ORIGINAL

No.

IN THE
SUPREME COURT OF THE UNITED STATES

ROBERT J. KULICK - PETITIONER

(Your Name)

VS.

Leisure Village Association, Inc. et al RESPONDENT(S)

ORDER ON REHEARING, AND COPIES OF ANY OPINIONS OR ORDERS BY ANY COURTS THAT HAVE PREVIOUSLY CONSIDERED YOUR CASE

EXECUTED ON NOV. 26, 2018

Robert J. Kulick

SIGNATURE

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

ROBERT J. KULICK,

Plaintiff and Appellant,

v.

LEISURE VILLAGE ASSOCIATION, INC., et al.,

Defendants and Respondents.

2d Civil No. B281922
(Super. Ct. No. 56-2016-00478277-CU-DF-VTA)
(Ventura County)

Robert J. Kulick appeals an order of the trial court granting a special motion to strike his cause of action for defamation pursuant to the anti-SLAPP statute. (Code Civ. Proc., § 425.16.)[1] We affirm.

This lawsuit and a prior lawsuit concern longstanding disputes between Kulick, a resident in a senior planned community, and the community's homeowners' association, the

[1] All statutory references are to the Code of Civil Procedure unless stated otherwise.

directors of the governing board, and the association's attorneys. Kulick published newsletters under an assumed name and circulated them within the community in violation of the homeowners' rules prohibiting anonymous publications. The association later successfully sued Kulick when he interfered with the insurance coverage for the association and the governing board. Kulick then published another newsletter criticizing the lawsuit and accusing the governing board of malfeasance. When the association wrote a response to the newsletter and distributed it to the community, Kulick filed this lawsuit for defamation, among other causes of action.

FACTUAL AND PROCEDURAL HISTORY

Kulick is a resident of Leisure Village, a common interest senior development in Camarillo, consisting of 2,136 homes. Leisure Village Association, Inc. (Association) is the Leisure Village homeowners' association which is governed by a board of volunteer directors (Board). Kulick is a longtime homeowner in Leisure Village and a member of the Association.

From time to time, Kulick published a newsletter entitled "Leisure Village News" (Newsletter), which he distributed to Leisure Village residents. All but one Newsletter was published anonymously under the pseudonym "Joe Byrne." The Newsletters are critical of the Association and the Board, specifically Board affairs and financial management of the Association. At times, the Newsletter has insulted individual Board members and also accused them and the Association's attorneys of unlawful activities and "hate mongering." The anonymous nature of the Newsletter contravenes Rule 2.08 of the

Association's rules and regulations, which prohibits distribution of anonymous publications within the community.[2]

In November 2013, the Association filed a lawsuit against Kulick, alleging that he had breached the Association's Declaration of Covenants, Conditions, and Restrictions; intentionally interfered with the Association's contractual relationship with its insurers; and created a nuisance. Following a jury trial and post-trial motions, the Association prevailed and received $129,643.80 damages, consisting of compensatory and punitive damages. Kulick appealed. We affirmed the judgment in *Leisure Village Association, Inc. v. Kulick* (Jan. 17, 2018, B271709) [nonpub.opn.].

In June 2015, Kulick, under the pseudonym Joe Byrne, published and distributed a Newsletter disparaging the then-pending lawsuit against him as based upon perjury, obstruction of justice, and racketeering, among other things. The Newsletter also accused the Association general manager of perjury, the Association attorney of extortion and "hate-mongering tactics," and a Board member of lying and cheating. The Newsletter described the Board election as "rigged," and stated that the Association "may be forced . . . into bankruptcy."

The Association's attorneys then prepared a July 6, 2015, letter response (Letter) to the Newsletter, answering the

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[2] Rule 2.08 provides: "No Owner, Member or Resident shall distribute or post any anonymous document within Leisure Village, and no Owner, Member or Resident shall send any anonymous document via any means to any other Owner, Member or Resident, or to any Member of the Association's Board of Directors or Employed Staff containing threats of physical violence, threatening language, slanderous and or defamatory remarks, etc."

