldier and Angel) did not answer nor 'join in or consent to" personal jurisdiction as 28 USC 1441 requires. In fact, the State, in its motion for dismissal, declared (SER 30) ,

> "Washington State has not waived its sovereign immunity, Eleventh Amendment immunity, against federal claims. *Micomonaco v. State of Wash*., 45 F.3d 316, 321 (9th Cir. 1995). The Defendants therefore have immunity under the Eleventh Amendment against any claims against the State and official-capacity claims for monetary damages or retrospective relief. *See Hirsch v. Justices of Supreme Court of California*, 67 F.3d 708, 715 (9th Cir. 1995). Any claims brought against the State or Defendants in their official capacities must be dismissed."

Scheidler filed a motion to remand. Thereafter, at SER 15, the State claims they "waive 11th amendment immunity". That claim is well beyond the 30-day time limit per §1446. Regardless, these statements by the State's lawyer is clear evidence these lawyers seek to mislead judges with false statements of fact and law – which is a gross misdemeanor crime in Washington State[1]. The district court judge (a WSBA associate) should have remanded the case and sanctioned the attorney for her crime. Instead, the whole case was dismissed on the pleadings despite defective removal.

[1] RCW 2.48.210 is a provision of law the mandates a lawyer "never seek to mislead a judge with any false statement of fact or law". RCW 9A.80.010 states, it is official misconduct when a public servant intentionally commits an unauthorized act under color of law; Official misconduct is a gross misdemeanor.

Scheidler on the very first page of the state complaint demanded the disqualification of all WSBA associates from presiding as this scam is devised by the WSBA, and implemented and protected by judges who are all WSBA associates. It is the perfect arrangement in which a RICO enterprise can operate without consequence because it has its members in nearly every decision-making office in Washington State.(CP 3-6)

III. ARGUMENT

Preamble

In all civil actions within all the courts of this state, RCW 4.04.010 controls.[2] It states, "The common law, so far as it is not inconsistent with the Constitution and laws of the United States, or of the state of Washington nor incompatible with the institutions and condition of society in this state, *shall be the rule of decision in all the courts of this state.*" Defendants, all public officials, are "established to protect and maintain" Scheidler's rights, as Article 1, section 1 expressly states[3]. Therefore, the only applicable common law is that which is consistent with "the consent of the

[2] The US Supreme Court, in *Cipollone v. Liggett Group, Inc*., 505 US 504, 516 (1992), states, "the historic police powers of the States [are] not to be superseded by . . . Federal Act unless that [is] the clear and manifest purpose of Congress." *Rice* v. *Santa Fe Elevator Corp.,* 331 U. S. 218, 230 (1947)"

[3] ARTICLE 1 SECTION 1 POLITICAL POWER. All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.

governed" as to "governments just powers" so as to insure Scheidler's rights are "protected and maintained".

A. **A jury was demanded and is an "inviolate right".**

The right to a jury trial is an "inviolate right" in both civil and criminal actions as the state's Article 1, sec 21 expressly states. The "jury" is the "institution" through which the "governed" exercise "all their political power" inherent in the people. Once a jury is demanded a judge is no longer a "court", but is distinguished from court and only has powers conferred by law. See Article 4, section 16, **"**Judges shall not charge juries with respect to matters of fact, nor comment thereon, but shall declare the law"; See RCW 2.28.050 and RCW 2.28.060 which state respectively: **"**A judge may exercise out of court all the powers expressly conferred upon a judge as contradistinguished from a court and not otherwise"; "Every judicial officer has power:

> (1) To preserve and enforce order … when he or she is engaged in the performance of a duty imposed upon him or her **by law**;
> (2) To compel obedience to his or her ***lawful orders*** as provided **by law**;
> (3) To compel … persons … in the cases and manner provided **by law**; ..."

The district court's denial of a jury and dismissal based upon court rules "abridges, modifies or enlarges" these constitutional and statutory rights. A consequence prohibited by 28 USC 2072(b).

B. **Res judicata does not apply in this case – Hull's order imposing $119,373.23 sanction is voidable by either direct review or by collateral attack.**

Res judicata is an invalid common law holding on at least any of 6 grounds.

1. Defendants' "just powers" are under the jurisdiction of the people as Article 1, section 1 (supra) expressly states.

Defendants have not presented any evidentiary support that shows defendants powers were by the consent of the governed. Until "the governed", through a jury, address defendants' use of their delegated "just powers" the common law notion of res judicata is unavailable.

