NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

STEVE MULLEN, Plaintiff - Appellant, v. UNITED STATES OF AMERICA, Defendant - Appellee.	No. 11-56533 D.C. No. 2:11-cv-01374-GHK MEMORANDUM[*]

Appeal from the United States District Court
for the Central District of California
George H. King, Chief Judge, Presiding

Submitted February 11, 2013[**]

Before: FERNANDEZ, TASHIMA, and WARDLAW, Circuit Judges.

Steve Mullen appeals pro se from the district court's judgment dismissing his independent action to set aside a prior judgment for fraud on the court under Fed. R. Civ. P. 60(b). We have jurisdiction under 28 U.S.C. § 1291. We review

[*] This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

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

the dismissal of an independent action under Rule 60(b) for an abuse of discretion. *Appling v. State Farm Mut. Auto. Ins. Co*., 340 F.3d 769, 780 (9th Cir. 2003). We affirm.

The district court did not abuse its discretion in dismissing Mullen's independent action because his allegations fail to state a facially plausible claim of fraud on the court. *See United States v. Beggerly*, 524 U.S. 38, 47 (1998) ("[A]n independent action should be available only to prevent a grave miscarriage of justice."); *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007) (claim must be "plausible on its face"). Mullen's allegation that the Department of Justice Civil Rights Division could not locate an audio tape he requested in its central filing system is insufficient to support a "plausible" inference that a United States District Judge and two Assistant United States Attorneys conspired to fabricate that tape. *Bell Atl. Corp.*, 550 U.S. at 570.

AFFIRMED.