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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

STEPHEN KERR EUGSTER, Plaintiff, v. PAULA C. LITTLEWOOD, Executive Director of the WASHINGTON STATE BAR ASSOCIATION in her official capacity, et al., Defendants.	No. 2:17-cv-00392 TOR DEFENDANTS' JOINT MOTION TO DISMISS AMENDED COMPLAINT 05/11/2018 Without Oral Argument

TABLE OF CONTENTS

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TABLE OF AUTHORITIES

Federal Cases

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Washington Cases

Washington Statutes

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I. INTRODUCTION

Ever since being disciplined for professional misconduct, Plaintiff Stephen K. Eugster ("Eugster") repeatedly has sued officials of the Washington State Bar Association ("WSBA") and the Justices of the Washington Supreme Court ("Justices"), asserting the same claims over and over without success. Federal and state courts across Washington have determined that Eugster's challenges to the constitutionality of mandatory bar membership and license fees, the way those fees are spent, and Washington's lawyer discipline procedures are meritless.

As with Eugster's prior suits, this case is frivolous and should be dismissed. Most importantly, the res judicata doctrine bars Eugster's claims because he already has or could have litigated them in his prior cases. Eugster attempts to distinguish this case based on recent amendments to the WSBA's bylaws, but a prior court already has rejected that distinction as meritless and irrelevant. He also now asserts that the Washington Supreme Court and WSBA constitute a monopoly, but he provides no reasoning or authority in support of this theory, which is contrary to law, irrelevant to his repetitive claims, and does not alter the preclusive effect of the prior judgments against him.

In addition, the collateral estoppel doctrine bars Eugster's claims because prior courts have already recognized numerous grounds for dismissing them—

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including failure to state a claim, res judicata, standing, and ripeness. Eugster's claims also fail on their merits and his due process claim is not justiciable. For each and all of these reasons, this lawsuit should be dismissed with prejudice.

II. LITIGATION AND PROCEDURAL HISTORY

A. Eugster Repeatedly Has Sued the WSBA and the Justices.

This lawsuit is one of many Eugster has pursued against WSBA officials, including Defendant Paula Littlewood as Executive Director, and the Justices. The prior cases provide context and persuasive authority for the issues presented here. This Court may take judicial notice of these cases. *See MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986) (court can "take judicial notice of matters of public record"); *Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (taking notice of party's "five prior cases" in state and federal courts).

***Eugster* I:** In 2005, the WSBA charged Eugster with misconduct. *See In re Disciplinary Proceeding Against Eugster*, 166 Wash.2d 293, 298 (2009) ("*Eugster* I"). After review by a hearing officer and the WSBA Disciplinary Board culminating in a recommendation of disbarment, Eugster appealed to the Washington Supreme Court, which suspended him for 18 months. *Id*. at 327-28.

***Eugster* II:** In January of 2010, Eugster sued the WSBA, its officers, and the Justices, alleging that Washington's lawyer discipline system violates due process. *Eugster v. Wash. State Bar Ass'n*, No. CV 09-357, 2010 WL 2926237, at *1-2

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(E.D. Wash. July 23, 2010) ("*Eugster* II"). This Court dismissed the case on standing and ripeness grounds, and the Ninth Circuit affirmed on both grounds. *Id.* at *11, *aff'd*, 474 F. App'x 624, 625 (9th Cir. 2012).

***Eugster* III:** In March 2015, Eugster filed another suit in federal court against the WSBA, its officials, and the Justices. *Eugster v. Wash. State Bar Ass'n*, No. C15-0375-JLR, 2015 WL 5175722 (W.D. Wash. Sept. 3, 2015) ("*Eugster* III"). Eugster claimed that bar membership and license fees, and the way fees are spent, violate his constitutional rights of speech and association. *Id.* at *2. The district court concluded Eugster had "grossly misstate[d]" and "misconstrued" governing precedent, which establishes that mandatory bar membership and fees are constitutional. *Id.* at *5-7 (citing cases). The district court also concluded Eugster's "mere mention" of WSBA activities and "bare assertion" that license fees were being misspent were "legally conclusory and thus insufficient" to state a claim. *Id.* at *7. Eugster appealed and the Ninth Circuit affirmed. *Eugster* III, 684 F. App'x 618, 619 (9th Cir. 2017).

