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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

IN RE RICO FRAUD CASE LITIGATION

ROBERT ALLEN RICHARDS JR.,

Plaintiff-Appellant,

v.

COUNTY OF LOS ANGELES; et al.,

Defendants-Appellees.

No. 17-56732

D.C. No. 2:17-cv-00400-PSG-AGR

MEMOANDUM

Appeal from the United States District Court
for the Central District of California
Philip S, Gutierrez, District Judge, Presiding

Submitted May15, 2018**

Before: SILVER, BEA, and WATFORD,Circuit Judges.

Appendix A

Robert Allen Richards Jr., appeals pro se from the district Court's judgment dismissing his action alleging violations Of the Racketeer Influenced and Corrupt Organizations Act and other claims in Connection with child support Proceedings. Proceedings. We have jurisdiction under 28 U.S.C. 1291. We review de novo a dismissal

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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).

under the *Rooker-Feldman* doctrine. *Noel v. Hall*, 341 F.3d 1148, 1154 (9th Cir, 2003), We affirm.

The district court properly dismissed Richards's action for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine because Richards's claims constituted a forbidden "de facto appeal" of a prior state court judgment or were "inextricably intertwined" with that judgment. *See id.* at 1163-65 (discussing proper application Of the *Rooker-Feldman* Doctrine); *see also Henrichs v. Valley View Dev.,* 474 F. 3d 609, 616 (9th Cir. 2007) (*Rooker-Feldman* doctrine barred plaintiff's Claim because the relief sought "would require

the district court to determine that the state court's decision was wrong and thus void").

We do not consider matters not specifically and distinctly raised and argued in 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). We do not consider document or facts not presented to be district court. *See United States v. Elias*, 921 F. 2d 870, 874 (9th Cir. 1990) (Documents or facts not presented to the district Court are not part of the record on appeal,").

Richards's motion for leave to file multiple reply briefs (Docket Entry No. 24) is granted.

The Clerk shall file the briefs submitted at Docket Entry Nos. 20-23.

AFFIRMED.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES-GENERAL

Case No. CV 17-0400 PSG (AGRx)

Date October 20, 2017

Title Robert Allen Richards Jr. v.

County of Los Angeles et al.

Present: The Honorable Philip S, Gutierrez,

United States District Judge

Wendy Hernandez	Not Reported
Deputy Clerk	Court Reporter

Attorneys Present for Plaintiff(s):

Not Present

Attorneys Present for Defendant(t):

Not Present

Proceeding (In Chamber): Order

Granting Defendants' Motion to Dismiss

Appendix B

Before the Court are Defendant Jesus D. Perez's motion to dismiss or strike portions of Plaintiff Robert Allen Richards, Jr's Third Amended Complaint and Defendant County of Los Angeles's(CSSD) ("COLA") motion to dismiss Plaintiff's Third Amended Complaint.[1] *See* Dkts .# 95 ("Perez MTD"), 96 ("COLA MTD"). Plaintiff opposes the motions, *see* Dkts. # 115 ("COLA Opp."), 116 ("Perez Opp."), and Defendants timely replied, *see* Dkts. # 118 ("Perez Reply"), 120 ("COLA Reply"). The Court finds the matter appropriate for Decision without oral argument. *See* Fed. R. Civ. P. 78(b); L.R. 7-15. Having considered the moving papers, the Court Grants Defendants' motions to dismiss with prejudice.

I. Background

A. Introduction

This case arises from a paternity action against Plaintiff Robert Allen Richards Jr.(Plaintiff) in Superior Court of California, Los Angeles County, in which Defendant COLA (together with Defendant Jesus D. Perez, "Defendants") asserted that Plaintiff is the biological Of Tracie Richards ("Tracie"). *See* Dkt. # 94, Third Amended Complaint ("TAC"), Ex. 14 at1. Plaintiff continues to deny the Finding by the Superior Court that he is Tracie's father and claims that Defendant Derek K. Williams ("Williams") is the Biological father. TAC Para.5. Plaintiff filed a Voluntary Declaration of Paternity upon Tracie's birth in 2002, prior to The litigation in Superior Court.[2] *See* TAC, Ex. 15 at 1, 4; *See also* Defendant

[1] Defendant Maria Del Rosario Guardado ("Guardado") requests to be included in the motion to dismiss filed by co-defendant Perez and COLA. *See* Dkt. #110. As defendant Guardado is proceeding pro se, the Court grants this request.

