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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOSHUA HILD,

Plaintiff,

v.

CALIFORNIA SUPREME COURT,
et al.

Defendant.

NO. C 07-5107 TEH

ORDER GRANTING MOTION
TO DISMISS

This matter came before the Court on February 4, 2008 on Defendants’ Motion to Dismiss. This action raises various challenges to California Rule of Court 8.1115(a), which prohibits citation to opinions of the California Court of Appeal or superior court appellate division which are not certified for publication or ordered published. Defendants move to dismiss. For the reasons set out below, the Court GRANTS the motion without leave to amend.

FACTUAL BACKGROUND

In 2003, Plaintiff Joshua Hild, then a minor, was accidentally blinded by an on-duty employee of Southern California Edison Company (“SCE”). Plaintiff filed a personal injury action against SCE in Los Angeles County Superior Court. The case ultimately went to trial solely on the question of whether the SCE employee who injured Hild acted in the scope of her employment, and on the issue of Plaintiff’s damages. First Amended Complaint (“FAC”) ¶ 10. The jury found for Plaintiff and awarded him over \$700,000.

1 SCE appealed. The Court of Appeal reversed the award in an unpublished decision.
2 FAC ¶ 14. Plaintiff alleges that, under the rules governing publication, the opinion should
3 have been published because it broke with and misapplied existing law, and established a
4 new rule of law.¹ FAC ¶ 17.

5 Plaintiff petitioned for review by the California Supreme Court. FAC ¶¶ 15-18. He
6 subsequently filed this action on October 4, 2007. The California Supreme Court denied
7 review on October 24, 2007. FAC ¶ 20.

8 The primary ground for review of an appellate decision by the California Supreme
9 Court is the need “to secure uniformity of decision or to settle an important question of law.”
10 Cal. R. Court 8.500(b)(1).² However, California Rule of Court Rule 8.1115(a) provides that,
11 with a few exceptions inapplicable to the issues raised in the complaint,

12 an opinion of a California Court of Appeal or superior court appellate division that is
13 not certified for publication or ordered published must not be cited or relied on by a
14 court or a party in any other action.

15 Cal. Rule of Court 8.1115(a).³

16 ¹ Rule 8.1105(c) provides that an opinion should be published when it

17 1) Establishes a new rule of law; (2) Applies an existing rule of law to a set of facts
18 significantly different from those stated in published opinions; (3) Modifies, explains, or
19 criticizes with reasons given, an existing rule of law; (4) Advances a new interpretation,
20 clarification, criticism, or construction of a provision of a constitution, statute, ordinance, or
21 court rule; (5) Addresses or creates an apparent conflict in the law; (6) Involves a legal issue
22 of continuing public interest; (7) Makes a significant contribution to legal literature by
23 reviewing either the development of a common law rule or the legislative or judicial history
24 of a provision of a constitution, statute, or other written law; (8) Invokes a previously
25 overlooked rule of law, or reaffirms a principle of law not applied in a recently reported
26 decision.

27 ² The Court can also grant review if the Court of Appeal had no jurisdiction, that Court of
28 Appeal decision lacked the concurrence of sufficient qualified justices, or to transfer the matter back
to the Court of Appeal for further proceedings. Cal.R.Court 8.500(b)(2), (3), (4).

³ Under subsection (b), an unpublished opinion may be cited or relied on:

(1) When the opinion is relevant under the doctrines of law of the case, res judicata, or
collateral estoppel; or

(2) When the opinion is relevant to a criminal or disciplinary action because it states reasons
for a decision affecting the same defendant or respondent in another such action.

1 Plaintiff claims that the Rule 8.1115(a), which prohibits citation of unpublished cases
2 means that unpublished opinions will not create a conflict with published decisions, thereby
3 depriving litigants of the main ground for Supreme Court review – the need to “secure
4 uniformity of decision” – and curtailing those litigants’ right to review. FAC ¶¶ 18-21.