***Eugster* IV**: In November 2015, Eugster filed another lawsuit against the WSBA and its officials in state court. *Eugster v. Wash. State Bar Ass'n*, 198 Wash. App. 758, 767 (2017) ("*Eugster* IV"). Yet again, Eugster claimed that the lawyer discipline system violates procedural due process requirements. *Id.* at 770. The superior court dismissed with prejudice, and Division III of the Washington

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Court of Appeals affirmed, holding res judicata barred Eugster's challenge because he should have raised it, if at all, in his prior discipline proceeding in *Eugster* I. *Id.* at 794. Eugster petitioned the Washington Supreme Court for review, which was denied. *See Eugster* IV, 189 Wash.2d 1018 (2017).

***Eugster* V**: In December 2015, one month after filing *Eugster* IV, Eugster filed a twin complaint in this Court. *Eugster v. Littlewood*, No. 2:15-CV-0352-TOR, 2016 WL 3632711 (E.D. Wash. June 29, 2016) ("*Eugster* V"). Eugster again claimed that the lawyer discipline system "violates procedural due process." *Id*. at *1. This Court dismissed with prejudice, holding Eugster's claim was barred by res judicata. *Id*. at *4-6. Eugster's appeal of that decision to the Ninth Circuit remains pending. *See Eugster* V, No. 16-35542 (9th Cir.).

***Eugster* VI**: In November 2016, Eugster filed another lawsuit against the WSBA and its officials in the Western District. *Eugster v. Wash. State Bar Ass'n*, No. 2:16-cv-01765 (W.D. Wash.) ("*Eugster* VI"). As before, Eugster asserted claims that compulsory bar membership and fees are unconstitutional and that the lawyer discipline system violates due process. *See id*. He also argued that recent WSBA bylaw amendments, formally designating limited license practitioners as members, created a "new" WSBA lacking regulatory authority. *Id.* Eugster voluntarily dismissed the case on January 4, 2017. *Id.*

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***Caruso*:** One day after dismissing *Eugster* VI, Eugster filed a nearly identical suit on behalf of two other previously disciplined attorneys. *Caruso v. Wash. State Bar Ass'n*, No. C17-003 RSM, 2017 WL 1957077 at *1 (W.D. Wash. May 11, 2017). Eugster filed the case initially as a putative class action on behalf of all WSBA members, but abandoned the class claims soon after. *Id.* The district court dismissed the case with prejudice for failure to state a claim, holding that (1) substantial authority establishes compelled bar membership and license fees are constitutional; (2) the WSBA remains the same entity and retains its regulatory authority notwithstanding the recent bylaw amendments; and (3) the lawyer discipline system provides due process. *Id.* at *2-4. The court sanctioned Eugster for filing a "legally and factually baseless" lawsuit and ordered payment of the WSBA's fees. 2017 WL 2256782, at *4 (W.D. Wash. May 23, 2017). Both orders are on appeal. *See Caruso*, Nos. 17-35410, 17-35529 (9th Cir.).

B. Eugster Pursues the Same Claims in the Current Lawsuit.

On November 25, 2017, Eugster filed the present suit, initially against the WSBA and its Executive Director. *See* Dkt. No. 1. In the original complaint, Eugster again argued that bar membership and license fees violate his constitutional rights of association and speech; that the WSBA bylaw amendments related to membership stripped the WSBA of its regulatory authority; and that the lawyer discipline system fails to satisfy due process. Dkt. No. 1 at 9-10. The

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WSBA filed a Motion to Dismiss, arguing res judicata, collateral estoppel, and failure to state a claim. Dkt. No. 8 at 1-2.