[2] The details of this Declaration are not before the Court.

Perez's Request for Judicial Notice ("Perez RJN"), Dkt # 95-3, Ex. A. [3]

Plaintiff alleges that Defendants "Committed Paternity Fraud... a type of fraud that occurs when... a mother names a man to be the biological father of a child, when she knows or suspects that he is not the biological father" TAC para. 9.

Further, Plaintiff claims that he"[i]s the victim of a well thought out Paternity Fraud scheme to get tax free money." *Id.* para. 3.

B. Procedural History

On January 18, 2017, Plaintiff filed His original complaint against COLA, Perez, Guardado, and Williams.[4] *See* Dkt. # 1. Defendant Perez moved to dismiss Plaintiff's Original complaint on February 23, 2017. See Dkt. # 13. The court Granted Perez's first motion to dismiss without prejudice on March 31, 2017. See Dkt. #25. On April 28, 2017, Plaintiff filed His First Amended Complaint ("FAC"). *See* Dkt. # 28. Defendant Perez moved to dismiss the FAC on May 12, 2017. *See* Dkt. #38. Defendant COLA moved to dismiss the FAC on May 19, 2017. *See* Dkt. # 47.

[3] When considering a motion to dismiss, a court typically does not look beyond the complaint in order to avoid converting a motion to dismiss into a motion for summary judgment. *See Mack v. South Bay Distribs., Inc.*, 798 F. 2d 1279, 1282 (9th Cir. 1986), *overruled on the grounds by Astoria Fed. Sav. & Loan Ass'n v. Solimiono*, 501 U.S. 104 (1991). Notwithstanding this precept, a court may properly take judicial notice of (1) material which is included as part of the complaint or relied upon by complaint, and (2) matters in the public record. *See Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir, 2006); *Lee v. City of L.A.*, 250 F.3d 668, 688-89 (9th Cir. 2001).

A court may also take judicial notice pursuant To Federal Rule of Evidence 201 (b). Under the rule, a judicial noticed fact must be one that is "not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R.Evid. 201(b). A court "must take judicial notice if a party requests it and the court is supplied with the necessary information." *See* Fed. Evid. 201(c)(2); *In re Icenhower*, 755 F. 3d 1130, 1142 (9th Cir. 2014). Accordingly, the Court takes judicial notice of exhibits "A-U" attached to Perez's Request for Judicial

Notice in Support of his Motion pursuant to Rule 201 of the Federal Rules of Evidence, as these documents are all publically filed court documents. *See* Fed. R. Evid.201 (b); *see also U.S. ex rel. Robinson rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244,248 (9th Cir. 1992) (holding that publicly filed Documents from proceedings in other Courts that "have a direct relation to matters at issue" are the proper subject of judicial notice) (citation omitted).

[4] Defendant Perez was Guardado's attorney during the paternity proceedings. *See* TAC para. 7,9. Plaintiff filed his Second Amended Complaint ("SAC") on June 26, 2017, thereby mooting Perez and COLA's

motion to dismiss the SAC. *See* Dkts. #90, 94. On September 8, 2017, Defendant Perez Moved to dismiss or strike portions of the TAC. *See* Perez MTD. On September 8, 2017, Defendant COLA also moved to dismiss the TAC. *See* COLA MTD. In his Plaintiff argues, *inter alia,* that Defendants committed paternity fraud. TAC para. 3, 9. Plaintiff also asserts two principle claims against Defendants for their alleged (1) violation of Racketeer Influenced and Corrupt Organization Act ("RICO"), 18 U.S.C. 1962 et seq., and (2) conspiracy to violate RICO.[5] *See* TAC at 16, 17, 23-25. Plaintiff also attempts to prosecute a number of criminal charges against

Defendants. *See* TAC at 17-22, 25-27.

C. Fact Adjudicated in State Court Proceeding

1. On February 28, 2002, Plaintiff and Defendant Guardado both signed a Declaration of Paternity stating that they were the biological parents of Tracie D. Richards. Perez RJN, Ex. A (Declaration of Paternity filed with the State of California-Health & Human Services Agency; 3/15/2002).