5 Plaintiff’s sole cause of action, against the California Supreme Court, seeks a
6 declaratory judgment under 28 U.S.C. § 2201 that the non-citation rule is unconstitutional
7 because it violates litigants’ due process and equal protection rights. Plaintiff asserts several
8 theories: that C.R.C. 8.1115(a) makes unpublished decisions “selectively prospective,” that
9 the rule denies litigants the ability to qualify for Supreme Court review, and that the Court of
10 Appeal deliberately used the rule to avoid review in *Hild v. Southern California Edison*.

11 Defendant now moves to dismiss the suit under Fed. R. Civ. Pro. 12(b)(1) and
12 12(b)(6).

14 **LEGAL STANDARD**

15 Dismissal is appropriate under Federal Rule of Civil Procedure 12(b)(6) when a
16 plaintiff’s allegations fail “to state a claim upon which relief can be granted.” Fed. R. Civ. P.
17 12(b)(6). In evaluating the sufficiency of a complaint’s allegations, a court must assume the
18 facts alleged in the complaint to be true unless the allegations are controverted by exhibits
19 attached to the complaint, matters subject to judicial notice, or documents necessarily relied
20 on by the complaint and whose authenticity no party questions. *Lee v. City of Los Angeles*,
21 250 F.3d 668, 688-89 (9th Cir. 2001). In addition, a court need not “accept as true
22 allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable
23 inferences.” *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001), *amended*
24 *on other grounds by* 275 F.3d 1187 (9th Cir. 2001). A court should not grant dismissal
25 unless the plaintiff has failed to plead “enough facts to state a claim to relief that is plausible
26 on its face.” *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1974 (2007). Moreover,
27 dismissal should be with leave to amend unless it is clear that amendment could not possibly
28

1 cure the complaint's deficiencies. *Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293, 1296 (9th
2 Cir. 1998).

3 Defendant also moves to dismiss this case for lack of jurisdiction under Federal Rule
4 of Civil Procedure 12(b)(1). Because Defendant does not seek to rely on any external facts,
5 this is a facial rather than factual challenge to the court's jurisdiction. *See Wolfe v.*
6 *Strankman*, 392 F.3d 358, 362 (9th Cir. 2004) (distinguishing between facial and factual
7 jurisdictional attacks). Consequently, this Court applies a similar standard to Defendant's
8 Rule 12(b)(1) motion as to its Rule 12(b)(6) motion: Dismissal is appropriate only if the
9 complaint's allegations, which are assumed to be true, are insufficient to support a finding of
10 jurisdiction. *Id.*

11 12 ANALYSIS⁴

13 **I. Plaintiff's Theory That The Non-Citation Rule Creates Prohibited "Selective 14 Prospectivity"**

15 Plaintiff alleges that the rule prohibiting citation to unpublished cases makes
16 unpublished cases "selectively prospective," in violation of the rule announced in *James B.*
17 *Beam Distilling Co. v. Georgia*, 501 U.S. 529, 537 (1991). In *Beam*, the Supreme Court held
18 that a court cannot "apply a new rule in the case in which it is pronounced, then return to the
19 old one with respect to all others arising on facts predating the pronouncement." The Court
20 explained that to do so violate the "equality principle" that "similarly situated litigants should
21 be treated the same." *Id.* at 540. Plaintiff claims the non-citation rule makes unpublished
22 decisions "selectively prospective" by applying the "new result-oriented rules of law"
23 enacted in unpublished opinions "arbitrarily, differently, and exclusively" to the litigants in
24 those cases, and not to other, later litigants. *See* FAC ¶ 18, Exh. 4; FAC ¶ 22.b.

25 The California Court of Appeal considered and rejected the "selective prospectivity"
26 argument in *Schmier v. Supreme Court of California*, 78 Cal.App.4th 703 (2000). There, the

27 ⁴ After oral argument, Plaintiff requested the opportunity to submit an additional brief on
28 those questions that the Court presented to Plaintiff at the hearing. Plaintiff had ample opportunity
to address those questions at the hearing. The request for additional briefing is denied.