Eugster then filed an Amended Complaint. Dkt. No. 9. In it, Eugster again claims that bar membership and license fees violate his constitutional rights and that the discipline system fails to satisfy due process. *Id*. at 18-19. He also reasserts his challenge from *Eugster* III against the use of fees. *Id*. at 20. In support of his claims, Eugster now argues that the Washington Supreme Court and WSBA constitute a monopoly over the practice of law. *Id*. at 7, 8, 10, 15-18. Eugster has removed the WSBA but added the Justices as defendants. *Id*. at 1; Dkt. No. 23 at 3.

III. STANDARDS OF REVIEW

A motion to dismiss on the basis of res judicata or collateral estoppel may be brought under Rule 12(b)(6). *See, e.g., Holcombe v. Hosmer*, 477 F.3d 1094, 1097 (9th Cir. 2007). Likewise, a complaint must be dismissed under Rule 12(b)(6) if it lacks a cognizable legal theory or fails to allege sufficient facts in support. *Zixiang Li v. Kerry*, 710 F.3d 995, 999 (9th Cir. 2013). Mere "labels and conclusions, a formulaic recitation of the elements of a cause of action, or naked assertions devoid of further factual enhancement will not suffice." *Landers v. Quality Commc'ns, Inc.*, 771 F.3d 638, 641 (9th Cir. 2014) (internal marks omitted). A complaint also must be dismissed under Rule 12(b)(1) if the plaintiff fails to

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demonstrate standing or ripeness for adjudication. *Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1121-23 (9th Cir. 2010).

IV. ARGUMENT

A. Res Judicata Bars Eugster's Claims Because They Were or Could Have Been Adjudicated in Each of His Prior Lawsuits.

All of the claims Eugster asserts here already have been or could have been adjudicated in each of his prior suits and are thus barred by the doctrine of res judicata. The purpose of res judicata, also called claim preclusion, is to "avoid[] repetitive litigation, conserv[e] judicial resources, and prevent[] the moral force of court judgments from being undermined." *Int'l Union of Operating Eng'rs-Emp'rs Constr. Indus. Pension v. Karr*, 994 F.2d 1426, 1430 (9th Cir. 1993) (internal quotes omitted). In determining whether res judicata bars a claim, federal courts apply the law of the jurisdiction in which each prior judgment was rendered. *Migra v. Warren City School Dist. Bd. of Ed.*, 465 U.S. 75, 81 (1984). Ninth Circuit law and Washington law are substantially aligned regarding application of the doctrine. *See Kuhlman v. Thomas*, 78 Wash. App. 115, 120 n.3 (1995) (noting overlap). In particular, a final judgment on the merits bars a later action between the same parties, or those in privity with them, over claims that were or could have been raised in the prior action. *W. Radio Servs. Co., Inc. v. Glickman*, 123 F.3d 1189, 1192 (9th Cir. 1997); *Kelly-Hansen v. Kelly-Hansen*, 87 Wash. App. 320, 329 (1997).

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Here, each claim Eugster raises already was or could have been raised in his past cases, and is thus barred. He attempts to distinguish this case as one of "first impression," but his alleged distinctions are meritless and irrelevant. The res judicata doctrine thus bars Eugster's claims in this case.

1. Eugster Has Already Challenged Bar Membership and License Fees.

Eugster claims that the requirement to maintain bar membership and pay license fees to practice law violates his constitutional rights of association and speech. Dkt. No. 9 at 18-19. Eugster already raised this claim in *Eugster* III. 2015 WL 5175722 at *1. His arguments were rejected on the merits. *See Eugster* III, 684 F. App'x at 619. Because he already litigated this claim unsuccessfully, Eugster is unquestionably barred from re-litigating it here. *W. Radio*, 123 F.3d at 1192. Eugster also could have raised this claim in any of his other suits, including when he challenged the lawyer discipline system in *Eugster* IV and V. 198 Wash. App. at 770; 2016 WL 3632711, at *1. Eugster did not, and is barred from raising it here for this additional reason. *See Kelly-Hansen*, 87 Wash. App. at 330; *W. Radio*, 123 F.3d at 1192.