2. On April 14, 2015, COLA filed a Complaint Regarding Parental Obligations against Plaintiff Seeking child support for Tracie in the amount of $1,319.00 per month. *See* Defendant COLA's

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Request for Judicial Notice ("COLA RJN"), Dkt. #97, Ex. A[6]; *see also*

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[5]Plaintiff specifically alleges four counts against COLA and Perez: 1) "Enterprise/ ENTERPRISE"; 2) "Racketeering"; 3) "Conspiracy to Engage in a Pattern Racketeering Activity"; 4) "Interstate and International Commerce of the ENTERPRISES/ Enterprises." TAC para. 31-34, 51-54. Plaintiff alleges three count against Defendant Guardado: 1) "Interest in an Enterprise Engaged in a Racketeering Activity";

2) "Conspiracy of RICO";

3) "Racketeering." Because Plaintiff fails to substantively differentiate between the claims, the court will analyze the counts in the context of 1) RICO, and 2) Conspiracy to Violate RICO.

[6]The court takes judicial notice of Exhibits A-J attached to COLA's Request for Judicial Notice pursuant to Rule 201 of the Federal Rules of Evidence, as These documents are all Publically filed court documents. *See* Fed. R. Evid. (b); *see also Borneo*, 971 F.2d at248.

Perez RJN Ex. B (4/14/2015 Complaint- *County of Los Angeles v. Robert Allen Richards Jr.*, LASC #BZ176122).

3. On September 23, 2015, Judgment was entered against plaintiff ordering him to pay child support in the amount of $1,319.00 per month. COLA RJN, Ex. B; Perez RJN, Ex. C (9/23/2015 Judgment Regarding Obligations).

4. On October 9, 2015, Plaintiff Filed an Application to Set Aside The Judgment and Support Order Based upon lack of notice. COLA RJN, Ex. C; Perez RJN, Ex. D (10/09/2015 Application to Set Aside Support Order).

5. On January 7, 2016, Plaintiff Filed a Request for Order, Requesting, *inter alia,* a DNA Test and Judgment of Non-paternity. COLA RJN, Ex.D; Perez RJN,Ex, E (1/07/2016 Request for Order).

6. On February 24, 2016, Plaintiff Filed a Request to Set Aside Voluntary Declaration of Paternity. COLA RJN, Ex. F (2/24/2016 Application to Set Aside Voluntary Declaration of Paternity}.

7. On July 19, 2016, the state court denied Plaintiff's Application to Set Aside Judgment and entered A Judgment Regarding Parental Obligations ordering Plaintiff to ordering Plaintiff to pay a modified child support obligation in amount of $1,041.00 per month. COLA RJN, Ex. F; Perez RJN Ex. K (7/18/2016 Minute Order, Ex. "L"; 7/19/2016 Judgment).

8. On July 25, 2016, Plaintiff Filed a Declaration to Application to Set Aside

Voluntary Declaration of Paternity and requesting Genetic testing. COLA RJN, Ex, G; Perez RJN, Ex. M (7/25/2016 Declaration to Application to Set Aside Paternity).

9. October 12, 2016, the court Denied Plaintiff's Application To Set Aside Judgment of Paternity and Voluntary Declaration of Paternity. COLA RJN, Ex. H; (10/12/2016 Order After Hearing).

10. On or about October 11, 2016, Plaintiff filed a Request for Order requesting a change in His child support obligations and paternity testing.

COLA RJN, Ex. I; Perez RJN, Ex. P (10/11/2016 Request for Change in Child Support and Paternity Testing).

11. On December 21, 2016, the state court denied Plaintiff's Application to Set Aside Voluntary Declaration of Paternity and Request for Genetic testing. COLA RJN, Ex. J; Perez RJN, Ex. R (12/21/2016 Order After Hearing).

D. Motion to Dismiss

The defendants move to Dismiss the TAC on the Following grounds:

(1) lack of personal jurisdiction

over Defendant COLA due to insufficient service of process pursuant to Federal Rule of Civil Procedure 12(b)(5);[7]

(2) lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine pursuant to Federal Rule of Civil Procedure 12(b)(1);

(3) res judicata and collateral;[8]

(4) failure to state a claim upon which relief can be granted under Federal Rule of Civil Procedure 12(b)(6); and

(5) lack of private right of action to give rise to criminal violations.

