APPENDIX A - Memorandum Opinion, Of The Ninth Circuit Court Of Appeals, Appeal No. 15-15831 (Unpublished), Filed June 11, 2019

NOT FOR PUBLICATION
United States Court of Appeals for the 9th Circuit

No. 15-15831

WILLIAM RUPERT

v.

SUSAN BOND, et al.,

MEMORANDUM*

Appeal from the United States District Court
For the Northern District of California
Beth Labson Freeman, District Judge, Presiding

Submitted June 7, 2019**

Before: FARRIS, TROTT, and SILVERMAN,
Circuit Judges

William Rupert appeals pro se from the district court's judgment dismissing his action alleging violations of state law and the Racketeer Influenced and Corrupt Organizations Act ("RICO") relating to a dispute arising out of Oregon estate plans. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Hebbe v. Pliler,* 627 F.3d 338, 341-42 (9th Cir. 2010) (dismissal under Fed.R.Civ.P. 12(b)(6);

Brayton Purcell LLP v. Recordon & Recordon, 606 F.3d 1124, 1127 (9th Cir. 2010) (personal jurisdiction); *Kearney v. Foley & Lardner, LLP,* 590 F.3d 638, 643 (9th Cir. 2009) (dismissal based on *Noerr-Pennington*). We affirm.

The district court properly determined that the California based defendants are immune from liability under the *Noerr-Pennington* doctrine because Rupert failed to allege facts sufficient to show that the defendants' actions to defend against Rupert's prior lawsuit were objectively baseless or deprived the litigation of its legitimacy. *See id.* at 643-644 (under *Noerr-Pennington,* "those who petition any department of the government for redress are generally immune from statutory liability for their petitioning conduct" (citation omitted)); *see also Freeman v. Lasky, Haas & Cohler,* 410 F.3d 1180 (9th Cir. 2005) (explaining circumstances where the "sham litigation" exception to the *Noerr-Pennington* doctrine applies).

The district court properly dismissed all claims against the non-resident defendants for lack of personal jurisdiction. *See Walden v. Fiore,* 134 S.Ct. 1115, 1121-23 (2014) (discussing the requirements for specific personal jurisdiction and stating that "the plaintiff cannot be the only link between the defendants and the forum"); *Schwarzenegger v. Fred Martin Motor Co.,* 374 F.3d 797, 801-802 (9th Cir. 2004) (requirements for general and specific personal jurisdiction); *Butcher's Union Local No. 498, United Food & Comm. Workers v. SDC Inv., Inc.,* 788 F.2d 535, 539 (9th Cir. 1986) (requirements

for nationwide service in an action alleging RICO violations).

The district court did not abuse its discretion in dismissing Rupert's complaint without leave to amend. *See Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011) (setting forth standard of review and explaining that a district court may dismiss without leave where amendment would be futile); *see also Chodos v. West Publ'g Co.*, 292 F.3d 992, 1003 (9th Cir. 2002) (district court's discretion to deny leave to amend is particularly broad when it has afforded plaintiff one or more opportunities to amend).

The district court did not abuse its discretion by denying Rupert's motions under Fed.R.Civ.P 59(e) and 60(b) because Rupert failed to demonstrate any grounds for relief. *See Sch. Dist. No. 1J, Multnomah Cty., Or. V. ACandS, Inc.*, 5 F.3d 1255, 1262-63 (9th Cir. 1993) (setting forth standard of review and listing grounds warranting reconsideration under Fed.R.Civ.P. 59(e) and 60(b)).

We do not consider matters not specifically and distinctly raised and argued in the opening brief or arguments raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

Plaintiff's request for oral argument (Docket Entry No. 63) is denied.

AFFIRMED.

* 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).

APPENDIX B – Order of the Ninth Circuit Court of Appeals, Appeal No. 15-15831, Denial of Petition for Rehearing and Petition for Rehearing En Banc, Filed July 18, 2019

United States Court of Appeals for the 9th Circuit

No. 15-15831

WILLIAM RUPERT

v.

SUSAN BOND, et al.,

ORDER

Before: FARRIS, TROTT, and SILVERMAN, Circuit Judges

The panel has voted to deny the petition for rehearing and recommended denial of the petition for rehearing en banc.

The full court has been advised of the petition for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing is DENIED and the petition for rehearing en banc is DENIED.

APPENDIX C - Order Granting Defendants' Motions To Dismiss; Denying Defendants Gile R. Downes And Schulte, Anderson, Downes, Aronson & Bittner, P.C.'s Motion For Sanctions, USDC for the Northern District of California, Case No. 5:12-cv-05292-BLF; *Rupert v. Bond, et al.*, 68 F. Supp. 3d 1142, Filed September 22, 2014

No. 12-cv-05292 BLF

WILLIAM RUPERT

v.

SUSAN BOND, et al.,

Order Granting Defendants' Motions To Dismiss; Denying Defendants Gile R. Downes And Schulte, Anderson, Downes, Aronson & Bittner, P.C.'s Motion For Sanctions

Before: Beth Labson Freeman, District Judge

This case involves a family dispute over the Rupert siblings' inheritance rights under their parents' wills and trusts. Plaintiff William Trick Rupert brings this Second Amended Complaint ("SAC") against a number of Defendants, including two of his siblings, several attorneys, and three law firms, alleging claims under the federal Racketeer Influenced and Corrupt Organizations ("RICO") Act, the Oregon RICO Act ("ORICO"), and common law claims for conversion and intentional interference with expected inheritance, arising out of a family

dispute regarding the disbursement of his parents' trust assets. The Defendants[1] can be divided into four groups: (1) the "Sibling Defendants," including Plaintiff's sister, Susan Bond, and brother, James Rupert; (2) the "Downes Defendants," including attorney Gile Downes and his law firm, Schulte, Anderson, Downes, Aronson & Bittner, P.C.; (3) the "Zusman Defendants," including attorney Edward Zusman and his law firm, Markun Zusman & Compton, LLC; and (4) the "Cartwright Defendants," including attorneys Matthew Whitman and Michelle Johansson, as well as their law firm, Cartwright Whitman Baer P.C.