2. Judge Hull was disqualified, by law, RCW 2.28.030, to enter any order.

Judge Hull was assigned the case after the presiding judge abruptly retired before any orders were issued. Hull immediately issued the order imposing $119,373.23 in sanctions upon Scheidler despite not being "present and sitting as a member of the court at the hearing of a matter submitted for its decision", RCW 2.28.030(2). The disqualification statute is not discretionary. Nor can Judge Hull decide his own "disqualification" as RCW 2.28.030(1) prohibits Hull from deciding any matter of direct interest to the judge or if the judge is a party. Judge Hull is both interested and a party in violating RCW 2.28.030(2). Hull's order is void.

3. Scheidler was delegated the task, by the WSBA –to obtain a judicial finding of impropriety concerning his grievance against his lawyer, Ellerby.

In disciplinary proceedings, the lawyer bears all costs – even the costs associated with unintended consequences. The state's supreme court *In re Disciplinary Proceeding Against Dann*, 136 Wn.2d 67, 960 P.2d 416, (1998), states,

> We give "particularly great weight" to the question of the extent of injury involved due to the attorney's misconduct. In re Discipline of Curran, 115 Wn.2d 747, 772, 801 P.2d 962, 1 A.L.R.5th 1183 (1990). We do so to "maintain public confidence in our legal institutions with an eye toward enhancing respect for the law generally. We must therefore administer the rule in a manner which holds individuals accountable for the results, even unintended results, of their actions." *Curran*, 115 Wn.2d at 772 (emphasis added).

It is Ellerby, not Scheidler, who bears the full cost due to his misconduct. Hull's $119,373.21 sanction imposed on Scheidler was improper and void.

4. Hull denied a demanded jury trial.

This indicates either of two conditions: (1) "a judicial finding of impropriety" is an administrative action –not a civil action; or (2) judge Hull abolished the state's Article 1, section 21 "inviolate right to a jury trial"

If a "judicial finding of impropriety" is an *administrative action*, there must be an independent avenue to challenge the agencies decision under both *Goldberg* (which must be free of bias), and a plethora of state and federal decisions that recognize "we do not defer to an agency the power to determine the scope of its

own authority." *Elec. Lightwave v. Utils. & Transp. Comm'n (in Re Registration of Elec. Lightwave)*, 123 Wn.2d 530, 869 P.2d 1045, (1994). Res judicata doesn't apply when an administrative decision is collaterally attacked.

If Scheidler's action was a *civil action*, not administrative, then the denial of a demanded jury trial violated Scheidler's due process and is void by law – RCW 4.04.010 (supra), as it abolishes a constitutional right – Article 1, sec 21's 'inviolate right to a jury trial', as discussed above. See also *Sofie v Fibreboard*, infra.

In either case, res judicata doesn't apply.

5. The US 7th amendment is the controlling authority on res judicata.

The 7th amendment states, "no fact tried by a jury, shall be otherwise reexamined in any court of the United States." Judges who deny a demanded "jury trial" cannot claim res judicata for their decisions, as no fact has yet to be tried by a jury. "Because of the constitutional nature of the right to jury trial, litigants have a continued interest in it -- it simply cannot be removed by legislative action. As long as the cause of action continues to exist and the litigants have access to a jury, that right of access remains as long as the cause of action does. Otherwise, article 1, section 21 means nothing." *Sofie v. Fibreboard Corp.*, 112 Wn.2d 636, 771 P.2d 711, 1989 Wash. LEXIS 42, CCH Prod. Liab. Rep. P12

6. Scheidler's 'direct appeal' of Hull's order was obstructed by the clerk of the state court of appeals.

The clerk refused to file Scheidler's 'opening brief' and then dismissed the appeal for failing to file an opening brief. The clerk then upheld his own ruling to dismiss and subsequently upheld by the clerk of the state supreme court. This issue is raised in case 3:12-cv-05996-RBL, and in appeal 15-35945 (petition for en banc review). To claim res judicata when the clerks obstructed a direct appeal is a fraud upon the court! Fraud vitiates everything it touches, *Haagen v. Landeis*, 56 Wn.2d 289, 352 P.2d 636, (1960). Fraud can be attacked collaterally.