COLA MTD at 7-9, 14-17; Perez MTD at 1-2. In the alternative, Defendant Perez moves to strike portions of the TAC pursuant to Federal Rule of Civil Procedure 12(f). Perez MTD at 2-3.

II. Legal Standard

A. Personal Jurisdiction

Rule 12(b)(5) of the Federal Rules of Civil Procedure authorizes a defendant to move for dismissal or to quash a summons due to insufficient service of process. "A federal court does not have jurisdiction over a defendant unless the defendant has been served

properly [with the summons and complaint] under Fed.R. Civ.P. 4....[W]ithout substantial compliance with Rule 4, neither actual notice nor simply naming the defendant in the complaint will provide personal jurisdiction.'" *Direct Mail Specialist, Inc v. Eclat Computerized techs.* 840 F.2d 685, 688 (9th Cir. 1988) (internal quotation marks omitted). Once service of process is Challenged, the "plaintiff[] bear[s] the burden of establishing that service was valid." *Brockmeyer v. May*, 383F.3d 798, 801 (9th Cir. 2004). If plaintiff is unable to satisfy its burden of demonstrating effective service, the Court has discretion to either dismiss or retain the action. *See Stevens v. Security Pac. Nat'l Bank*, 538 F.2d. 1387, 1389 (9th Cir. 1976).

B. Subject Matter Jurisdiction

A motion to dismiss an action Pursuant to Federal Rule of Civil Procedure 12(b)(1) raises the question of the federal court's subject matter jurisdiction over the action. The objection presented by this motion is that the Court has no authority to hear and decide the case. This defect may exist despite the formal sufficiency of the allegations in the complaint. *See T.B. Harms Co. v. Eliscu*, 266 F. Supp. 337, 338 (S.D. N.Y. 1964), *Aff'd* 339 F.2d 823 (2d Cir. 1964)

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[7] Only Defendant COLA moves to dismiss the complaint on the grounds

of lack of personal jurisdiction.

[8] Only Defendant COLA moves dismiss the complaint under the doctrines of res judicata and collateral estoppel.

(the formal allegations must Yield to the substance of the claim when a motion is filed to dismiss the complaint for lack of subject matter jurisdiction). When considering a Rule 12(b)(1) motion challenging the substance of jurisdictional allegations, the Court is not restricted to the face of the pleading, but

May review any evidence, such as declarations and testimony, to resolve any factual disputes concerning the existence of jurisdiction. *See McCarty v. United States,* 850F.2d 558, 560 (9th Cir. 1988). The burden of proof in a Rule 12(b)(1) motion is on the party asserting jurisdiction. *See Sopcak v. Northern Mountain Helicopter Serv.,* 52 F.3d 817, 818 (9th Cir. 1995); *Association of Am. Med. Coll. V. United States,* 217 F.3d 770, 778-79 (9th Cir. 2000).

C. Failure to State a Claim

Federal Rule of Civil Procedure 8(a) states that a complaint must contain a "short and plain statement of claim showing that the [plaintiff] is entitled to relief." Fed. R Civ. P. complaint must "contain sufficient factual Matter, accepted as true, to 'state a claim to relief that Is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)(quoting *Bell Atl. Corp.v. Twombly,* 550 U.S. 544,570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."

Iqbal, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556). "Factual allegations must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 570.

In assessing the adequacy of the complaint, the court must accept all pleaded facts as true and construe them in light most favorable to the plaintiff. *Turner v. Cty. of S.F.*, 788 F.3d 1206, 1210 (9th Cir, 2015); *Cousins v. Lockyer*, 568 F.3d 1063, 1067 (9th Cir. 2009). The Court then determines whether the complaint "pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."

Iqbal, 556 U.S. at 678. "Mere conclusory statements in a complaint and 'formulaic recitation[s] of the elements of a cause of action' are not sufficient." *Chavez v. United States*, 683 F.3d 1102, 1108 (9th Cir. 2012) (quoting *Twomly*, 550 U.S. At 555). Therefore, "a court discounts conclusory statements, which are not entitled to the presumption of truth, before determining whether a claim is plausible." *Chaves*, 683 F.3d at1108 (citing *Iqbal*, 556 U.S. at 678).