Plaintiff categorizes his RICO allegations against the Defendants into five stages, termed "RICO Stage 1" through "RICO Stage 5," and alleges that the four groups of Defendants, through repetition of a statement that Plaintiff terms "the Big Lie" and various other acts, conspired to deprive him of his inheritance. Before the Court are Motions to Dismiss from each of the four Defendant groups. The Zusman Defendants move to dismiss for failure to state a claim upon which relief can be granted, pursuant to Federal Rule of Civil Procedure 12(b)(6). (ECF 114) The Downes Defendants, Sibling Defendants, and Cartwright Defendants each move to dismiss for lack of personal jurisdiction, pursuant to Rule 12(b)(2).

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[1] In addition to the named Defendants, Plaintiff includes a lengthy list of "non-party co-conspirators, or aiders and abetters (sic)." Which includes a number of attorneys, two other law firms, Plaintiff's mother, two Oregon state court judges, and employees of several financial institutions. (SAC, ECF 106 ¶¶ 15a-15m)

(ECF 107, 111, 113) The Downes Defendants separately move for Sanctions under Rule 11. (ECF 130)

Having considered the briefing and oral argument of the parties, as well as the relevant law, the Court GRANTS Defendants' Motions to Dismiss, WITH PREJUDICE. The Court, however, DENIES the Downes Defendants' Motion for Sanctions.

I. BACKGROUND

A. Procedural History

Plaintiff filed his initial Complaint on October 12, 2012. (ECF 1)[2] Thereafter, Plaintiff filed a First Amended Complaint ("FAC") on October 26, 2012. The four Defendant groups each moved to dismiss the FAC on the same grounds as they do here: the Zusman Defendants for failure to state a claim upon which relief can be granted (ECF 50), and the Downes, Sibling, and Cartwright Defendants for lack of personal jurisdiction. (ECF 18, 33, 33) The Downes Defendants also moved for sanctions (ECF 65) After briefing, Judge Lucy H. Koh granted the Motions to Dismiss without prejudice (ECF 100), and denied the Motion for Sanctions. (ECF 101).

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[2] Plaintiff is pursuing this action pro se. This Court construes a pro se plaintiff's complaint so as to give the plaintiff the benefit of any doubt. *See, e.g., Morrison v. Hall,* 261 F.3d 896, 899 n.2 (9th Cir. 2001) (citing *Haines v. Kerner,* 404 U.S. 519, 520 (1972), for the proposition that pro se pleadings are "subject to a lesser standard than pleadings drafted by lawyers").

Plaintiff filed the operative pleading, a Corrected Second Amended Complaint ("SAC"), on October 7, 2013. (ECF 106) The four groups of Defendants again moved to dismiss: the Downes Defendants (ECF 107), Sibling Defendants (ECF 111), and Cartwright Defendants (ECF 113) claiming lack of personal jurisdiction, and the Zusman Defendants arguing failure to state a claim. (ECF 114) The Downes and Sibling Defendants, as well as Plaintiff, filed Requests for Judicial Notice. (ECF 109, 112, 118) Plaintiff opposed each Motion, and all Defendants timely filed Replies.

After the Motions were fully briefed, on April 17, 2014, this case was reassigned to the undersigned, who heard oral argument on the Motions on July 31, 2014. (*See* ECF 159)

B. Factual Allegations in the SAC

Having been granted leave to amend, Plaintiff has added nearly forty pages of new allegations to his SAC. (ECF 106) The Court has engaged in a painstaking review of the now-110 page pleading,[3] in order to ascertain whether Plaintiff has pled facts sufficient to overcome the jurisdictional and factual deficiencies cited in Judge Koh's Order dismissing the FAC.

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[3] Plaintiff includes, along with the SAC, two appendices that outline every RICO and ORICO predicvate act he claims occurred during the pendency of the alleged conspiracy, and the party or parties Plaintiff claims participated in the act; Appendix A, the "RICO – Predicate Acts Chart" (ECF 106 at 114-127), and Appendix B, the "ORICO – Predicate Acts Chart." (ECF 106 at 128-134)

The Court describes Plaintiff's allegations below, with particular emphasis on those allegations newly-added to the SAC. The factual allegations are presumed to be true for purposes of deciding the Motions to Dismiss. *See Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 555-56 (2007).

1. Creation of the Rupert Trusts and the Dispute over Trust Management

Samuel Rupert, Plaintiff's father, created a revocable living trust in Michigan in 1995 ("the Samuel Rupert Trust"), which made Irene Rupert, his wife, the "life income beneficiary" and their three children, Susan, William, and James, remainder beneficiaries. (SAC ¶ 35) Irene was the first nominated successor trustee, and the three siblings were named, "jointly, as co-alternate successor trustees." (*Id.* at ¶ 36) That same year, Irene Rupert also created a trust ("the Irene Rupert Trust"). (*Ed.*) In 2004, Plaintiff alleges that both trusts were amended to name Plaintiff as the "sole alternate successor trustee, with Susan [Bond] as the second choice, and James [Rupert] the third [choice]." (*Id.* at ¶ 37) In 2006, Samuel and Irene Rupert moved to Oregon, and in October 2008, Samuel Rupert died. (*Id.* at ¶¶ 41-42)

After Samuel's death, a dispute arose between Plaintiff and Susan regarding the management of the trust (SAC ¶¶ 42-48), with Susan claiming that she had documents "subsequent to the 2004 amended estate plans" which placed her in charge of the trusts. (*Id.* at ¶ 42) Among other acts, Plaintiff

alleges that Susan "used fraud and deceit to trick William into drafting a document entitled Amendment to Trust Agreement" (*id.* at ¶ 45), and caused four brokerage accounts containing trust assets "to be transferred from Michigan to California." (*id.* at ¶ 47)

Plaintiff eventually informed his sister of her duty to "submit periodic accountings" and Susan provided such an accounting on May 12, 2009 (SAC ¶¶ 48-49) On May 17, 2009, Plaintiff objected in writing to the accounting as "inadequate and insufficient" (*id.* at ¶ 50), and demanded that Susan "relinquish control [of the trust] to William, fully account for her actions, and make whatever restitution might be necessary." (*Id.*) Susan refused, and retained an attorney, Mr. Downes. (*Id.* at ¶¶ 51-53)

2. "The Big Lie"