7. Scheidler has statutory protections from Hull's retaliation under RCW 4.25.500 and 4.25.510.

WSBA's delegated "judicial finding of impropriety" is proof Scheidler 'communicated to the proper state agency' concerning Ellerby – who is an 'officer of the court', and is "information vital to the efficient operation of government", as RCW 4.24.500 states,

> "Information provided by citizens concerning potential wrongdoing is vital to … the efficient operation of government. The legislature finds that the threat of a civil action for damages can act as a deterrent to citizens who wish to report information to federal, state, or local agencies… The purpose of RCW 4.24.500 through 4.24.520 is to protect individuals who make good-faith reports to appropriate governmental bodies."

Furthermore, the legislature notes its intentions in RCW 4.24.510, which they state,

> "Strategic lawsuits against public participation, or SLAPP suits, … are designed to intimidate the exercise of First Amendment rights and rights under Article I, section 5 of the Washington state Constitution."

For these statutory reasons, Hull's $119,373.23 retaliatory sanction is void.

C. **The appellate panel misapprehends the case – calling it a 'tax matter', when both Scheidler and Amici noted the matter stemmed from lawyer misconduct.**

As stated above, WSBA policies precipitate this action. Amici, Tom Scott – a professional engineer, and Sara Naheedy – a CA lawyer, state in their amicus brief (submitted to help the court better understand the issues),

> "Secondly, for the Kitsap County prosecutor, Cassandra Noble, to intimidate Attorney Ellerby by threatening to rescind his license to practice law is not only unethical, but also a criminal act in some states…There are several injustices that have been committed against the appellant in this case, but this is one of the first which precipitated many of the others." (Dkt 11, page 6).

The underlying issue bears on the laws that apply. A *tax matter* may or may not raise the same legal issues as *a delegated WSBA task*.

> "If a trial court has tenable grounds for a decision but applies the wrong law, it errs as a matter of law. Moreover, whatever its stated reasons under the inapplicable standard, these reasons are no longer reasonable under the controlling legal standard." *Estate of Stalkup v. Vancouver Clinic, Inc., PS*, 145 Wn. App. 572 (Wash. Ct. App. 2008); "[w]hen a court misapprehends or fails to apply the law with respect to underlying issues, it abuses its discretion." *Gunnells v. Healthplan Servs. Inc.,* 348 F.3d 417, 446 (4th .2003)."

En banc review should be granted on this issue alone.

D. **Iqbal/Twombly pleading standards are inapplicable in Washington as they 'abridge' Article 1, sec 4's right of petition, limit civil actions in violation of Article 2, sec 28(17); and render's Article 1, sec 1 irrelevant.**

The duties and obligations of all defendants are established, solely, by Washington's constitution and laws. Therefore, state law must apply, as state laws represent the contract between the "governed and the governments they created". Federal pleading standards are not 'positive federal law' and therefore must give way to the states' rights to establish their own laws as the US 10th amendment provides.

Federal courts have yet to apply, or even address, the pleading standards Washington enacted into law, which are: RCW 4.04.010, RCW Ch. 4.36, RCW Ch. 4.32 that define "common law application" "pleadings" and the remedy for "pleading deficiencies". These *laws are substantive rights* of the Appellant and the *People* in fulfillment of the state's Article 1, sec 4, and Article 2, sec 28(17) – right of petition that shall *never be abridged; nor civil actions limited*. Because these statutes "qualifies" the rights of the people, and only the people (not defendants), 'it is substantive law rather than procedural.' *Johansen v. EI Du Pont De Nemours & Co*., 810 F. 2d 1377 - 5th Circuit 1987.

RCW 4.36.170 requires only a material allegation to maintain a civil action. The allegation is "Hull, without authority, unlawfully sanctioned Scheidler $119,373.21, in which the other defendants aid and abet."

Both RCW 4.32.250 and RCW 4.36.240 require *the court* to remedy defects "which shall not affect the substantial rights of the adverse party". As *Cudihee*[4] makes clear, Appellees as far as their office is concerned, which is what this case is about, *have no rights whatever*. Therefore the *court,* as the laws' mandate, is obligated to remedy any pleading deficiency to *protect and maintain*[5] *Appellant's right of petition and the people's right to address the petition*. These laws "qualify" Article 1, secs 1, and 4, and, as the 5th Circuit holds, are substantive rights of the Appellant – and are rights only due the Appellant, as *Cudihee* and Art 1, sec 1 clearly state.

Furthermore, the State's Supreme court rejected adopting *Twombly* and *Iqbal* standards of pleading in *McCurry v. Chevy Chase Bank, FSB*, 169 Wn.2d 96. [CP 147]. Under the US 10th amendment, state law[6] controls this case and this Court must declare *Twombly/Iqbal* pleading standards collide with the state's standards mandated by RCW 4.04.010, supra, and do not apply.