2. Eugster Has Already Challenged the Use of License Fees.

Eugster also claims the WSBA improperly spends his fees for "purposes not germane to the practice of law," in violation of his constitutional rights of association and speech. Dkt. No. 9 at 20. Eugster already raised this claim in

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Eugster III. *See* 2015 WL 5175722, at *2-3. His arguments were rejected because they lacked specificity and he failed to identify any improper spending. *See Eugster* III, 684 F. App'x at 619. Eugster also could have raised this claim again in any of his other suits, but did not. On either basis, this claim is barred. *See W. Radio*, 123 F.3d at 1192; *Kelly-Hansen*, 87 Wash. App. at 330.

3. Eugster Has Already Challenged the Discipline System Procedures.

Eugster also vaguely asserts that the lawyer discipline system has "affected" his constitutional due process rights. Dkt. No. 9 at 7, 19. Eugster repeatedly has raised unsuccessful challenges to the lawyer discipline system and this claim is also barred.

Initially, Eugster already had the opportunity to raise this challenge during his prior disciplinary proceeding. *See Eugster* I, 166 Wash.2d at 298; *see also Eugster* IV, 198 Wash. App. at 785 (noting that constitutional challenges may be raised during bar disciplinary proceedings). Eugster failed to do so, and is thus barred from arguing the claim here. *See id.*; *Kelly-Hansen*, 87 Wash. App. at 330.

Eugster also raised the same claim in multiple subsequent suits that were dismissed with prejudice, including on the basis of res judicata. *See Eugster* IV, 198 Wash. App. at 767, 785-90, 794 (holding Eugster should have raised claim in *Eugster* I); *Eugster* V, 2016 WL 3632711 at *1, 5-6 (holding *Eugster* IV barred the claim); *Eugster* II, 474 F. App'x at 625 (holding Eugster lacked standing and the

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claim was unripe). Such dismissals preclude re-litigation. *See Berschauer Phillips Const. Co. v. Mut. of Enumclaw Ins. Co.*, 175 Wash. App. 222, 232 (2013) (noting dismissal "with prejudice" is a final judgment on merits for res judicata purposes); *Int'l Union*, 994 F.2d at 1429 (same).

4. Eugster's Asserted Distinctions Are Irrelevant and Meritless.

Eugster makes two unavailing attempts to distinguish this case from his prior cases. First, he asserts this is a case of "first impression" because of WSBA bylaw amendments designating limited license practitioners as members. Dkt. No. 9 at 2. Second, he attempts to distinguish his claims by asserting a new theory that the Washington Supreme Court and WSBA constitute a monopoly. *See* Dkt. No. 9 at 15-18. Neither alleged distinction affects the outcome here.

As to the bylaw amendments, this is not an issue of first impression: Eugster already raised the same argument in *Caruso* and it was rejected as frivolous. *See* 2017 WL 1957077 at *3. The argument remains frivolous here.

Decidedly, Eugster never explains how the designation of limited-license practitioners as WSBA members makes any difference to his claims. *See* Dkt. No. 9. Nor could he. Mandatory bar membership and license fees still serve strong state interests and impose minimal burdens on speech and association regardless of whether limited-license practitioners are designated bar members. *See* Section IV(C)(1), *infra*. The WSBA's expenditures are also legitimate either way. *See*

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Section IV(C)(2), *infra*. And Washington's bar discipline procedures still provide notice, an opportunity to be heard, and impartial adjudication. *See* Section IV(C)(3), *infra*. Accordingly, res judicata still applies here. *See, e.g.*, *Davidson v. Kitsap Cty.*, 86 Wash. App. 673, 682 (1997) (holding res judicata barred review where asserted change in circumstances was irrelevant).

Further, as Eugster acknowledges, the Washington Supreme Court and WSBA have authorized and regulated limited-license practitioners since at least 1983. *See* Dkt. No. 9 at 8. Indeed, Eugster already unsuccessfully challenged spending for such regulation in *Eugster* III. *See* 2015 WL 5175722 at *7. Thus, the issue of limited-license practice is not new, it has been or should have been litigated in each of Eugster's prior suits, and it does not affect the outcome here.