1 plaintiff argued that predecessor versions of California’s publication and citation rules
2 violated, *inter alia*, the constitutional right to due process and equal protection. *Id.* at 707,
3 710. But the Court of Appeal held that the California rules on publication

4 ... protect against selective prospectivity by providing a uniform and reasonable
5 procedure to assure that actual changes to existing precedential decisions are
6 applicable to all litigants. They require that all opinions of the state's highest court be
7 published. (Rule 976(a).) They establish comprehensive standards for determining
8 publication of Court of Appeal cases, particularly specifying that an opinion
9 announcing a new rule of law or modifying an existing rule be published. (Rule
10 976(b).) They permit any member of the public to request the Court of Appeal to
publish an opinion and, if the request is denied, require the Supreme Court to rule
thereon. (Rule 978.) In short, the rules assure that all citizens have access to legal
precedent, while recognizing the litigation fact of life expressed in *Beam* that most
opinions do not change the law. If appellant's view prevailed, the Supreme Court
would be unable to decertify opinions for publication, which would seriously
compromise its ability to control the direction of appellate precedent.

11 *Id.* at 710-711. Current Rules 8.1105 and 8.1120 retain all of these protections and ensure
12 that cases articulating new rules are published, and that new rules are not, as Plaintiff claims,
13 applied only to certain litigants.

14 The non-citation rule, which means unpublished cases are not precedent, and therefore
15 not “prospective,” does not function in isolation. It depends on the standards for publication
16 contained in Rule 8.1105. Those criteria, in turn, ensure that *new* rules *are* published and
17 become precedent, to be applied according to the principles of *stare decisis*. Under
18 California’s system for publication and citation of cases, unpublished and uncitable opinions
19 should not announce new rules at all. They therefore do not lead courts to apply a new rule
20 to only the case in which it is pronounced. To the extent that unpublished cases do so, it is
21 because the Court of Appeal misapplied the publication criteria – an argument to be raised on
22 direct appeal, and not in a challenge to the citation rule. This Court therefore agrees with the
23 California Court of Appeal that the rule prohibiting citation to unpublished cases does not
24 impermissibly make those cases selectively prospective.

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1 **II. Plaintiff's Theory That The Non-Citation Rule Denies Litigants Ability to**
2 **Qualify for Review**

3 Plaintiff claims that the rule barring citation to unpublished cases denies litigants with
4 unpublished cases "the ability to qualify for review" by the Supreme Court under C.R.C.
5 8.500(b). FAC ¶ 21, 22.a. Plaintiff alleges that the rule therefore violates due process and
6 equal protection rights. Viewing this claim in the best possible light, this allegation
7 presumably claims that it is a denial of due process to arbitrarily or unfairly refuse certain
8 litigants a type of judicial review, and a denial of equal protection to deny a certain class of
9 litigants a type of judicial review.

10 **A. Plaintiff Does Not Have Standing To Bring An Action On This Theory**

11 To carry his burden of showing he has standing, a plaintiff must allege 1) an "injury in
12 fact" that is concrete, particularized, and actual or imminent, not hypothetical; 2) causation;
13 and 3) that it is likely, as opposed to merely speculative, that the injury will be redressed by a
14 favorable decision. *American Civil Liberties Union of Nevada v. Lomax*, 471 F.3d 1010,
15 1015 (9th Cir. 2006); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

16 **1. Injury In Fact**

17 Plaintiff claims that Rule 8.1115(a) "cost him his money judgment, denied him the
18 right to review of the decision doing so, and further denied him his due process and equal
19 protection rights to be treated as all other similarly situated litigants." Opp. 6:26-27 n. 3.