Newsletter's specific accusations. The Letter also discussed aspects of the then-pending lawsuit against Kulick and invited Association members to view the courthouse filings. In particular, the Letter described the recent Newsletter as a "reckless communication" that contained "unfounded, inaccurate and spiteful allegations" regarding the Association, the Board members, employees, and the Association's attorneys. The Letter explained the Association's position in the then-pending lawsuit, the discussions during a court settlement conference, and the Association's success in obtaining a preliminary injunction against Kulick contacting the Association's insurance carriers. The Letter also denied that any Board member was a cheat or a liar or that the Association attorneys have engaged in unlawful conduct during the litigation. The Association distributed the Letter to each member of the Association.

Kulick then brought this lawsuit against the Association, individual Board members, the Association's manager, and the Association's attorneys. His first amended complaint alleges causes of action for defamation, and declaratory and injunctive relief regarding enforcement of rule 2.08 *ante*, footnote 2. Kulick alleges that these six statements within the Association's Letter are defamatory: his 2015 Newsletter was "a reckless publication . . . yet again"; the Newsletter contains "unfounded, inaccurate and spiteful allegations"; the implication that he lied to the court settlement judge; the characterization of Newsletter statements as "malicious [and] devious"; his "unwanted intrusions" to Association members; and the implication that his dissatisfaction with the pending litigation is illegal.

The Association then filed an anti-SLAPP motion pursuant to section 425.16.[3] Following written and oral argument by the parties, the trial court granted the anti-SLAPP motion as to the defamation cause of action. The court then dismissed that cause of action with prejudice and awarded attorney fees and costs to the Association and its attorneys. (§ 425.16, subd. (c).)[4]

Kulick appeals and contends that the trial court erred by granting the special motion to strike pursuant to the anti-SLAPP statute. (§ 425.16, subd. (i) [appeal of anti-SLAPP motion].)

On February 16, 2018, the Association filed a request for judicial notice that Kulick had filed a Chapter 13 bankruptcy petition on January 29, 2018. We grant the request. (Evid. Code, §§ 452, subd. (d)(2), 453, 459.) We proceed to decide Kulick's appeal, however, because the automatic bankruptcy stay is not applicable where the debtor commenced the action and later prosecutes the appeal. (*Shah v. Glendale Federal Bank* (1996) 44 Cal.App.4th 1371, 1376 ["The automatic stay provision was not intended to prevent debtors from prosecuting actions against others"].)

DISCUSSION

I.

Kulick argues that the anti-SLAPP statute does not apply because the Letter was not communicated "in a place open to the

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[3] We shall refer to the defendants collectively as "Association," except where clarity demands that we draw a distinction.

[4] The court also sustained the demurrer of the attorney defendants to the second and third causes of action. It then dismissed those causes of action with prejudice as to the attorney defendants.

public or a public forum in connection with an issue of public interest" (§ 425.16, subd. (e)(3)) or "conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." (*Id.*, subd. (e)(4).) He points out that the trial court, in denying his application for an injunction against enforcement of rule 2.08, ruled that the relationship between homeowners and the Association was one of contract and not one of First Amendment expression.

Section 425.16, subdivision (b)(1) provides that a cause of action "arising from" a defendant's act in furtherance of a constitutionally protected right of free speech or petition may be struck unless the plaintiff establishes a probability that he will prevail on his claim. (*Barry v. State Bar of California* (2017) 2 Cal.5th 318, 321; *Fahlen v. Sutter Central Valley Hospitals* (2014) 58 Cal.4th 655, 665, fn. 3.) Section 425.16 "provides a procedure for the early dismissal of what are commonly known as SLAPP suits . . . litigation of a harassing nature, brought to challenge the exercise of protected free speech rights." (*Fahlen*, at p. 665, fn. 3.) "The anti-SLAPP statute's definitional focus is not the form of the plaintiff's cause of action but, rather, the defendant's *activity* that gives rise to his or her asserted liability--and whether that activity constitutes protected speech or petitioning." (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 92.) The anti-SLAPP statute instructs that its provisions are to be "construed broadly" to implement its legislative objectives. (§ 425.16, subd. (a); *Barry*, at p. 321.)