Plaintiff alleges that Susan and Downes conspired to exploit Irene Rupert "through a scheme to interfere with William's Trusteeships and expected inheritance" (*id.* at ¶ 55), and that Downes, through this scheme, "came up with the 'Big Lie' that has been so damaging to Plaintiff's trusteeship interests." (*Id.* at ¶ 7) "The Big Lie," according to Plaintiff, is the statement that Irene Rupert, and not Plaintiff, was the trustee of the Samuel Rupert Trust. (*See id.* at ¶ 7; *see also id.* at ¶ 56) Plaintiff alleges that Downes stated "the Big Lie" in a June 10, 2009 letter sent to Plaintiff ("June 10 Letter," *id.* at ¶¶ 58, 59a), and that "the Big Lie" was repeatedly invoked by Downes and others during Plaintiff's

various lawsuits regarding this dispute over the Samuel Rupert Trust. (*See, e.g., id.* at ¶¶ 73, 74, 83, 108, 110) Plaintiff alleges that "the Big Lie" is untrue because Irene Rupert "rejected here nomination to be the successor trustee of the Samuel Rupert Trust." (*Id.* at ¶ 60a; *see also id.* at ¶ 60c ("[T]here has never been one scintilla of evidence to show a lawful acceptance [of her nomination].")

Plaintiff describes this June 10 Letter as "threatening and fraudulent." (SAC ¶ 58) He states that the misrepresentations contained in the letter were relied upon by his mother, causing Irene Rupert to retain Mr. Downes to prepare "drastically different Oregon estate plans" that disinherited William from "the combined assets of the late Samuel and Irene Rupert." (*Id.* at ¶ 61)

3. *Plaintiff's First Lawsuit in this District (*Rupert I*)*

Following his dispute with Susan over the management of the family's trust assets, and the exchange of letters between Plaintiff and Susan's attorneys, Plaintiff filed a tort suit in this District, *Rupert I,* naming his sister, Mr. Downes, and the Schulte Anderson Downes law firm as defendants. (*Id.* ¶ 64) This case was assigned to District Judge Jeremy Fogel. Plaintiff thereafter joined Irene Rupert as a Defendant. (*Id.* at ¶¶ 64, 69) Plaintiff alleges that Mr. Downes and Susan, after learning of the suit, schemed to "further deceive the late Irene Rupert, by telling her William's federal lawsuit was unfounded, baseless and outrageous."

(*Id.* at ¶66) Plaintiff further argues that Susan paid Mr. Downes a "hidden bribe" of nearly $10,000 in order to make material misrepresentations of fact to Irene Rupert. (*Id.* at ¶ 67)

Following the filing of an FAC, the *Rupert I* Defendants filed a joint motion to dismiss for lack of personal jurisdiction. Ms. Bond and Ms. Rupert were represented by Mr. Zusman, among others, and Mr. Downes and his firm were represented by two firms who are alleged to be non-party co-conspirators. (*Id.* at ¶ 71) Judge Fogel granted this Motion.[4] Plaintiff alleges that "knowingly false declarations were procured and filed with the Court" (*id.*), including the declarations of Irene Rupert, Susan Bond, and Mr. Downes, which made a number of statements regarding the identity of the trustee of both family trusts, the location of trust assets, and the trust administration activity, which Plaintiff argues were false and amounted to "extrinsic fraud upon the court." (*Id.* at ¶ 83) Plaintiff argues that the identify and location of the trustee and the location of trust assets are "material jurisdictional facts" (*id.* at ¶ 72), and that but for these misrepresentations regarding these jurisdictional facts, Judge Fogel would never have granted the motion to dismiss. (*See* SAC ¶ 112(c); *see also* Opp. To Cartwright Mot. To Dismiss at 22)) In responding to the instant Motions to Dismiss, Plaintiff claims that these activities amount to

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[4] Judge Fogel's short, 4-page order granting the motions to dismiss, which Plaintiff himself describes as "a well-reasoned ruling" (SAC ¶ 81), is cited as *Rupert v. Bond (Rupert I),* 2010 WL 3618662 (N.D. Cal. Sept. 9, 2010).

purposeful "targeting" of Plaintiff in California. (*See, e.g.*, Opp. To Sibling Mot. To Dismiss at 23)

4. The Oregon State Court Proceedings

Irene Rupert died on March 12, 2010. (SAC ¶ 77) Three days later, Susan Bond commenced two proceedings in Oregon state court, Case No. CV10030497 (*In the Matter of the Irene E. Rupert Trust*) and Case No. CV10030498 (*In the Matter of the Samuel J. Rupert Trust*), seeking declaratory judgments. (*Id.* at ¶ 78) Plaintiff contends that Susan Bond committed perjury in those proceedings by falsely verifying that the administration of the Samuel J. Rupert Trust was located in Oregon, and not California. (*Id.*) Plaintiff states that he "formally accepted his appointment to be successor trustee," after Irene Rupert allegedly declined her appointment, and at that time moved the principal place of administration of the trust to California. (*Id.*)

Plaintiff alleges that Defendants schemed to use "extrinsic and intrinsic fraud" to obtain declaratory judgments from the Oregon courts (*id.* at ¶ 79), and that these fraudulent judgments were successfully obtained: in one case because Plaintiff was unable to present his case because the Defendants engaged in a wrongful *ex parte* communication with the judge, which resulted in what he terms a "Bum's Rush Ambush Expedited Bench Trial" (*is.* At ¶ 87), and in another case because the court believed false statements made in a declaration by Susan Bond that Irene Rupert was the successor trustee of the

Samuel Rupert Trust. (*Id.* at ¶ 89) Plaintiff further alleges that Defendant Whitman used extrinsic fraud to trick an Oregon state court judge, Elizabeth Welch, into "inadvertently" signing a General Judgment that found in favor of Ms. Bond. (*Id.* at ¶ 90) In the *Irene Rupert Trust* case, the court found Plaintiff liable for attorney's fees. (*Id.* at ¶ 95)