20 These are different types of injuries, and not all can confer standing. Plaintiff's
21 allegation that the citation rule "cost him his money judgment," is a claim that the outcome
22 of the state court case would have been different if the decision had been citable (the
23 Supreme Court would have granted review and reversed). This is the type of injury that
24 courts have held to be too speculative to serve as the basis for Article III standing. In *Loritz*
25 *v. U.S. Court of Appeals for the Ninth Circuit*, 382 F.3d 990, 992 (9th Cir. 2004), for
26 example, the Ninth Circuit held that the plaintiff's claim that the outcome of his case would
27 have been different had he been able to cite to a certain unpublished case was too speculative
28 for standing purposes. Here, Plaintiff similarly asks the Court to engage in speculation and

1 conjecture that the Supreme Court would have granted review and reversed absent the rule
2 barring citation of unpublished cases.

3 The claim that Rule 8.1115(a) denied Plaintiff his right to review, however, alleges
4 another type of injury. As Defendant points out, there is no constitutional right to appellate
5 review. California has no constitutional right to an appeal or other review of a judicial
6 decision; the right to an appeal is wholly statutory. *Porter v. United Services Automobile*
7 *Ass'n*, 90 Cal.App.4th 837, 839-40; *Powers v. City of Richmond*, 10 Cal.4th 85, 108 (1995);
8 *People v. Davis*, 147 Cal. 346, 348 (1905)(no right of appeal to Supreme Court). Moreover, it
9 is well established that “a State is not required by the Federal Constitution to provide
10 appellate courts or a right to appellate review at all.” *Francisco Enterprises, Inc. v. Kirby*,
11 482 F.2d 481, 484 (9th Cir. 1973), *quoting Griffin v. Illinois*, 351 U.S. 12, 18 (1955).

12 However, once a right to appeal is established, a state's procedures “must comport
13 with the demands of Due Process and Equal Protection.” *Evitts v. Lucey*, 469 U.S. 387,
14 393-94 (1985); *Lindsey v. Normet*, 405 U.S. 56, 77 (1972).⁵ Plaintiff claims that his “right
15 to review” under C.R.C. 8.500(b)(1) was “curtailed” by operation of the non-citation rule.
16 That rule holds that the Supreme Court “may” order review “when necessary to secure
17 uniformity of decision or to settle an important question of law.” Viewing the Plaintiff’s
18 claims in the best possible light, he argues that he was denied the statutory opportunity or
19 possibility of review – arbitrarily, unfairly, or otherwise in violation of due process, and
20 differently from other similarly situated applicants.

21 Taking Plaintiff’s allegations as true, he can show he suffered an injury. Courts have
22 repeatedly held that in the equal protection context, loss of a chance to compete for a benefit
23 on equal footing with other similarly situated individuals is an injury. As the Supreme Court
24 explained,

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26 ⁵ “[A] constitutional violation may cause injury to a legally protected interest that is not
27 itself guaranteed by the Constitution, as when the government denies a class of persons a contractual
28 or statutory benefit to which they could otherwise be entitled but for the government's violation of
their constitutional right to equal protection.” *American Civil Liberties Union of N.M. v.*
Santillanes, 506 F.Supp.2d 598, 620 (D.N.M. 2007)(loss of statutory option to vote in person at
polling place is injury that confers standing).

1 [w]hen the government erects a barrier that makes it more difficult for members of
2 one group to obtain a benefit than it is for members of another group, a member of the
3 former group seeking to challenge the barrier need not allege that he would have
4 obtained the benefit but for the barrier in order to establish standing. The “injury in
fact” in an equal protection case of this variety is the denial of equal treatment
resulting from the imposition of the barrier, not the ultimate inability to obtain the
benefit.

5 *Northeastern Fla. Chapter of Associated Gen. Contractors v. City of Jacksonville*, 508 U.S.
6 656, 666 (1993), *quoted in Silveira v. Lockyer*, 312 F.3d 1052, 1087 n.53 (9th Cir. 2002); *see*
7 *also Gratz v. Bollinger*, 539 U.S. 244, 262 (2003)(student denied admission to school
8 because of race preference was injured because he was denied “the opportunity to compete
9 on an equal basis”); *Settles v. U.S. Parole Comm*, 429 F.3d 1098, 1101-02 (D.C. Cir.
10 2005)(denial of opportunity to seek parole on equal footing is injury). Here, the “benefit” is
11 Supreme Court review, and the non-citation rule is the allegedly unlawful barrier that makes
12 it more difficult for litigants in unpublished cases to obtain review.