Eugster's monopoly theory fares no better. As Eugster himself observes, the authority of the Washington Supreme Court and WSBA over the practice of law is not new. *See* Dkt. No. 9 at 9 (acknowledging this form of bar regulation and oversight was established in 1933). As such, Eugster could have raised this theory before and is barred from doing so now. *See Franklin v. Murphy,* 745 F.2d 1221, 1230 (9th Cir. 1984) (res judicata barred claim because new legal theory could have been raised previously); *Costantini v. Trans World Airlines*, 681 F.2d 1199, 1201 (9th Cir. 1982) (res judicata applies to a new legal theory where the underlying cause of action is the same); *Kelly-Hansen,* 87 Wash. App. at 330.

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Moreover, Eugster never explains how Washington's bar system constitutes a monopoly, nor could he, given that regulation and monopolization are distinct concepts. The Supreme Court merely oversees the practice of law in this state rather than practicing law itself, with the WSBA acting as its "agent." *Hahn v. Boeing Co.*, 95 Wash.2d 28, 34 (1980).

Even if Eugster could begin to explain his theory, it would still fail under the state immunity doctrine. *See Mothershed v. Justices of Supreme Court*, 410 F.3d 602, 609-10 (9th Cir. 2005) (holding state supreme court and bar association did not constitute unlawful monopoly under federal or state law). As in *Mothershed*, Eugster is challenging aspects of Washington's bar system that are subject to state governmental control and supervision, which are immunized from antitrust restrictions. *See id.*; Dkt. No. 9 at 17-18; Wash. Gen. R. ("GR") 12.2; RCW 19.86.920 (Washington antitrust law construed in accordance with federal law).

Eugster also fails to explain why his monopoly theory would make any difference to his claims. *See* Dkt. No. 9. It would not. Whether the Supreme Court and WSBA have complied with antitrust laws is distinct from any alleged violations of the First Amendment or due process requirements, which are the only claims Eugster has pleaded. *See* Dkt. No. 9 at 13-22. In sum, res judicata precludes Eugster from re-litigating his claims in this serial lawsuit.

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B. Eugster Is Barred Under the Collateral Estoppel Doctrine from Challenging the Numerous Grounds for Dismissing His Claims.

In addition to res judicata, collateral estoppel bars Eugster's claims because the applicable grounds for dismissal of those claims have already been decided against Eugster, repeatedly. The collateral estoppel doctrine, also called issue preclusion, protects litigants from the burden of "relitigating an identical issue" and "promot[es] judicial economy" by "preventing needless litigation." *Wabakken v. California Dep't of Corr. & Rehab.*, 801 F.3d 1143, 1148 (9th Cir. 2015) (internal quotations omitted). As with res judicata, a federal court will apply the law of the jurisdiction that issued the prior judgment. *Migra*, 465 U.S. at 81. Ninth Circuit law and Washington law on collateral estoppel are again aligned. *Gausvik v. Perez*, 396 F. Supp. 2d 1173, 1175 (E.D. Wash. 2005) (noting there is "no material distinction"). In particular, the doctrine applies when an issue was decided in a prior action, that action ended in a final judgment on the merits, and the party against whom the issue is asserted was a party to that first action or in privity with one. *Hydranautics v. FilmTec Corp.*, 204 F.3d 880, 885 (9th Cir. 2000); *Nielson By & Through Nielson v. Spanaway Gen. Med. Clinic, Inc.*, 135 Wash.2d 255, 263 (1998).

Numerous courts have already determined that Eugster's claims against Washington's bar system are subject to dismissal, on multiple grounds. Prior

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courts have rejected Eugster's legal theories as failing to state a valid claim for relief. *See Eugster* III, 684 F. App'x at 619 (holding that mandatory bar membership and license fees are constitutional requirements to practice law, and that Eugster's broad assertion that the WSBA improperly spends fees fails); *Caruso*, 2017 WL 1957077 at *3-4 (holding mandatory bar membership and fees are constitutional and lawyer discipline system satisfies due process standards).[1]

Prior courts have also rejected Eugster's due process claim under res judicata, standing, and ripeness doctrines. *Eugster* IV, 198 Wash. App. at 785-90, 794 (res judicata); *Eugster* II, 474 F. App'x at 625 (standing and ripeness).