After the completion of these two proceedings, Plaintiff alleges that Defendants Susan Bond and James Rupert succeeded in obtaining yet a third "corrupt" judgment in Oregon courts through the use of extrinsic fraud, in Case No. CV11050251, an action commenced by Ms. Bond to remove Plaintiff from "his capacity as Successor Trustee" (*Id.* at ¶ 92; *see also id.* at ¶ 94 (where Plaintiff contends that James Rupert "fully supported all of the Oregon litigation activities"))

5. Alleged Contacts with California After The Oregon Proceedings

Following, the Oregon proceedings, Plaintiff alleges that Susan "collaborated with Defendants Whitman and Johansson to engage in wrongful enforcement of judgment collection activities" by, among other things, mailing Plaintiff a document which demanded he pay the attorneys' fees judgment against him, and failing to domesticate the judgment pursuant to the California Sister-State Money Judgment Act. (*See id.* at ¶¶ 95, 99) Plaintiff also alleges that Defendants Susan, Johansson, Whitman, and Cartwright schemed to misuse another Oregon writ of garnishment, dated October 19, 2011, which targeted assets Plaintiff

held in a T.D. Ameritrade account opened in Soquel, California (*id.* at ¶ 98), and resulted in Plaintiff losing access to over $5,000. (*Id.*) Additionally, Plaintiff contends that these Defendants caused wrongful levies to be placed upon his California checking account, resulting in the transfer of about $7,000 out of that account, and a hold being placed on his account that has "resulted in Plaintiff William being unable to access Social Security payments" directly deposited into that account. (*Id.* at ¶ 101) Plaintiff claims that these actions amounted to Defendants Susan, Johansson, Whitman, and Cartwright "schem[ing] to abuse the process of the Sate of Oregon, and violate the laws of the State of California" (*id.* at ¶ 100), thus showing that the Defendants targeted their activities at California. (*See, e.g.* Opp. to Sibling Mot. to Dismiss at 23)

II. LEGAL STANDARDS

A. Rule 12(b)(6)

A motion to dismiss under Rule 12(b)(6) concerns what facts a plaintiff must plead on the face of his claim. Under Rule 8(a)(2) of the Federal Rules of Civil Procedure, a complaint must include "a short and plain statement of the claim showing that the pleader is entitled to relief." Any complaint that does not meet this requirement can be dismissed pursuant to Rule 12(b)(6). In interpreting Rule 8(a)'s "short and plain statement" requirement, the Supreme Court has held that a plaintiff must plead "enough facts to state a claim to relief that is plausible on its face," *Bell Atl. Corp. V. Twombly,*

550 U.S. 544, 570 (2007), which requires that "the plaintiff plead factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009). This standard does not ask a plaintiff to plead facts that suggest he will probably prevail, but rather "it asks for more than a sheer possibility that a defendant has acted unlawfully." Id. (internal quotation marks omitted). The Court must "accept factual allegations in the complaint as true and construe the pleadings in the light most favorable to the nonmoving party." *Manzarek v. St. Paul Fire & Marine Ins. Co.,* 519 F.3d 1025, 1031 (9th Cir. 2008). The Court is not, however, forced to "assume the truth of legal conclusions merely because they are cast in the form of factual allegations." *Kane v. Chobani, Inc.,* 973 F.Supp.2d 1120, 1127 (N.D. Cal. 2014) (citing *Fayer v. Vaughn,* 649 F.3d 1061, 1064 (9th Cir. 2011)).

The Court, however, should liberally construe the pleadings of pro se plaintiffs. *See, e.g., Balistreri v. Pacifica Police Dep't,* 901 F.3d 696 (9th Cir. 1988). Pro se plaintiffs "must follow the same rules of procedure that govern other litigants". *Brown v. Rumsfeld,* 211 F.R.D. 601, 605 (N.D. Cal. 2002).

B. Rule 12(b)(2)

Plaintiff bears the burden of establishing that the Court has personal jurisdiction over Defendants. *See, e.g., Schwarzenegger v. Fred Martin Motor Co.,* 374 F.3d 797, 800-01 (9th Cir. 2004). If a defendant moves to dismiss under Rule 12(b)(2) for lack of personal jurisdiction, a plaintiff must "come forward

with facts, by affidavit or otherwise, supporting personal jurisdiction." *Scott v. Breeland,* 792 F.2d 925, 927 (9th Cir. 1986). When, as here, the motion is based on written materials, rather than an evidentiary hearing, Plaintiff "need only make a prima facie showing of jurisdictional facts." *Schwarzenegger,* 374 F.3d 797, 800. "Uncontroverted allegations in the complaint must be taken as true," *id.* at 800, though Plaintiff cannot "simply rest on the bare allegations of tis complaint." *Amba Mktg. Sys., Inc. v. Jobar Int'l, Inc.,* 551 F.2d 784, 787 (9th Cir. 1977). Conflicts between facts contained within the declarations or affidavits submitted by the parties are resolved in the plaintiff's favor for purposes of plaintiff's prima facie case. *See, e.g., Mattel, Inc. v. Greiner & Hausser GmbH,* 354 F.3d 857, 861-62 (9th Cir. 2003).

Federal courts, in the absence of a specific statutory provision conferring jurisdiction, apply the personal jurisdiction laws of the state in which they sit. California's long-arm jurisdictional statute is "coextensive with federal due process requirements." *Panaision Int'l, LP v. Toeppen,* 141 F.3d 1316, 1320 (9th Cir. 1998). To exercise jurisdiction over a non-resident defendant, the defendant must have "minimum contacts" with the forum state such that the exercise of jurisdiction "does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington,* 326 U.S. 310, 316 (1945). Jurisdiction can be either general or specific. *See Helicopteros Nacionales de Colombia, S.A. v. Hall,* 466 U.S. 408, 415-16 (1984).

C. Leave to Amend

Pursuant to Federal Rule of Civil Procedure 15(a), a court should grant leave to amend a complaint "when justice so requires," because "the purpose of Rule 15 . . . [is] to facilitate decision on the merits, rather than on the pleadings or technicalities." *Lopez v. Smith,* 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc). The Court may deny leave to amend, however, for a number of reasons, including "undue delay, bad faith or dilatory motive on the part of the movant, *repeated failure to cure deficiencies by amendments previously allowed,* undue prejudice to the opposing party by virtue of allowance of the amendment, [and] *futility of amendment.*" *Eminence Capital, LLC. Aspeon, Inc.,* 316 F.3d 1048, 1052 (2003) (citing *Foman v. Davis,* 371 U.S. 178, 182 (1962) (emphasis added).