13 Nor was this injury “speculative” or “hypothetical” at the time Plaintiff filed this
14 action. *See Clark v. City of Lakewood*, 259 F.3d 996, 1006 (9th Cir. 2001)(standing depends
15 on facts as they existed when the case was filed). When Plaintiff filed this action, the
16 California Supreme Court was considering his petition for review; taking the allegations of
17 his complaint as true, he was about to be denied the opportunity to vie for Supreme Court
18 review on equal footing with litigants whose appellate opinions were published.

19 Plaintiff’s case is therefore distinguishable from *Schmier v. U.S. Court of Appeals for*
20 *the Ninth Circuit*, 279 F.3d 817 (9th Cir. 2002) on which Defendant relies heavily. In
21 *Schmeir*, the plaintiff alleged that litigants and lawyers were beneficially interested in having
22 the court perform its duties and in being able to know how the law is being applied. *Id.* at
23 819. The Court held that he could not generally assert the rights of litigants or lawyers as a
24 whole. *See also Loritz*, 382 F.3d at 992 (no standing to allege violation of rights of later
25 litigants who might want to cite plaintiff’s unpublished case). Because he had “failed to
26 allege any action by the Ninth Circuit that has immediately and personally subjected him to
27 sanctions or has adversely affected one or more of Schmier’s clients in a Ninth Circuit
28 litigation,” the Court found he had no standing. *Id.* at 821-822. Here, in contrast, Plaintiff

1 has alleged a concrete injury: deprivation of a chance to petition for review on equal footing
2 with similarly situated litigants.

3 **2. Causation**

4 Plaintiff's FAC clearly alleges that the rule barring citation of unpublished cases
5 diminishes his chances of review, because an unpublished case is less likely to be required to
6 secure uniformity of decision. FAC ¶ 21; 25.E (setting out statistics to show that California
7 Supreme Court does not review unpublished opinions).

8 **3. Likelihood That Injury Will Be Redressed**

9 Again, to evaluate whether Plaintiff has established that his injury is redressable for
10 standing purposes, this Court must examine the facts as they existed at the time the complaint
11 was filed. *Lomax*, 471 F.3d 1010, 1015 (9th Cir. 2006), *citing Lujan*, 504 U.S. at 569 n. 4
12 and *Clark v. City of Lakewood*, 259 F.3d 996, 1006 (9th Cir. 2001). In *Lomax* itself, for
13 example, plaintiffs claimed they were injured by a state rule that prevented their initiative
14 from qualifying for a ballot; although the election had long since passed by the time the case
15 reached the Ninth Circuit, the court examined whether plaintiffs' injury would have been
16 redressed had they won their challenge to the state rule at the time the complaint was filed.
17 471 F.3d at 1015-1016.

18 At the time Plaintiff's complaint was filed, when his petition for review was pending
19 before the California Supreme Court, a favorable decision finding the non-citation rule
20 unconstitutional would have redressed his injury. It would have put him on equal footing
21 with other litigants seeking review, removing the alleged barrier to his obtaining review. *See*
22 *Silveira*, 312 F.3d 1087 n.53. His injury was redressable when the case was filed.

23 **4. Mootness/Likelihood Plaintiff Will Be Wronged Again**

24 There is no longer a live case or controversy, however, if a determination of the legal
25 issues tendered by the parties "could not serve to prevent" the injury at issue. *DeFunis v.*
26 *Odegaard*, 416 U.S. 312, 317 (1974). If Plaintiff is "no longer able to satisfy the
27 redressibility requirement of Article III standing," then his claims are moot. *Scott v.*
28 *Pasadena Unified School District*, 306 F.3d 646, 656-657 (9th Cir 2003).