Rule 9(b) requires a party alleging fraud to "state with particularity the circumstances constituting fraud." Fed. R. Civ. P. 9(b).

To plead fraud with particularity, the pleader must state the time, place, and specific content of the false representations. *Odom v. Microsoft Corp.*. 486 F.3d 541, 553 (9th Cir. 2007). The allegation "must set forth more than neutral facts necessary to identify the transaction. The plaintiff must set forth what is false or misleading about the statement, and why it is false." *Vess v. Ciba-Geigy Corp. USA,* 317 F.3d 1097, 1106 (9th Cir. 2003) (internal Quotation marks omitted).

In essence, the defendant must be able to prepare an adequate answer to the allegations of fraud.

Where multiple defendants allegedly engaged in fraudulent activity, "Rule 9(b) does not allow a complaint to merely lump multiple defendants together." *Swartz v. KPMG LLP*, 476F.3d 756, 764 (9th Cir. 2007). Rather, a plaintiff must identify each defendant's role in the alleged scheme. *Id.* at 765.

D. Motion to Strike

A motion to strike material From a pleading is made pursuant to Federal Rule of Civil Procedure 12(f). Under Rule 12(f), the Court may strike from a pleading any "insufficient defense" or any material that is "redundant, immaterial, impertinent or scandalous."

A Rule12(f) motion is not a motion to dismiss for dismiss for state a claim upon which relief may be granted, and, where not involving a purportedly insufficient defense, simply tests whether a pleading contains inappropriate material. The Court may also strike under Rule 12(f) a prayer for relief which is not available as a matter of law. *Tapley v. Lockwood Green Engineers*, 502 F,2d 559, 560(8th Cir. 1974). The essential function of Rule 12(f) motion is to "avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior trial. " *Fantasy, Inc. v. Fogerty,* 984 F,2d 1524, 1527 (9th Cir. 1993), *rev'd on other grounds*, 510 U.S. 517 (1994).

Because of "the limited importance of pleading in federal practice," motions to strike pursuant to Rule 12(f) are disfavored. *Bureerong v. Uvawas*, 922 F.Supp. 1450, 1478 (C.D. Cal. 1996).

III. Discussion

A. Failure to Timely Effectuate Service

Defendant COLA argues that Plaintiff's TAC should be dismissed for failure to timely effectuate service under Federal Rule of Civil Procedure 4(m). Rule 4(m) states that, "[i]f a defensant is not Served within 90 days the complaint is filed, the court.... must dismiss the action without prejudice against that defendant or order that service be made within a specified time" unless "the plaintiff shows good cause for the failure." Fed. R. Civ. P. 4(m). absent a finding of good cause, the Court may extend the time for service if

there is a showing of excusable neglect. *Lemoge v. United States*, 578 F.3d 1188, 1198 (9th Cir. 2009). In *Lemoge*, the Ninth Circuit held that "[e]xcusable neglect 'encompass[es] situations in which the failure to comply with a filing deadline is attributable to negligence' ... and includes 'omissions caused by carelessness.'" *Id.* at 1192 (quoting *Pioneer Inv. Servs. Co v. Brunswick Assocs. Ltd.*, 507 U.S. 380,388,394 (1993)). If the plaintiff is unable to satisfy its burden of demonstrating effective service, the Court has discretion to either dismiss or retain the action. *See Stevens*, 538 F.2d at 1389. Defendant COLA argues that here, "Plaintiff effectuated service of process on the County on September 20, 2017 (Dkt. No.111), which was two hundred and forty (240) days from the date when Plaintiff filed his initial Complaint on January 18, 2017 (Dkt. No. 1)."

COLA Reply at 2n.1.[9] Defendant COLA further argues that "this warrants mandatory dismissal because service of process was not effectuated within 90 days after filing the initial complaint." *Id.* Because Plaintiff does not proffer a counter argument to rebut COLA's claim or show good cause for the failure and, once service of process is challenged the "plaintiff[] bear[s] the burden of establishing that service was valid," the Court determines that COLA was not properly served under Rule 4(m). *Brockmeyer*, 383 F.3d 801; Fed. R. Civ. P. 4(m). However, in light of additional finding of the Court, discussed *infra*, the Court finds this issue to be moot and chooses to exercise its discretion to retain the action at this time. *See Stevens*, 538 F.2d at 1389.