D. Judicial Notice

There are four Requests for Judicial Notice before the Court with regards to the instant motions. The Downes Defendants (ECF 109), the Sibling Defendants (ECF 112), and Plaintiff (ECF 118) each submit Requests for Judicial Notice with regard to the Motions to Dismiss. The Downes Defendants further submit a Request for Judicial Notice with regard to their Motion for Sanctions. (ECF 132) The Court considers each in turn.

In general, a court should not look beyond the four corners of a complaint when ruling on a motion to dismiss. *See, e.g., Swartz v. KPMG, LLP,* 476 F.3d 756, 763 (9th Cir. 2007). Pursuant to Federal Rule of Evidence 201, however, the Court is permitted to take judicial notice of adjudicative facts

"not subject to reasonable dispute," and "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed.R.Evid. 201(b); *see also Mack v. S. Bay Beer Distribs.*, 798 F.3d 1279, 1282 (9th Cir. 1986) (permitting a court to take judicial notice of "matters of public record").

The Downes Defendants request the Court take judicial notice of thirteen documents, including pleadings and declarations publicly filed with Oregon and California courts (ECF 109 Exhs. 1, 6, 8, 11, 12, and 13), orders and judgments issued by said courts (*id.* Exhs. 2, 4, 5, 7, 9, and 10), and an excerpt from a transcript of proceedings in *In the Matter of Irene E. Rupert Trust* (*id.* Exh. 3). (*See* ECF 109 at 2-3) A court may take judicial notice of documents filed in judicial or administrative proceedings, *see United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992), and documents that are public record. *See Mack,* 798 F.2d 1279, 1282. As such the Downes Defendants' Request for Judicial Notice is GRANTED.

The Sibling Defendants ask the Court to take judicial notice of two documents, the FAC filed in *Rupert I* and Judge Fogel's Order granting the Motion to Dismiss in *Rupert I.* (ECF 112). These documents are both matters of public record. As such, the Court GRANTS the Sibling Defendants Request for Judicial Notice. *See Mack,* 798 F.2d 1279, 1282.

Plaintiff asks the Court take judicial notice of five documents: (1) an email purportedly sent from James Rupert to Plaintiff on August 31, 2010; (2) a copy of the General Judgment issued in *In the Matter of the Irene E. Rupert Trust*; (3) a copy of the Declaration of James Rupert, filed in *In the Matter of the Irene E. Rupert Trust*; (4) an order granting reconsideration in the Oregon Court of Appeal, filed on March 7, 2013, regarding *In the Matter of the Irene E. Rupert Trust*; and (5) an order granting reconsideration in the Oregon Court of Appeal, also filed on March 7, 2013, regarding two other cases, including *In the Matter of the Samuel J. Rupert Trust.*

The Court GRANTS Plaintiff's request regarding Exhibits 2-5 because they are matters of public record. *See Mack,* 798 F.2d 1279, 1282. Plaintiff contends that the Court should judicially notice Exhibit 1, the James Rupert email, because the document is referenced in the SAC and the Defendants do not call into question its authenticity. Plaintiff is correct that the Sibling Defendants do not object to this Request for Judicial Notice. In this Circuit, "documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading, may be considered in ruling on a Rule 12(b)(6) motion to dismiss." *Branch v. Tunnell,* 14 F.3d 449, 454 (9th Cir. 1994), *overruled on other grounds by Galbraith v. Cnty. Of Santa Clara,* 307 F.3d 1119 (9th Cir. 2002). Plaintiff does reference the James Rupert email in his SAC and its Appendix (*see* SAC ¶ 94 n.30 (discussing an email sent from James to Plaintiff, though not stating the

date of that email); *see also* SAC App'x A at 12) Therefore, Plaintiff's request that the Court notice Exhibit 1 falls within the ambit of the rule articulated in *Branch*, and the Court GRANTS Plaintiff's Request for Judicial Notice in its entirety.

Finally, the Downes Defendants seek judicial notice of sixteen documents with regard to their Motion for Sanctions. (*See* ECF 132) Several of these requests overlap with their Request for Judicial Notice filed with their Motion to Dismiss. The documents the Downes Defendants seek judicial notice for in this context include: pleadings and papers filed with courts in Oregon and California (*id.* Exh. 1, 6, 8, 11, 12, 13, 15 and 16); orders and judgments issued by courts in Oregon and California (*id.* Exhs. 2, 4, 5, 7, 9, and 10); a copy of a transcript from proceedings in *In the Matter of the Irene E. Rupert Trust* (*id.* Exh. 3); and a copy of a page of the California Vexatious Litigant List, as it existed on November 1, 2012 (*id.* Exh. 14). These documents are either documents in the public record (*id.* Exhs. 1-13, 15, 16), *see Mack,* 798 F.2d 1279, 1282, or is information contained on a government website (*id.* Exh. 14). *See Daniels-Hall v. Nat'l Educ. Ass'n,* 629 F.3d 992, 998-99 (9th Cir. 2010) (judicially noticing information contained on a government website when neither party disputes either the website's authenticity or the accuracy of the information displayed therein). The Court GRANTS the Downes Defendants' Request for Judicial Notice with regard to the Motion for Sanctions.

The Court thus GRANTS each of the four Requests for Judicial Notice, and will consider these documents where applicable and relevant.

III. DISCUSSION

The Court is presented with four Motions to Dismiss and a Motion for Sanctions. The Court will first consider the Zusman Defendants' Motion to Dismiss for failure to state a claim. Then, the Court will consider the three Motions to Dismiss for lack of personal jurisdiction. Finally, the Court will consider the Downes Defendants' Motion for Sanctions.