Prior courts have also informed Eugster that the designation of limited-license practitioners as members did not alter the WSBA's authority to regulate the practice of law and that spending to regulate those members is appropriate.

[1] In *Caruso*, the court rejected the theories Eugster argued for his clients as frivolous. Under the circumstances, those rulings should apply to him here as plaintiff. *See United States v. ITT Rayonier, Inc.*, 627 F.2d 996, 1003 (9th Cir. 1980) (noting "[c]ourts are no longer bound by rigid definitions of parties or their privies" and that determining privity is flexible and directed by policy); *Weinberger v. Tucker*, 510 F.3d 486, 493 (4th Cir. 2007) (noting attorney-client relationship in prior litigation can establish privity for preclusion purposes).

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Caruso, 2017 WL 1957077 at *3 (holding WSBA regularly amends its bylaws and the membership amendment did not alter WSBA's authority); *Eugster* III, 2015 WL 5175722 at *7 (holding spending for limited-license boards appropriate because geared toward "improving the quality of legal services").

These prior decisions are determinative in this case, notwithstanding Eugster's new monopoly theory. Arguing a new legal theory in support of the same ultimate claim or issue is insufficient to avoid collateral estoppel. *See, e.g.*, *Paulo v. Holder*, 669 F.3d 911, 918 (9th Cir. 2011) ("If a party could avoid issue preclusion by finding some argument it failed to raise in the previous litigation, the bar on successive litigation would be seriously undermined."). Moreover, Eugster has not explained the relevance of his new theory to his claims in this case or to any of the prior decisions against him. And as explained above, the theory has no legal merit in any event. In sum, Eugster's claims remain subject to dismissal for the same reasons prior courts have recognized.

C. Eugster's Claims Fail on the Merits.

Finally, even if this Court reaches the merits of Eugster's claims, it should dismiss for the same reasons recognized by prior courts. Specifically, Eugster fails to state a valid claim and his due process claim is not justiciable.

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1. Mandatory Membership and License Fees Are Constitutional.

Eugster's first claim challenging mandatory bar membership and fees fails to present a valid basis for relief. Ample authority establishes that these requirements are constitutional, specifically to regulate and improve the practice of law. *See Eugster* III, 2015 WL 5175722 at *2; *Caruso*, 2017 WL 1957077 at *3; *see also, e.g.*, *Harris v. Quinn*, 134 S. Ct. 2618, 2643-44 (2014); *Keller v. State Bar of Cal.*, 496 U.S. 1, 4 (1990); *Lathrop v. Donohue*, 367 U.S. 820, 827-28 (1961).

As these and other courts have repeatedly recognized, mandatory bar membership and license fees not only serve "strong" state interests, *Harris*, 134 S. Ct. at 2644, they also impose only minimal burdens on speech and association. Like any other WSBA member, Eugster remains "free to attend or not attend [bar] meetings or vote in [bar] elections," and he is not forced "to associate with anyone." *Lathrop*, 367 U.S. at 828. Likewise, he is not required "to express any particular ideas or make any particular utterances of any kind," and remains able "to express [his] own views or to disagree with the positions of the Bar." *Morrow v. State Bar of Cal.*, 188 F.3d 1174, 1176 (9th Cir. 1999). Thus, Eugster cannot demonstrate a violation of his First Amendment rights, and this claim should be dismissed as prior courts have done.

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2. WSBA Spending of License Fees Is Appropriate and Constitutional.

As to Eugster's second claim, his vague assertion that the WSBA collects his license fees "for political, ideological, and other non-chargeable activities" in violation of his constitutional rights also fails as a matter of law. Dkt. No. 9 at 20. Eugster fails to specify any non-chargeable activity funded by fees in violation of the Constitution. *See* Dkt. No. 9 at 20-21. Thus, as before, Eugster does not allege a basis for a cognizable legal claim regarding the WSBA's use of fees. *See Eugster* III, 684 F. App'x at 619 (holding "Eugster failed to allege facts sufficient to show an improper use of" his license fees).