B. Subject Matter Jurisdiction and the *Rooker-Feldman* Doctrine[10]

The Supreme Court has explained that "'lower federal courts no power what ever to sit in direct review of state court decision.'" *District of Columbia Ct. of App. v. Feldman,* 460 U.S. 462, 482 n. 16 (1983) (quoting *Atlantic Coast Line R. Co. v. Brotherhood of Locomotive Eng'rs.* 398 U.S. 281, 296 (1970). Pursuant to the *Rooker-Feldman* doctrine, a federal Court is without jurisdiction to exercise appellate review of state court judgments. *See Rooker-Fidelity Trust,* 263 U.S. 413, 415-16 (1923); *Feldman,* 460 U.S. at 482-486. Specifically, the *Rooker-Feldman* doctrine bars a litigant who lost in state

court "seeking what in substance would be appellate review of the state judgment in a United States district court." *Johnson v. DeGrandy*, 512 U.S. 997, 1005-06 (1994). The underlying question is whether "the District Court is in essence being called upon to review the state court decision." *Feldman*, 460 U.S. at 482 n. 16.

The *Rooker*-Feldman doctrine "includes three requirements: (1)'[T]he party against whom the doctrine is invoked must have actually been a party to the state-court judgment

[9]The Court reviewed the proof of service and notes that service of COLA occurred on September 15, 2017. See Dkt. #111. This date, however, is still well outside the prescribed time period for service of process.

[10]Because Defendants' *Rooker-Feldman* argument "is a challenge for lack of subject matter jurisdiction," *Olson Farms, Inc. v. Barbosa,* 134 F.3d 933, 937 (9th Cir. 1998), the Court will consider it as a threshold matter before turning to the Defendants' motion to dismiss for failure to state a claim for which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6).

or have been in privity with such a party'; (2) 'the claim raised in the federal suit must have been actually raised or inextricably intertwined with state-court judgment'; and (3) 'the federal claim must not parallel to the state-court claim.'" *Lance v. Dennis,* 546 U.S. 459, 462 (2006) (quoting *Lance v. Davidson,* 379 F. Supp. 2d 1117, 1124 (D. Colo. 2005)).

i. Involves same party

ii. Here, the plaintiff was a party in the prior state court judgment where he was unsuccessful in his efforts to reverse his Voluntary Declaration of Paternity and was ordered to pay child support. *See* COLA RJN, Ex. A; Perez RJN, Ex. B (4/15/2015 Complaint- *County of Los Angeles v. Robert Allen Richards Jr.,* LASC #BZ176122); *see also* TAC para. 16-17, 22-25, Exs. 14, 15; Perez RJN, Exs. C, K, L, O, Q, and R; COLA RJN, Exs. B, F, H, J. Thus, this element is met.

iii. *Inextricably Intertwined*

Pursuant to the *Rooker-Feldman* doctrine, "federal district courts do not have jurisdiction to hear de facto appeals from state court

Judgments." *Carmona v. Carmona*, 603 F.3d 1041, 1050 (9th Cir. 2003)). In *Cooper v.* Ramos, 704 F.3d 772 (9th Cir. 2012), the Ninth Circuit "found Claims inextricably intertwined where the relief requested in the federal action would effectively reverse the state court decision or void its ruling." *Id.* at779 (internal quotation marks and Citation omitted). The Supreme Court held in *Feldman* that "[i]f the constitutional claims prevented to a United States District Court are inextricably intertwined with the state court's [decision]... then the District Court is in essence being called upon to review the state court decision. This the District Court may not do." *Feldman*,460 U.S. at 482 n. 16 (emphasis added).