The analysis of an anti-SLAPP motion filed pursuant to section 425.16 is two-fold. (*Barry v. State Bar of California, supra*, 2 Cal.5th 318, 321; *Abuemeira v. Stephens* (2016) 246

Cal.App.4th 1291, 1297.) The trial court first decides whether defendant has made a threshold showing that the challenged cause of action is one arising from protected activity. (*Parrish v. Latham & Watkins* (2017) 3 Cal.5th 767, 774.) If the court finds that a showing has been made, it then determines whether the plaintiff has demonstrated a probability of prevailing on his claim. (*Barry*, at p. 320; *Abuemeira*, at pp. 1297-1298.) Only a cause of action that satisfies both prongs of the anti-SLAPP statute is subject to a special motion to strike. (*Barry*, at p. 321.) We independently review the trial court's determination of each step of the analysis. (*Golden Eagle Land Investment, L.P. v. Rancho Santa Fe Assn.* (2018) 19 Cal.App.5th 399, 412; *Sheley v. Harrop* (2017) 9 Cal.App.5th 1147, 1162.)

The trial court did not err in granting the anti-SLAPP motion because the Letter constitutes protected activity as set forth in section 426.16, subdivision (e)(3): "[A]ny written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest." A statement made by or on behalf of the governing body of a planned development may constitute a "'public forum.'" (*Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468, 475 [defamation lawsuit brought by former manager of planned development homeowners' association against authors of non-official community newsletter].) A writing may be "a public forum in the sense that it [is] a vehicle for communicating a message about public matters to a large and interested community." (*Id.* at p. 476.) Here the Letter was a communication by the Board, through its attorneys, to approximately 2,100 homeowners in furtherance of the Association government. (*Id.* at p. 478 [widely distributed

writing may constitute a "public forum" where it is a vehicle for open discussion of public issues].)

The content of the Letter was also "an issue of public interest," i.e., a controversy initiated by Kulick when he distributed the 2015 Newsletter. (§ 425.16, subd. (e)(3).) "Public interest" within the anti-SLAPP statute is broadly defined to include private conduct that impacts a broad segment of society or that affects a community in a manner similar to that of a governmental entity. (*Ruiz v. Harbor View Community Assn.* (2005) 134 Cal.App.4th 1456, 1468 [letters written by association's attorney to plaintiff homeowner concerned ongoing disputes of interest to definable portion of the public, i.e., 523 homeowners/members of association].) Here the challenged communication occurred "'in the context of an ongoing controversy, dispute or discussion'" and thus "'warrants protection by a statute that embodies the public policy of encouraging *participation* in matters of public significance.'" (*Ibid.*)

The trial court's decision regarding Kulick's application for a preliminary injunction against enforcement of rule 2.08 does not compel a different result. Whether Kulick had a right to anonymously publish the Newsletter in violation of the Association rules is a different issue from whether the Letter is a protected activity within the anti-SLAPP statute.

In any event, the Letter falls within the purview of section 425.16, subdivision (e)(2), any writing "made in connection with an issue under consideration or review by a . . . judicial body." The Letter discusses the pending lawsuit it filed against Kulick, the Association's success in obtaining a preliminary injunction

against Kulick contacting the Association's insurers and vendors, and the mandatory settlement conference.

II.

Kulick also argues that he has met the burden of establishing a probability that he will prevail on the merits of his defamation claim. (*Barry v. State Bar of California, supra,* 2 Cal.5th 318, 320.)

For several reasons, Kulick has not met his burden. First, expressions of opinion that do not include or imply false factual assertions do not constitute actionable defamation. (*Kahn v. Bower* (1991) 232 Cal.App.3d 1599, 1607.) Thus, the Letter's characterization of the Newsletter as "reckless," Kulick's accusations as "spiteful," and the Newsletter as an "unwanted intrusion" are expressions of opinion and not actionable defamation.