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[4] "The people, speaking in the manner provided by law, may discharge their public officers for any cause, or without any cause, as their laws may provide. Indeed, the people's rights are as complete in that respect as when they choose such officer. In other words, as against the people, a public officer, their servant, *has no rights whatever, so far as his possession of the office is concerned,* which may not be ignored by the people speaking in a lawful manner." *Cudihee v. Phelps*, 76 Wash. 314 (Wash. 1913).

[5] Ref: Article 1, sec 1

[6] See 28 USC 1652

En banc review should be granted to address this pleading issue of first impression.

E. **Neither Judicial immunity nor Legislative Immunity apply in Washington State.**

Immunities, in whatever form or by any other name, such as 'res judicata', 'pleading deficiencies', 'estoppel', 'absolute immunity' … are prohibited by Washington's constitution. Washington State *abolished* hereditary emoluments, *privileges, and powers*, and prohibits granting or conferring 'privileges and powers' in this state. (Article 1, sec 28) Furthermore, "no law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, *privileges or immunities* which upon the same terms shall not equally belong to all citizens, or corporations", Article 1, sec 12. "No law granting irrevocably any privilege, franchise or immunity, shall be passed by the legislature." (Article 1, sec 8).

Federal common laws that grant "immunity" are not "Acts of Congress" that can supersede Washington's 10th amendment right to abolish "privileges, hereditary powers, and immunities". See *Cipollone v. Liggett Group, Inc*.. supra.

Notwithstanding this 10th amendment issue of first impression, this Court holds, "Officials who knowingly violate the law are not entitled to immunity. 135 S. Ct. at 1774 (quoting Ashcroft, 131 S. Ct. 2085)". Ninth Circuit, *Hardwick v*

County of Orange, et al., No. 15-55563 D.C. No. 8:13-cv-01390-JLS-AN, (Jan. 2017).

Additionally, this Court citing the US Supreme Court holds "immunity" is "waived" when a defendant removes a case from state court to federal court – as in this case. Removal of a state action to federal court *is to submit to the 'jurisdiction of the federal court*' therefore all 'immunity' is waived. *Embury v. King*, 361 F. 3d 562 - Court of Appeals, 9th Circuit 2004, citing *Lapides v. Bd. of Regents of Univ. Sys. of Ga.*, 535 U.S. 613, 122 S.Ct. 1640, 152 L.Ed.2d 806 (2002).

En banc review should be granted regarding federal common law preempting Washington's constitution and laws to the contrary.

F. **Dismissal at the pleading stage is improper; the scope of a public employee's job duties is a question of fact for a jury.**

If immunity applies at all in Washington State, then those claiming immunity must be acting in their official capacity[7]. Hull has no authority to enter any order, or alter laws, or deny constitutional rights. The other government appellees are not acting within their authority when they aid and abet in Hull's misconduct. Immunity cannot attach to unlawful acts by government officials. This court holds "when

[7] First, a judge is not immune from liability for nonjudicial actions, i. e., actions not taken in the judge's judicial capacity. *Forrester v. White*, 484 U. S., at 227-229*; Stump v. Sparkman*, 435 U. S., at 360. 12*12 Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction. Id., at 356-357; *Bradley v. Fisher*, 13 Wall., at 351.

there are genuine and material disputes as to the scope and content of the plaintiff's [defendants'] job responsibilities, the court must reserve judgment … until after the fact-finding, *Dahlia v. Rodriguez*, 735 F. 3d 1060 - Court of Appeals, 9th Circuit 2013, citing *Posey v. Lake Pend Oreille School Dist. No. 84*, 546 F. 3d 1121 - Court of Appeals, 9th Circuit 2008.

These 9th Circuit holdings are compatible with the state's broad public policy expressed in Article 2, sec 28(12) – *unauthorized or invalid acts by any official shall never be legalized.*

The district court's dismissal at the pleading stage and the panel's unreasoned affirmation of dismissal is contrary to these authorities and should be reviewed en banc.

G. **Institutional conflict of interest**

When a case is dismissed at the pleading stage under court rule powers, based upon federal common law holdings, the State's laws that collide with the federal common laws, as argued above, are "abridged, modified or enlarged". Thereafter 'bias and fiduciary conflict' permeate the appeal process. Said another way, to deny the jury their jurisdiction, it becomes judges-judging-judges concerning their powers, limitations, obligations and the laws that apply to judges and 'officers of the court' such as 28 USC 1652, 28 USC 2072(b), 28 USC 455, RCW 2.48.180

through RCW 2.48.230, LCR rule 83.3, and FRAP 46 and Circuit rule 46.1 through 46.2. This presents an institutional conflict without a fair forum for its resolution.