Further, the WSBA has established a meticulous process to avoid any such violation. *See* WSBA, *Keller Deduction Overview, Calculation and Arbitration* (noting "extremely 'conservative' test" is used to determine which activities are non-chargeable).[2] As the district court observed in *Eugster* III, this deduction system "provides robust procedural safeguards to ensure compliance with *Keller*, many of them responding directly to Supreme Court precedent." 2015 WL 5175722, at *7. Eugster's unsupported assertion to the contrary should be dismissed for failure to state a claim.

[2] *Available at* https://www.wsba.org/docs/default-source/licensing/keller-deduction-overview.pdf?sfvrsn=9f3538f1_4 (last visited Mar. 13, 2018).

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3. The Lawyer Discipline System Affords Due Process.

With respect to Eugster's third claim, abundant authority establishes that Washington's lawyer discipline system satisfies due process requirements. In the context of lawyer discipline, the Ninth Circuit has recognized that due process consists primarily of "notice and an opportunity to be heard." *Rosenthal v. Justices of the Supreme Ct. of Cal.*, 910 F.2d 561, 564 (9th Cir. 1990). Further, the Ninth Circuit has held that "more than constitutionally sufficient procedural due process" exists where disciplined attorneys are afforded (1) the right to a hearing, (2) the ability "to call witnesses and cross-examine," (3) the burden being placed on the state "to establish culpability by convincing proof," and (4) ultimate, independent review by the state's supreme court. *See id.* at 564-65. Under Washington's system, lawyers are afforded these very protections. *See* Wash. R. Enf't of Lyr. Conduct 4.1, 5.7, 10.1, 10.3, 10.11, 10.12, 10.13, 10.14 (b), 12. As with the system considered in *Rosenthal,* Washington's discipline system provides more than adequate due process.

4. Eugster's Due Process Claim Is Not Justiciable.

Eugster's due process claim should also be dismissed for lack of standing and because it is unripe. To have standing to seek injunctive relief, Eugster must show imminent harm. *Chandler*, 598 F.3d at 1122; *Eugster* II, 474 F. App'x at 625 (affirming Eugster lacked standing because he did not point to any imminent

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injury for which he sought relief). Here, Eugster asserts that he will be "irreparably harmed," but without explanation or support. Dkt. No. 9 at 14. Eugster's due process claim thus fails because he has no standing to pursue it.

Likewise, a due process claim is not ripe if a claimant alleges an injury that is speculative, abstract, and undeveloped. *See Pence v. Andrus*, 586 F.2d 733, 737-38 (9th Cir. 1978); *Eugster* II, 2010 WL 2926237 at *8 (concluding Eugster's claims were unripe because they relied on "abstractions" and speculation). Here, as in prior cases, Eugster's due process claim is entirely abstract and vague. *See* Dkt. No. 9 at 7 (relying on bare assertion that discipline system violates "the Constitutional Scrutiny Test"). As such, Eugster's due process claim is unripe and fails for that added reason.

D. Eugster's Claims Should Be Dismissed With Prejudice.

This Court should dismiss Eugster's claims with prejudice. He has already amended his complaint once, in response to a motion to dismiss, but could not salvage any of his claims, which remain barred on multiple grounds. As such, leave for further amendment should not be granted. *See, e.g.*, *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, 546 F.3d 981, 990 (9th Cir. 2008) (affirming dismissal without leave to amend because plaintiff was unable to propose any amendments that would save complaint).

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V. CONCLUSION

Despite repeated prior dismissals of his claims and a sanction for frivolity, Eugster continues to advance unavailing challenges to the state bar system. He should be precluded from seeking another round of review of the same meritless claims, and from asserting a new, equally meritless monopoly theory. The doctrines of res judicata and collateral estoppel exist to preclude precisely this type of repetitive litigation. The WSBA respectfully requests that Eugster's requests for relief be denied and that this suit be dismissed with prejudice.

DATED this 22nd day of March, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of March, 2018, I caused to be electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which in turn automatically generated a Notice of Electronic Filing (NEF) to all parties in the case who are registered users of the CM/ECF system. The NEF for the foregoing specifically identifies recipients of electronic notice.

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DATED this 22nd day of March, 2018.

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