Second, the remaining challenged statements in the Letter are privileged pursuant to Civil Code section 47. The litigation privilege of Civil Code section 47, subdivision (b), pertains to any communication: 1) made in judicial or quasi-judicial proceedings; 2) by litigants or other participants authorized by law; 3) to achieve the objects of the litigation; and 4) that have some connection or logical relation to the action. (*GetFugu, Inc. v. Patton Boggs LLP* (2013) 220 Cal.App.4th 141, 152.) The litigation privilege extends to communications made before, during, or after trial. (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1057; *Freeman v. Schack* (2007) 154 Cal.App.4th 719, 731 [attorney who is made a defendant based upon statements made on behalf of clients in a judicial proceeding or an issue under review by a court has standing to bring anti-SLAPP motion].) The Letter was written and distributed to the Association's

members during the pendency of the Association's previous lawsuit against Kulick. The Letter discusses the lawsuit and invites the Association members to review the courthouse filings.

The order is affirmed. Respondents shall recover costs.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Court of Appeal, Second Appellate District, Division Six - No. B281922

S248692

IN THE SUPREME COURT OF CALIFORNIA

En Banc

ROBERT J. KULICK, Plaintiff and Appellant,

v.

LEISURE VILLAGE ASSOCIATION, INC., et al., Defendants and Respondents.

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice

R 11.1.18

FILED

OCT 29 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROBERT J. KULICK, Plaintiff-Appellant, v. LEISURE VILLAGE ASSOCIATION, INC., Defendant-Appellee.	No. 18-56000 D.C. No. 2:18-cv-05718-PA-SS MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Percy Anderson, District Judge, Presiding

Submitted October 22, 2018**

Before: SILVERMAN, GRABER, and GOULD, Circuit Judges.

Robert J. Kulick appeals pro se from the district court's judgment dismissing his action alleging civil rights violations and a state law claim arising from state court proceedings. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under the *Rooker–Feldman* doctrine. *Noel v. Hall*, 341 F.3d

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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).

1148, 1154 (9th Cir. 2003). We affirm.

The district court properly dismissed for lack of subject matter jurisdiction under the *Rooker–Feldman* doctrine because Kulick's action is a "de facto appeal" of a prior state court judgment, and he raises claims that are "inextricably intertwined" with that judgment. *See id.* at 1163-65 (*Rooker–Feldman* bars de facto appeals of a state court decision and constitutional claims "inextricably intertwined" with the state court decision).

To the extent Kulick attempted to plead a state law defamation claim against Leisure Valley Association, Inc., the district court properly dismissed Kulick's claim for lack of subject matter jurisdiction because Kulick failed to allege any violation of federal law or diversity of citizenship in his complaint. *See* 28 U.S.C. §§ 1331, 1332(a); *see also Kuntz v. Lamar Corp.*, 385 F.3d 1177, 1181-83 (9th Cir. 2004) (addressing diversity of citizenship under § 1332).

AFFIRMED.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 18-5718 PA (SSx)	Date	July 9, 2018
Title	Robert J. Kulick v. Leisure Village Association, Inc.		

Present: The Honorable	PERCY ANDERSON, UNITED STATES DISTRICT JUDGE	
Kamilla Sali-Suleyman	Not Reported	N/A
Deputy Clerk	Court Reporter	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	
None	None	

Proceedings: IN CHAMBERS – COURT ORDER

On June 28, 2018 plaintiff Robert J. Kulick ("Plaintiff"), appearing pro se, commenced this action by filing a complaint against defendant Leisure Village Association, Inc. ("LVA"). (Docket No. 1.)