In this case, it is the people of the state of Washington who determine if the state's public servants are acting "by consent" and in a "just" manner. Otherwise Article 1, sec 1 is meaningless. Congress enacted 28 USC 455(a) and (b), 28 USC 1652, and 28 USC 2072(b) to ensure "government doesn't decide for itself that it is the masters over citizens". In Washington, as Article 1, secs 1, 4, 21 make clear, and the state's Supreme Court holds, "To permit branches to measure their own authority would quickly subvert the principle that state governments, while governments of general powers, must govern by the consent of the people as expressed by the constitution." *Wash. State Labor Council v. Reed*, 149 Wn.2d 48 (Wash. Apr. 3, 2003), Chambers concurring.

IV. CONCLUSION

Defendants cannot justify their conduct, as consistent with their statutory duty, so their legal strategy is to render the laws that apply to them irrelevant. The state blatantly displays this attack on our laws by their defective removal practice noted above.

This court should accept en banc review due to the issues of first impression and matters of substantial public concern.

William Scheidler, pro se, all rights reserved

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NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WILLIAM SCHEIDLER, Plaintiff-Appellant, v. STATE OF WASHINGTON; et al., Defendants-Appellees.	No. 17-35202 D.C. No. 3:16-cv-06016-BHS MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Benjamin H. Settle, District Judge, Presiding

Submitted December 18, 2017**

Before: WALLACE, SILVERMAN, and BYBEE, Circuit Judges.

William Scheidler appeals pro se from the district court's judgment dismissing with prejudice his 42 U.S.C. § 1983 action alleging claims related to his 2010 property tax assessment. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal for failure to state a claim under Fed. R. Civ. P.

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

12(b)(6). *Hicks v. Small*, 69 F.3d 967, 969 (9th Cir. 1995). We affirm.

The district court properly dismissed Scheidler's action because Scheidler failed to allege facts sufficient to state any plausible claim. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." (citation and internal quotation marks omitted)); *see also Bogan v. Scott-Harris*, 523 U.S. 44, 49 (1998) (state legislators are entitled to absolute immunity from liability under § 1983 for their legislative activities); *Noel v. Hall*, 341 F.3d 1148, 1163 (9th Cir. 2003) ("It is a forbidden de facto appeal under *Rooker-Feldman* when the plaintiff in federal district court complains of a legal wrong allegedly committed by the state court, and seeks relief from the judgment of that court."); *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986) (en banc) (explaining that "[j]udges and those performing judge-like functions are absolutely immune from damage liability for acts performed in their official capacities").

The district court did not abuse its discretion in taxing costs against Scheidler because the requested costs are allowable. *See* 28 U.S.C. § 1920(1) (permitting court to include fees of the clerk as costs).

We reject as meritless Scheidler's contentions that federal pleading standards are inapplicable, that the district judge was biased, and that the removal

of his complaint from the state court was improper.

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

All pending motions or requests are denied.

AFFIRMED.

Form 11. Certificate of Compliance Pursuant to 9th Circuit Rules 35-4 and 40-1 for Case Number 17-35202

Note: This form must be signed by the attorney or unrepresented litigant *and attached to the back of each copy of the petition or answer.*

I certify that pursuant to Circuit Rule 35-4 or 40-1, the attached petition for panel rehearing/petition for rehearing en banc/answer to petition (check applicable option):

☒ Contains 4146 words (petitions and answers must not exceed 4,200 words), and is prepared in a format, type face, and type style that complies with Fed. R. App. P. 32(a)(4)-(6).

or

☐ Is in compliance with Fed. R. App. P. 32(a)(4)-(6) and does not exceed 15 pages.

Signature of Attorney or Unrepresented Litigant "S/" William Scheidler

Date Jan 1, 2018

("s/" plus typed name is acceptable for electronically-filed documents)

9th Circuit Case Number(s) 17-35202

NOTE: To secure your input, you should print the filled-in form to PDF (File > Print > *PDF Printer/Creator*).

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I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Signature (use "s/" format) [ ]

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CERTIFICATE OF SERVICE
When Not All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) [Jan 1, 2018].

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I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

Sara Naheedy
Suite 280
2575 McCabe Way
Irvine, CA 92614

Signature (use "s/" format) "s/" William Scheidler