A. The Zusman Defendants' Motion to Dismiss

The Zusman Defendants move this Court to dismiss Plaintiff's claims against them under two theories: first, that Plaintiff's federal RICO claims are barred by the *Noerr-Pennington* doctrine, in that Plaintiff's RICO claims are premised entirely on the Zusman Defendants' legal representation of Susan Bond and Irene Rupert in *Rupert I*, which constitute protected petitioning activity; and second, that Plaintiff's other federal RICO claim, which does not involve the *Rupert I* litigation, fails to allege fraudulent conduct with the requisite specificity, as required under the heightened pleading requirements of Rule 9(b). Plaintiff, in opposition, contends that the "sham litigation" exception to the *Noerr-Pennington* doctrine precludes the Zusman Defendants from invoking the doctrine's protection, and that he has pled his RICO claims with the

necessary specificity. The Court ultimately agrees with the Zusman Defendants, and GRANTS their Motion to Dismiss.

Before engaging in the legal analysis, the Court first outlines the alleged wrongful activities that Plaintiff pleads against the Zusman Defendants.[5] In his SAC, Plaintiff alleges that the Zusman Defendants participated in the following actions: (1) filing the Joint Motion to Dismiss for lack of personal jurisdiction before Judge Fogel in *Rupert I* (*see, e.g.*, SAC ¶¶ 71, 81, 108, 112); (2) obtaining the declarations of Irene Rupert and Susan Bond, which stated that Irene Rupert was the trustee of the Samuel Rupert Trust and that the trust assets of the Samuel Rupert Trust were located in Oregon, and filing said declarations with the court in *Rupert I* (*see, e.g.*, SAC ¶¶ 72, 83, 108, 112); (3) making material misrepresentations of fact before Judge Fogel at the hearing on the Joint Motion to Dismiss in *Rupert I* (*see, e.g.*, SAC ¶ 74); and (4) "schem[ing]" alongside Defendants Susan Bond, Gile Downes, and Matthew Whitman, "to wrongfully use . . . extrinsic and intrinsic fraud to obtain corrupt Oregon Trust Code declaratory judgments" concerning the Samuel Rupert and Irene Rupert trusts. (SAC ¶ 79)[6]

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[5] These allegations include any activities ascribed to Mr. Zusman himself, or the Markun Zusman law firm generally.

[6] Plaintiff describes the Zusman Defendants' alleged participation in predicate acts on pages 6 and 7 of Appendix A (predicate acts 23-25 and 32), and page 4 of Appendix B (predicate acts 16-18). However, the allegations in the two appendices do not include every allegation Plaintiff alleges in

With this factual backdrop, the Court considers the Zusman Defendants' arguments in turn.

1. The Noerr-Pennington *Doctrine Bars All of Plaintiff's Claims Arising From Activities Undertaken by the Zusman Defendants in* Rupert I

The Zusman Defendants argue that all of their actions as counsel in *Rupert I* are protected petitioning activities under the *Noerr-Pennington* doctrine. (*See, e.g.*, Zusman Mot. To Dismiss, ECF 114 at 4) *Noerr-Pennington* stands for the proposition that "those who petition any department of the government for redress are generally immune from statutory liability for their petitioning conduct." *Sosa v. DirectTV, Inc.*, 437 F.3d 923, 929 (9th Cir. 2006) (citing both *Eastern R.R. Presidents' Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961), and *United Mine Workers of Am. v. Pennington*, 381 U.S. 657 (1965)). This doctrine arose in the context of antitrust law, *see, e.g., Noerr*, 365 U.S. 127, but this Circuit has applied its protections to RICO actions. *See, e.g., Kearney v. Foley & Lardner, LLP*, 590 F.3d 638, 643-48 (9th Cir. 2009) (applying *Noerr-Pennington* in an action brought against attorneys and law firms under RICO); *see also Winters v. Jordan*, 2010 WL

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the SAC – for example, it does not include the alleged scheme to obtain Oregon declaratory judgments outlined in paragraph 79 of the SAC – and thus the Court engaged in a reading of the entire SAC in order to determine the fullest extent of Plantiff's claims against the Zusman Defendants and the three other Defendant groups.

2836834, at *8 (E.D. Cal. July 20, 2010) ("The *Noerr-Pennington* doctrine applies to petitioning activity that gives rise to . . . a claim brought pursuant to the RICO statute."). Such protected petitioning activity includes representing a party in a court proceeding – either in bringing suit or defending against a suit brought by another party – and filing papers with a court. *See, e.g., Freeman v. Lasky, Haas & Cohler,* 410 F.3d 1180, 1184 (th Cir. 2005) (defining petitioning activity as any "communication to the court," and finding that *Noerr-Pennington* applies to defensive pleadings, "because asking a court to deny one's opponents' petition is also a form of petition"). "Conduct incidental to a petition is protected by *Noerr-Pennington* if the petition itself is protected." *Id.* (citing *Thoefel v. Farey-Jones,* 359 F.3d 1066, 1078 (9th Cir. 2004)).

Noerr-Pennington's protections are not absolute, however, and there exists a "sham litigation" exception to the doctrine. *See, e.g., Freeman,* 410 F.3d 1180, 1183-84 (holding that *Noerr-Pennington* immunity "is not so broad as to cover all litigation: 'Sham' petitions don't fall within the protection of the doctrine"). Plaintiff contends that the Zusman Defendants' activities in *Rupert I* constituted "sham litigation." (*See, e.g.,* Opp. To Zusman Mot. To Dismiss at 9-10)[7] The sham litigation exception has three formulations:

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[7] Plaintiff further asserts that the Court cannot determine whether or not the sham litigation exception applies in the context of a Rule 12(b)(6) motion to dismiss, contending that the Ninth Circuit has held that such a determination cannot be made at the pleadings stage. (*See,* Opp. To Zusman Mot. To

First, if the alleged anticompetitive behavior consists of bringing a single sham lawsuit (or a small number of such suits), the antitrust plaintiff must demonstrate that the lawsuit was (1) objectively baseless, and (2) a concealed attempt to interfere with the plaintiff's business relationships.

Second, if the alleged anticompetitive behavior is the filing of a series of lawsuits, "the question is not whether any one of them has merit – some may turn out to, just as a matter of chance – but whether they are brought pursuant to a policy of starting legal proceedings without regard to the merits and for the purpose of injuring a market rival."