Where the parties do not directly contest the merits of a decision by the state court, the *Rooker-Feldman* doctrine may also apply as it "prohibits a federal district court from exercising subject matter jurisdiction over a suit that is a *de facto* appeal from a state court judgment." *Reusser v. Wachovia Bank, N.A.*, 525 F.3d 855, 859 (9th Cir. 2008) (quoting *Kougasian v.TMSL, Inc.*, 359 F.3d 1136, 1139 (9th Cir. 2004). "A federal action constitution such a *de facto* appeal where 'claim raised in the federal court action are inextricably intertwined with the state court's decision such that the adjudication of the federal claims would undercut the state ruling

or require the district court to interpret the application of state laws or procedural rules.'" *Reusser*, 525 F.3d at 859 (quoting *Bianchi v. Rylaarsdam*, 334 F.3d 895, 898 (9th Cir.2003). Under these circumstances, "the district court is in essence being called upon to review the state court decision." Reusser, 525 F.3d at 859 (quoting *Feldman,* 460 U.S. at 482 U.S. n.16). In this case, Defendant Perez argues that "Plaintiff's claims against the Defendants... all arise from his multiple, unsuccessful efforts at reversing his Voluntary Declaration of Paternity in the underlying State court Paternity Action." Perez MTD at 1, 10. Defendant COLA states that, "both the state and the present case seek similar relief; that is, relief of

Plaintiff's obligation to pay child support." COLA MTD at 13. Further, as Defendant COLA explains, "the only injuries alleged by Plaintiff derive from the state court judgment- the obligation to provide child support payments." *Id.*

Defendant Perez further argues That integral to Plaintiff's allegations of RICO violations are Plaintiff's claims that he was "ma[de]... to pay a debt that was never owed" and that Defendants acted as an enterprise to "develop and carry out" the alleged RICO scheme "to bill and collect unlawful debt." Perez MTD at 10; *see also* Perez Reply at 3; TAC para. 31, 34. These claims appear to be based upon the state

court's refusal to set aside the Plaintiff's Voluntary Declaration of Paternity, finding that Plaintiff is Tracie's legal father, and the reaffirmation of Plaintiff's attendant child support obligations. Further, as Defendant Perez argues, Plaintiff purports to "circumvent the application of the *Rooker-Feldman* doctrine by casting the TAC as a 'civil RICO.'" Perez MTD at 11. However, this is specifically proscribed by the *Rooker-Feldman* doctrine as "a litigant may not attempt to circumvent the effect of *Rooker-Feldman* and seek reversal of a state court judgment simply by casting the complaint in the form of a civil rights action." *Id.* (quoting *Long v. Shorebank Dev. Corp.*, 182 F.3d 548, 557 (7th Cir. 1999)).

Defendants also contend that "Plaintiff failed to file a timely appeal." COLA MTD at 13 (citing COLA RJN, Exs. B, J). Defendant COLA argues that "Plaintiff's complaint is nothing but an attempt to re-litigate issues previously decided against him because he failed to file a timely appeal." COLA MTD at 14. The *Feldman* Court held that the fact that we may not have jurisdiction to review a final state court judgment because of a petitioner's failure to raise his constitutional claims in state court does not mean that a United States District Court should have jurisdiction over the claims. By failing to raise his claims in state court a plaintiff may forfeit his right to obtain review of the state

court decision in any federal court. This result is eminently defensible on policy grounds. We have noted the competence of state courts to adjudicate federal constitutional claims. *Feldman*, 460 U.S. at 482 n.16 (citations omitted). Plaintiff does not provide a substantive opposition to the Defendants' contentions regarding the *Rooker-Feldman* doctrine. The substance of Plaintiff's opposition is that the "DOCTRINE is not application in case, RICO Fraud Lawsuits are exempt from this doctrine, Citing: Iqbal v. Patel, F.3d, 2015 WL 85941 (7th Cir. 2015). (See Exhibit 2)." *See* COLA Opp. para. 2; Perez para. 1. The Court has reviewed the *Iqbal v. Patel* case cited by the Plaintiff and provided in