1 Today, the California Supreme Court has already declined to review Plaintiff's state
 2 court case, and this Court cannot redress Plaintiff's loss of a chance for review. Past injury
 3 alone cannot establish standing; to be entitled to injunctive and declaratory relief,

4 ... the Supreme Court has also required that a plaintiff show that "he is realistically
 5 threatened by a repetition of [the violation]." *Lyons*, 461 U.S. at 109. "The plaintiff
 6 need only establish that there is a reasonable expectation that his conduct will recur,
 7 triggering the alleged harm; he need not show that such recurrence is probable." *Jones*
 8 *v. City of Los Angeles*, 444 F.3d 1118, 1127 (9th Cir.2006), *citing Honig v. Doe*, 484
 9 U.S. 305, 318 & n. 6 (1988).

10 *Truth v. Kent School Dist.*, 499 F.3d 999, 1006 (9th Cir. 2007); *see also Gest v. Bradbury*,
 11 443 F.3d 1177, 1181 (9th Cir. 2006)(extending requirement to declaratory relief claims).

12 Plaintiff must show "a sufficient likelihood that he will again be wronged in a similar way."

13 *Canatella v. State of California*, 304 F.3d 843, 852 (9th Cir. 2002), *citing City of Los Angeles*
 14 *v. Lyons*, 461 U.S. 95, 111 (1983); *Armstrong v. Davis*, 275 F.3d 849, 860 -861 (9th Cir.
 15 2001).

16 The imminent injury upon which Plaintiff's standing rested when the Complaint was
 17 filed has already occurred. The case is now moot. Plaintiff has not alleged a likelihood he
 18 will be subjected to or affected by Cal.R.Court 8.1115(a) in the future. At oral argument,
 19 Plaintiff asserted he would not seek leave to amend to allege he is "realistically threatened by
 20 a repetition of the violation." *See Gest*, 443 F.3d at 1181. He claims that the Complaint
 21 properly alleges Article III standing because standing should be judged at the time the
 22 Complaint is filed. But the Court cannot treat this case as if it were frozen in time; once
 23 redressibility ends, the case is moot. There is no basis for this Court to find Article III
 24 standing.

25 **B. Additional Grounds for Dismissal**

26 Defendant's discussion of the merits in its motion to dismiss is more a survey of cases
 27 that involve California's publication rules than an actual argument that Plaintiff does not
 28 state a claim. However, the Court notes that even if Plaintiff had standing to challenge Cal.
 R. Court 8.1115(a), his claims are doomed to fail on the merits.

Plaintiff's Equal Protection claim alleges that the rule barring citation to unpublished
 cases divides similarly situated litigants into two classes – those with published opinions,

1 who are more likely to get review, and those with unpublished opinions, who are denied
2 virtually any chance at review. But where no suspect classes or fundamental rights are at
3 issue, the Equal Protection clause requires only that the government's classification
4 rationally further a legitimate state interest. *Equity Lifestyle Properties, Inc. v. County of San*
5 *Luis Obispo*, 505 F.3d 860, 871 (9th Cir. 2007), citing *Nordlinger v. Hahn*, 505 U.S. 1, 10
6 (1992).

7 Here, the classification rationally furthers the state's legitimate interests in managing
8 the Supreme Court's caseload, ensuring that the most important cases (primarily among those
9 judged worthy of publication under C.R.C. 8.1105(c)) are reviewed, and controlling the
10 direction of appellate precedent. See *Schmeir*, 78 Cal.App.4th at 711. Viewed a different
11 way, litigants whose cases were published are not similarly situated to those whose cases
12 were not published. A published appellate decision involves a new rule of law, applies an
13 existing rule to new facts, advances a new interpretation of positive law, or otherwise
14 represents an important development in the law. C.R.C. 8.1105(c). An unpublished
15 appellate decision falls within that majority of opinions that apply familiar rules and "do not
16 change the law." *Schmeir*, 78 Cal.App.4th at 711. Litigants whose cases were decided by
17 published decisions do not stand in the same position as those whose cases were resolved
18 with unpublished decisions. There is plainly a rational basis for distinguishing between the
19 two.