Finally, in the context of a judicial proceeding, if the alleged anticompetitive behavior consists of making intentional misrepresentations to the court, litigation can be deemed a sham if "a party's knowing fraud upon, or its intentional

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Dismiss at 10-11) Plaintiff cites for this proposition *Hydranautics v. FilmTec Corp.*, 70 F.3d 533, (9th Cir. 1995). In *Hydranautics,* however, the circuit court, recognizing that "the district court did not reach th[e] issue" of *Noerr-Pennington* immunity, *id.* at 538, declined to affirm on that ground. The Ninth Circuit has, contrary to Plaintiff's argument, upheld dismissals under *Noerr-Pennington* immunity in a number of cases more recent that *Hydranautics. See, e.g., Freeman,* 410 F.3d 1180 ("*Noerr-Pennington* immunity is a sufficient ground to dismiss the complaint as to all defendants.").

> misrepresentations to, the court deprive the litigation of its legitimacy."
>
> *Kottle v. Nw. Kidney Ctrs.*, 146 F.3d 1056, 1060 (9th Cir. 1998) (internal citations omitted).

Judge Koh's Dismissal Order found that none of the three formulations of the sham litigation exception applied in this case. (Dismissal Order, ECF 100 at 13-15) This Court finds that Plaintiff has not stated any additional facts in the SAC that would merit a finding that the representation mounted by Defendant in *Rupert I* was a sham. As to the first formulation, the Zusman Defendants succeeded in obtaining a dismissal in *Rupert I.* As such, their actions cannot be viewed as "objectively baseless." *See Professional Real Estate Investors, Inc. v. Columbia Pictures Indus.*, 508 U.S. 49, 60 n.5 (1993) ("A winning lawsuit is *by definition a reasonable effort* at petitioning for redress and therefore not a sham.") (emphasis added). The second formulation is inapplicable to this case, as it applies only to instances when a series of lawsuits or petitions are brought "for the purpose of injuring a market rival." *Kottle,* 146 F.3d 1056, 1060 (citing *USS-POSCO Indus. v. Contra Costa Cnty. Bldg. & Constr. Trades Council,* 31 F.3d 800, 810-11 (9th Cir. 1994)). As Judge Koh's Dismissal Order clearly states, "Plaintiff's interest in his inheritance [] has no relationship to market competition or business[,] [r]ather, it is a personal financial relationship." (ECF 100 at 14).

Plaintiff contends that the third formulation of the sham exception should apply in this case,

because the Zusman Defendants in *Rupert I* "concealed and misrepresented the true identity of the trustee of the Samuel Rupert Trust, the true location of this successor trustee, and the true location of the trust assets which were in dispute." (Opp. To Zusman Mot. To Dismiss at 11) Plaintiff argues that these "significant jurisdictional facts" were relied on by Judge Fogel in granting the Motion to Dismiss in *Rupert I,* and that these misstatements thus constituted a fraud upon the court that renders the Zusman Defendants' representation a sham. (*Id.* at 12, 13) Judge Koh's Dismissal Order found that Plaintiff had not made an adequate showing with regard to any of these alleged misrepresentations. (Dismissal Order at 14-15) This Court finds that Plaintiff still fails to make such a showing, for the reasons set forth below.

First, Plaintiff fails to show how Judge Fogel in any way relied on the alleged misrepresentations Plaintiff outlines when Judge Fogel decided *Rupert I.* Plaintiff insists, repeatedly, that "Judge Fogel was deliberately misled" (*see, e.g.,* SAC ¶ 27), and that these misrepresentations "caused Judge Fogel to grant [the] Motion to Dismiss, which most likely would have been denied, if Judge Fogel had realized that he was being misled." (*Id.*)

A review of *Rupert I* finds absolutely no support for this allegation. In *Rupert I,* the Court, applying the familiar three-prong test to determine specific jurisdiction, found that:

> Defendants did communicate with William, who resides in California. However, the

> communications concerned the estate planning decisions of Irene, an Oregon resident. Susan's alleged mistreatment of Irene and alleged mismanagement of trust funds occurred in Oregon. Downes and the members of his law firm are Oregon attorneys; their communications with William related solely to their representation of Irene under Oregon law. None of Defendants' alleged conduct has any nexus with California other than the fact that William happens to reside in California. Under these circumstances, the Court concludes that the "effects" test is not satisfied, and that it would be unreasonable for it to exercise personal jurisdiction over Defendants.
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> *Rupert v. Bond (Rupert I),* 2010 WL 3618662, at *4 (N.D. Cal. Sept. 9, 2010)

Rupert I makes no mention of Irene Rupert as the alleged successor trustee, but rather of Susan Bond "misle[ading] William as to the scope of [Susan's] authority" to manage Irene Rupert's financial affairs. *Id.* at *2. The decision further does not rely on the location of the trustee or any trust assets, contrary to Plaintiff's assertions. Even if it had, Plaintiff does not make a showing that Defendants misled the *Rupert I* court regarding the location of these assets – he insists that the brokerage accounts holding some of the assets of the Samuel Rupert Trust were located in California because they were held in Charles Schwab accounts, and Charles Schwab is headquartered in San

Francisco. (SAC ¶ 47) Judge Koh's Dismissal Order noted that the FAC "allege[d] no facts that Susan or Irene were in California at the time the accounts were allegedly opened," and "no support for the proposition that simply because a department is headquartered in California, all accounts with that department are held there as well." (Dismissal Order at 14) Plaintiff makes no attempt in his SAC to cure these factual deficiencies. Instead, he merely repeats his allegation that these trust funds were "moved" from Michigan to California simply because brokerage accounts were opened with Charles Schwab, a company based in San Francisco. (*See, e.g.*, SAC ¶¶ 34, 47, 72)

Plaintiff asks this Court to read into Judge Fogel's reasoned decision a "blind trust" of the Zusman Defendants' arguments, which prevented him from coming to what Plaintiff views to be the correct decision. (Opp. To Zusman Mot. To Dismiss at 12) This Court refuses to do so. Plaintiff clearly disagrees with the ruling in *Rupert I.* Plaintiff has not, however, provided this Court any evidence that the rationale undergirding Judge Fogel's ruling was in any way caused by the alleged misrepresentations on the part of the Zusman Defendants. Instead, Plaintiff just repeatedly insists that these misrepresentations prevented Judge Fogel from making the decision that Plaintiff wishes he had made – insistences that have already once been rejected by this district in Judge Koh's Dismissal Order.