I. BACKGROUND

The Complaint identifies no claims. It does, however, provide a one-page statement of facts. (Compl. p. 3.[1/]) Plaintiff alleges that Steven Rein, Plaintiff's former attorney of record in a state court case, Kulick v. Leisure Village Association, Inc., Ventura County Superior Court Case No. 56-2016-00478277, refused to return Plaintiff's complete file. (Id.) Plaintiff also alleges that LVA's lawyer defamed Plaintiff in a July 6, 2015 letter sent to other homeowners at LVA. (Id.) Plaintiff asserts that this Court has federal question jurisdiction over this action, and to support this assertion, cites to the United States Constitution, various Supreme Court cases, and the Civil Rights Act of 1964. (Id. at 1)

As relief, Plaintiff requests that (1) "[d]efamation be granted & remanded back to the trial court for a court trial, VCSC Case # 56-2016-478277," (2) "anti-SLAPP, C.C.P. #425.16 & the awarded attorney fees both be denied & be excluded in remand back to trial court for court trial on all causes of action in VCSC Case #56-2016-478277," (3) "Plaintiff's Pro Per status be denied & remanded back to trial court for re-instatement of Steven Rein as Plaintiff's attorney of record, VCSC Case #56-2016-478277," and (4) "Plaintiff's right for discovery was denied by trial court & that be remanded back to trial court for his right to discovery before court trial begins, VCSC Case #56-2016-478277." (Id. at 4.)

Plaintiff raised the same facts alleged here in two other lawsuits filed in this District on April 23, 2018 and May 24, 2018. See Robert J. Kulick v. Leisure Village Ass'n, Inc., Case No. CV 18-3392 PA (SSx), Docket No. 22 at 2 (mentioning LVA's attorney's purported defamation of Plaintiff in July 6, 2015 letter); Robert J. Kulick v. Steven Rein, Case No. CV 18-4533 PA (SSx), Docket No. 1 ¶ 5

1/ Due to inconsistency in the Complaint's paragraph and page numbering, all citations are to ECF page number

(alleging Rein's withholding of Plaintiff's file). Plaintiff was given opportunities to amend the complaints in the prior federal actions. (Case No. CV 18-3392 PA (SSx); Docket Nos. 9, 13; Case No. CV 18-4533 PA (SSx), Docket No. 8.) Ultimately those cases were dismissed on June 21, 2018 and June 29, 2018, respectively, based on the Rooker-Feldman doctrine and lack of federal jurisdiction, respectively. (Case No. CV 18-3392 PA (SSx); Docket No. 27; Case No. CV 18-4533 PA (SSx), Docket No. 12.) On June 28, 2018, Plaintiff appealed the dismissal of his prior federal action against LVA. (See Case No. CV 18-3392 PA (SSx); Docket No. 32.) The next day, Plaintiff filed this action.

II. LEGAL STANDARD

a. Duplicative Actions

"A litigant has no right to maintain a second action duplicative of another." Barapind v. Reno, 72 F. Supp. 2d 1132, 1145 (E.D. Cal. 1999) (citing The Haytian Republic, 154 U.S. 118, 124, 14 S. Ct. 992, 38 L. Ed. 930 (1894); Ridge Gold Standard Liquors, Inc. v. Joseph E. Seagram & Sons, Inc., 572 F. Supp. 1210, 1213 (N.D. Ill. 1983)). Rather, a plaintiff generally is "required to bring at one time all of the claims against a party or privies relating to the same transaction or event." Adams v. Cal. Dep't of Health Servs., 487 F.3d 684, 693–94 (9th Cir. 2007) (citing N. Assur. Co. of Am. v. Square D Co., 201 F.3d 84, 88 (2d Cir. 2000); Nilsen v. City of Moss Point, 701 F.2d 556, 564 (5th Cir. 1983) (en banc); Restatement (Second) of Judgments § 25, cmt. b (1982)), overruled on other grounds by Taylor v. Sturgell, 553 U.S. 880, 904, 128 S. Ct. 2161, 171 L. Ed. 2d 155 (2008); see also Mycogen Corp. v. Monsanto Co., 28 Cal. 4th 888, 897, 51 P.3d 297 (2002) ("[A]ll claims based on the same cause of action must be decided in a single suit; if not brought initially, they may not be raised at a later date." (internal quotation marks omitted)). Additionally, a newly filed complaint may not be tactically employed to bypass procedural conditions imposed on the first complaint. See Adams, 487 F.3d at 688 (affirming dismissal with prejudice of duplicative action filed "in an attempt to avoid the consequences of [the plaintiff's] own delay and to circumvent the district court's denial of her untimely motion for leave to amend her first complaint"); see also Oliney v. Gardner, 771 F.2d 856, 859 (5th Cir. 1985); Walton v. Eaton Corp., 563 F.2d 66, 71 (3d Cir. 1977).