Exhibit 2 to the Oppositions, and determines that the *Patel* decision involves an issue that is distinguishable from this case. In *Patel,* the court held that the *Rooker-Feldman* doctrine did not bar the plaintiff's claims because he sought damages for activity that took place before the state proceeding and "caused injury independently of it." *Iqbal v. Patel,* 780 F.3d 728, 730 (7th Cir. 2015). The *Patel* held that, "[b]ecause Iqbal seeks damages for activity that (he alleges) predates the state litigation and caused injury independently of it, the Rooker-Feldman doctrine does not block this suit." *Id.* Contrary to Plaintiff's assertions, the *Patel* court's conclusions do not state civil RICO actions are exempt from the *Rooker-Feldman* doctrine generally, but that the doctrine was not applicable to the specific facts

of the *Patel* case. The court agrees with the Defendants and concludes that, although the principal claims alleged by Plaintiff involve RICO violations, the essence underlying Plaintiff's claims is his dissatisfaction with and attempt to circumvent the paternity ruling by the state court. Although the RICO claims may be masked as independent claims, the crux of the allegations are inextricably intertwined with the state court findings. Accordingly, the Court finds that the TAC is effectively a *de facto* appeal of the final state court decision and as such is barred by the *Rooker-Feldman* doctrine. *See Reusser*, 525 F.3d at 860.

iv. Claim Not Parallel

Lastly, this case was filed after the conclusion of the state court proceeding and is therefore not parallel to the state court action. Judgment was entered in the state Court proceeding on September 23, 2015 and the state court denied Plaintiff's Application to Set Aside Judgment on December 21, 2016. COLA RJN, Exs. C, R. Plaintiff filed the current case in federal court on January 18, 2017.

v. Summation

The Court finds that, under the *Rooker-Feldman* doctrine, the Court does not have subject matter jurisdiction over this action pursuant to Federal Rule of Civil Procedure 12(b)(1). Because the lack of subject matter jurisdiction disposes of the entire case, Defendants'

additional arguments in support of dismissal need not be addressed.

C. Motion to Strike Under Federal of Civil Procedure 12(f)

Defendant Perez moves to strike Plaintiff's "Triple Damages Multiplier" as well as his prayer for criminal penalties. Because the Court finds that Plaintiff's claims are barred due to lack of subject matter jurisdiction pursuant to the *Rooker-Feldman* doctrine, which warrants dismissal of the TAC in its entirety, the Court does not reach the issues contained in Defendant Perez's alternative motion to strike.

IV. Leave to Amend

According to the Ninth. "[d]is-missal without leave to amend is proper if it is clear that the

complaint could not be saved by amendment." *Kendall v. Visa U.S.A., Inc.*, 518 F.3d 1042, 1051 (9th Cir. 2008) (citing *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1059 (9th Cir. 2003) (per curiam)); *see also Gordon v City of Oakland*, 627 F.3d 1092, 1094 (9th Cir. 2010) ("Although leave to amend a deficient complaint shall be freely given when justice so requires, leave may be denied if amendment of the complaint would be futile.") (citation omitted).

Plaintiff was already put on notice that this action might be dismissed with prejudice if he failed to adequately plead his claims and oppose

any future motions to dismiss. In a minute order dated August 8, 2017, the Court explained that "considering Plaintiff's repeated failure to substantively oppose Defendants' motions to dismiss, the Court notes that Plaintiff's pattern of litigation boarders on vexation and his pleadings bear markers of futility." *See* Dkt. # 90. The Court further stated that it " hereby cautions Plaintiff that the Court may dismiss this Action *with prejudice*, unless Plaintiff adequately pleads his claims in the Third Amended Complaint, or substantively demonstrates in opposition to any future motions to dismiss that leave to amend would not be futile."

Id. (citing *Carrico v. City & Cty. of S.F.*, 656 F.3d 1002, 1008 (9th Cir. 2011)) (emphasis added).

Here, Plaintiff's Oppositions to Motion to Dismiss do not substantively demonstrate to the Court how leave to amend would not be futile. Moreover, Plaintiff has already been granted leave to amend his complaint on three separate occasions. The Court agrees with Defendant COLA's observation that "Plaintiff['s] 50-page Complaint, is rambling, full of criminal allegations, incoherent argument and irrelevant detail with unsupported conclusions, and is not simple, concise or direct." COLA MTD at 4. Even if Plaintiff's claims

were sufficiently pleaded, they would still be barred by the *Rooker-Feldman* doctrine. Accordingly, the Court finds that further amendment would be futile and DENIES leave to amend.

V. Conclusion

For the foregoing reason, the Court GRANTS Defendants' Motion to Dismiss and dismiss Plaintiff's Third Amended Complaint with prejudice.

IT IS SO ORDERED.