20 Moreover, even if California's citation and publication rules do create two tiers of
21 access to review by the California Supreme Court, there is no reason to believe that system
22 violates due process guarantees. Plaintiff has failed to articulate, either in his opposition or
23 in response to a direct question at oral argument, what is wrong with a process that might
24 lead the California Supreme Court to focus its *discretionary* review on new developments in
25 California decisional law. As the California Court of Appeal recognized in *Schmeir*, *supra*,
26 California's publication and citation rules function together as a system, ensuring that
27 important developments in the law are so designated and disseminated to the populace they
28 affect. Those rules simultaneously keep appellate precedent coherent and manageable.

1 While even discretionary appellate review must conform to due process requirements, due
2 process does not demand that every case be treated identically.

3
4 **III. Plaintiff's Theory That the Court of Appeal Intentionally Issued An Unpublished
5 Opinion In His State Court Case In Order To Avoid Review**

6 Despite Plaintiff's protestations that this case involves "solely" the "general
7 constitutionality of California Rule of Court Rule 8.1115(a) as written," Plaintiff confirmed
8 at oral argument that he also asserts a theory that the California Court of Appeal deliberately
9 and wrongfully issued an unpublished opinion in *Hild v. Southern California Edison* in order
10 to avoid review by the California Supreme Court. This claim in essence argues that the
11 Court of Appeal intentionally misapplied the criteria for certifying an opinion for publication
12 under C.R.C. 8.1105(c). Under the *Rooker-Feldman* doctrine, this Court has no jurisdiction
13 over such a claim.

14 The *Rooker-Feldman* doctrine provides that federal district courts are without subject
15 matter jurisdiction to review state court decisions, and state court litigants may therefore only
16 obtain federal review by filing a petition for a writ of certiorari in the Supreme Court of the
17 United States. See *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 486-87
18 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923); *Mothershed v. Justices*, 410
19 F.3d 602, 606 (9th Cir. 2005). The doctrine essentially bars federal district courts from
20 exercising jurisdiction "over a suit that is a *de facto* appeal from a state court judgment."
21 *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1139 (9th Cir. 2004). While the doctrine bars
22 jurisdiction over a claim that a state court acted unconstitutionally in plaintiff's case, federal
23 courts *may* hear a general challenge to a judicial rule or policy. *Mothershed*, 410 F.3d at 607.
24 Thus, in *Feldman* itself, the federal court had jurisdiction over a general challenge to the
25 District of Columbia bar rule requiring applicants to graduate from an accredited law school,
26 but did not have jurisdiction over a challenge to a District of Columbia court's decision
27 applying that rule to plaintiff applicants. *Id.* at 606. Similarly, in *Craig v. State Bar of*
28 *California*, 141 F.3d 1353, 1354 (9th Cir. 1998), the federal court had no jurisdiction to hear
a challenge to the state supreme court's denial of bar admission, but it could hear a "general

1 attack” on the state bar rules because “a state supreme court acts in a nonjudicial capacity
2 when it promulgates such rules.” *Id.*, cited in *Mothershed*, 410 F.3d at 607.

3 Here, Plaintiff argues that the Court of Appeal was aware that its decision in *Hild v.*
4 *Souther California Edison* met seven of eight criteria for publication, FAC ¶ 17, but that the
5 court nevertheless made its decision unpublished to insulate its result-oriented opinion from
6 Supreme Court review. FAC ¶ 18 and Exh. 4. This is an argument that the Court of Appeal
7 acted improperly in Plaintiff’s state court case, not a general challenge to a judicial rule or
8 policy. It is barred by *Rooker-Feldman*.

9
10 **CONCLUSION**

11 Defendants’ Motion to Dismiss is hereby GRANTED without leave to amend.

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14 **IT IS SO ORDERED.**

15 Dated: 2/25/08

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18 THELTON E. HENDERSON, JUDGE
19 UNITED STATES DISTRICT COURT
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