"[I]n assessing whether the second action is duplicative of the first, we examine whether the causes of action and relief sought, as well as the parties or privies to the action, are the same." Adams, 487 F.3d at 689 (citing The Haytian Republic, 154 U.S. 118, 124, 14 S. Ct. 992, 38 L. Ed. 930 (1894); Curtis v. Citibank, N.A., 226 F.3d 133, 138–39 (2d Cir. 2000); Serlin v. Arthur Andersen & Co., 3 F.3d 221, 223–24 (7th Cir. 1993)). "To ascertain whether successive causes of action are the same, we use the transaction test, developed in the context of claim preclusion." Id. Courts thus examine four criteria: "(1) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution in the second action; (2) whether substantially the same evidence is presented in the two actions; (3) whether the two suits involve infringement of the same right; and (4) whether the two suits arise out of the same transactional nucleus of facts." Id. (quoting Costantini v. Trans World Airlines, 681 F.2d 1199, 1201–02 (9th Cir. 1982)). The fourth criterion is the most important. Id.

Furthermore, a plaintiff cannot continue to file new lawsuits against a defendant based on the same facts until he is successful. "The ultimate objective of [the] rule against claim-splitting is to 'protect the Defendant from being harassed by repetitive actions based on the same claim' and to promote judicial economy and convenience." Bojorquez v. Abercrombie & Fitch, Co., 193 F. Supp. 3d 1117, 1123 (C.D. Cal. 2016) (quoting Clements v. Airport Auth. of Washoe Cnty., 69 F.3d 321, 328 (9th Cir. 1995); citing Restatement (Second) of Judgments § 24).

When a plaintiff has filed a duplicative action, the court has discretion to dismiss the second action with or without prejudice, consolidate the two actions, or stay or enjoin the proceedings. Adams, 487 F.3d at 688, 692.

b. Subject Matter Jurisdiction

Federal courts have subject matter jurisdiction over only those matters authorized by the Constitution and Congress. Bender v. Williamsport Area Sch. Dist., 475 U.S. 534, 541, 106 S. Ct. 1326, 89 L. Ed. 2d 501 (1986). Federal Rule of Civil Procedure 8(a) requires that "[a] pleading that states a claim for relief must contain . . . a short and plain statement of the grounds for the court's jurisdiction . . . ." Fed. R. Civ. P. 8(a)(1). In seeking to invoke this Court's jurisdiction, Plaintiff bears the burden of proving that jurisdiction exists. Scott v. Breeland, 792 F.2d 925, 927 (9th Cir. 1986).

"Title 28 U.S.C. § 1331 vests in federal district courts 'original jurisdiction' over 'all civil actions arising under the Constitution, laws, or treaties of the United States.'" Empire Healthchoice Assurance, Inc. v. McVeigh, 547 U.S. 677, 689, 126 S. Ct. 2121, 165 L. Ed. 2d 131 (2006) (quoting 28 U.S.C. § 1331). "A case 'aris[es] under' federal law within the meaning of § 1331 . . . if 'a well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law.'" Id. (quoting Franchise Tax Bd. of Cal. v. Constr. Laborers Vacation Tr. for So. Cal., 463 U.S. 1, 27–28, 103 S. Ct. 2841, 77 L. Ed. 2d 420 (1983)). The "mere presence of a federal issue in a state cause of action" does not automatically confer federal-question jurisdiction. Merrell Dow Pharms. Inc. v. Thompson, 478 U.S. 804, 813, 106 S. Ct. 3229, 92 L. Ed. 2d 650 (1986). If the complaint does not specify whether a claim is based on federal or state law, it is a claim "arising under" federal law only if it is "clear" that it raises a federal question. Duncan v. Stuetzle, 76 F.3d 1480, 1485 (9th Cir. 1996).

c. The Rooker-Feldman Doctrine

The Rooker-Feldman doctrine prevents a federal district court from having subject matter jurisdiction to hear a direct appeal from a final judgment of a state court. Noel v. Hall, 341 F.3d 1148, 1158 (9th Cir. 2003); see D.C. Court of Appeals v. Feldman, 460 U.S. 462, 482, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983); Rooker v. Fid. Trust Co., 263 U.S. 413, 416, 44 S. Ct. 149, 68 L. Ed. 362 (1923). As the Supreme Court has explained, this doctrine applies to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings

commenced and inviting district court review and rejection of those judgments." Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284, 125 S. Ct. 1517, 161 L. Ed. 2d 454 (2005). Even if a plaintiff frames his claim as a constitutional challenge, if he seeks what, in substance, would be appellate review of a state judgment, the action is barred by Rooker-Feldman. Bianchi v. Rylaarsdam, 334 F.3d 895, 901 n.4 (9th Cir. 2003); Feldman v. McKay, Case No. CV 15-04892 MMM (JEMx), 2015 U.S. Dist. LEXIS 159741, at *8 (C.D. Cal. Nov. 25, 2015) ("A losing party in state court is . . . barred from seeking what in substance would be appellate review of a state judgment in federal district court, even if the party contends the state judgment violated his or her federal rights.").

To determine whether the Rooker-Feldman doctrine applies, a federal district court must assess whether the plaintiff is attempting to bring a "forbidden de facto appeal." See Noel v. Hall, 341 F.3d 1148, 1163 (9th Cir. 2003). A case is a de facto appeal "[i]f a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and seeks relief from a state court judgment based on that decision." See id. at 1164. If the case is a de facto appeal, the plaintiff is also barred from litigating "any issues that are 'inextricably intertwined' with issues in that de facto appeal." See Kougasian v. TMSL, Inc., 359 F.3d 1136, 1142 (9th Cir. 2004) (citing Noel, 341 F.3d at 1166). Issues presented are inextricably intertwined "[w]here the district court must hold that the state court was wrong in order to find in favor of the plaintiff." Doe & Assocs. Law Offices v. Napolitano, 252 F.3d 1026, 1030 (9th Cir. 2001); Cooper v. Ramos, 704 F.3d 772, 782 (9th Cir. 2012).

III. ANALYSIS

The only facts alleged in this action were raised in Plaintiff's prior federal actions. Additionally, LVA, identified as the defendant here, was the defendant in one of those federal actions. Thus, while none of Plaintiff's federal pleadings has been a model of clarity, the Court concludes that this case arises out of the same transactional nucleus of facts as the prior cases, and finds that this action is an impermissible duplicative action. Furthermore, Plaintiff has failed to adequately allege a basis for this Court's jurisdiction. While the Complaint asserts that the Court possesses federal question jurisdiction, Plaintiff has alleged no claims, much less claims arising under federal law. Nor do the facts alleged suggest that Plaintiff has a claim under federal law or that diversity jurisdiction applies. Accordingly, the Court finds that it lacks jurisdiction over this case. Finally, this action is an impermissible de facto appeal of state court decisions, and Plaintiff requests that this Court reverse and remand those decisions to the state trial court. Thus, the Rooker-Feldman doctrine applies to bar the Court from exercising jurisdiction over this action.

Accordingly, for each of these reasons, the Complaint is dismissed. Because amendment would be futile, the Complaint is dismissed without leave to amend. See Johnson v. Buckley, 356 F.3d 1067, 1077 (9th Cir. 2004) (identifying futility as a factor in deciding whether to permit amendment).

CONCLUSION

For the foregoing reasons, this action is dismissed. The Court will enter a Judgment consistent with this Order.

IT IS SO ORDERED.

Additional material from this filing is available in the Clerk's Office.