The Court finds that Plaintiff has not shown that the sham litigation exception to *Noerr-*

Pennington applies here. He has made only vague allegations of misrepresentations, which are "insufficient to overcome *Noerr-Pennington* protection," *Kottle,* 146 F.3d 1036, 1046, and the misrepresentations he does allege were clearly not relied upon by Judge Fogel in his written order granting the Joint Motion to Dismiss. *See Rupert I* at *4. As such, any alleged wrongdoing related to the Zusman Defendants' petitioning activity in *Rupert I* – which includes the filing of the Motion to Dismiss, the obtaining and filing of the Irene Rupert and Susan Bond declarations, and the statements made during oral argument – are all entitled to immunity under *Noerr-Pennington. See Freeman,* 410 F.3d 1180, 1184.

2. *Plaintiff Has Not Pled with the Requisite Specificity His Allegation That Zusman "Schemed" to Obtain the Oregon Declaratory Judgments*

Judge Koh's Dismissal Order found that Plaintiff had not pled with the requisite specificity his claims that the Zusman Defendants "violated RICO in other ways" beyond their activities in *Rupert I.* In the SAC, Plaintiff makes an allegation implicating one of the Zusman Defendants that goes beyond the representation of Susan Bond and Irene Rupert in *Rupert I.* Plaintiff alleges, in paragraph 79, that Mr. Zusman "schemed . . . to wrongfully use, and in fact did wrongfully us, both extrinsic and intrinsic fraud to obtain corrupt Oregon Trust Code declaratory judgments, concerning both [the Samuel

Rupert and Irene Rupert] trusts." (SAC ¶ 79)[8] The Court finds that Plaintiff has not pled this allegation with the necessary specificity.[9]

Allegations under RICO must meet the heightened pleading requirements of Rule 9(b), which demands that a party "state with particularity the circumstances constituting fraud." Fed.R.Civ.P. 9(b); *see Moore v. Kayport Package Express, Inc.*, 885 F.2d 531, 541 (9th Cir. 1989) ("We have applied the particularity requirements of Rule 9(b) to RICO claims.") Rule 9(b) requires that the pleader "state the time, place, and specific content of the false representations, as well as the identities of the parties to the misrepresentation." *Schreiber Distrib. V. Serv-Well Furniture Co.*, 806 F.2d 1393, 1400 (9th Cir. 1986). Plaintiff has not done so.

Plaintiff's single allegation in paragraph 79 fails to state the time, place, or specific content of the purported "scheme," though it does allege the identities of the parties. (SAC ¶ 79) Plaintiff merely states that a series of emails were

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[8] Plaintiff includes with this allegation a footnote which describes activity undertaken by several Defendants in this matter, but which does not mention Mr. Zusman or the Markun Zusman Compton firm. (*See* SAC ¶ 79 n.22 (mentioning activities by Susan Bond, Matthew Whitman, and non-party Judge Maurer of the Clackamas Circuit Court in Oregon))

[9] In his briefing, Plaintiff contends that his allegations regarding the Zusman Defendants' conduct regarding their representation in *Rupert I* are pled with the requisite specificity under Rule 9(b). As the Court finds that this *Rupert I*-related conduct falls under the protection of *Noerr-Pennington*, it does not reach this question.

exchanged, sometime after March 15, 2010,[10] "to wrongfully use . . . both extrinsic and intrinsic fraud to obtain corrupt Oregon Trust Code declaratory judgments concerning both Trusts." (*Id.*) Plaintiff does not state with any particularity the content of the communications that comprised this alleged scheme. Such an "entirely general" allegation is insufficient for purposes of Rule 9(b) pleading in the context of a RICO claim. *See Alan Neuman Prods., Inc. v. Albright,* 862 F.2d 1388, 1392 (9th Cir. 1988) (finding insufficient a pleading that fails to allege any "specifics of . . . [the] nature of the alleged communications," and holding that such generalities constituted a "fatal defect" in the plaintiff's pleading).

Plaintiff was clearly informed by Judge Koh's Dismissal Order that any claims brought under RICO would need to be pled with the specificity required of Rule 9(b). (*See* Dismissal Order at 15) Plaintiff has not done so, instead choosing to couch his single non-*Rupert I*-related claim in vague allegations of "extrinsic fraud" and a "scheme[]" between Defendants Zusman, Downes, Whitman, and Susan Bond. (SAC ¶ 79) Such mere generalities are fatal to Plaintiff's additional RICO claim against the Zusman Defendants.

3. Lacking Jurisdiction Over Plaintiff's Federal Causes of Action, the Court Does Not Exercise Supplemental Jurisdiction

[10] Plaintiff does not include a date with this allegation, but does state a date in paragraph 78, March 15, 2010, and opens paragraph 79 with the word "thereafter." (SAC ¶¶ 78-79)

Over Against Plaintiff's State Law Claims the Zusman Defendants

Plaintiff alleges in the SAC, as he did in the FAC, that this Court has supplemental jurisdiction over his pendent state law claims, arising under Oregon and California law, pursuant to 28 U.S.C. § 1367. (*See, e.g.,* SAC ¶ 1 ("[T]his Court also has supplemental jurisdiction over plaintiff William's state law claims under 28 U.S.C. § 1367.")

"A court may decline to exercise supplemental jurisdiction over state-law claims once it has dismissed all claims over which it has original jurisdiction." *Ove v. Gwinn,* 264 F.3d 817, 826 (9th Cir. 2001) (citing 28 U.S.C. § 1367(c)(3)).

All of Plaintiff's federal claims against Edward Zusman and the Markun Zusman law firm are either barred by *Noerr-Pennington* or lack the particularity required under Rule 9(b). Plaintiff has been given the opportunity to amend his allegations, and has not remedied the factual and jurisdictional deficiencies outlined by the Court in Judge Koh's Dismissal Order. This Court further declines to exercise supplemental jurisdiction over Plaintiff's state law claims, pursuant to 28 U.S.C. § 1367(c)(3). As such, Plaintiff's SAC is DISMISSED WITH PREJUDICE as to the Zusman Defendants.

B. The Sibling, Downes, and Cartwright Defendants' Motions to Dismiss

Plaintiff alleges that this Court has jurisdiction over the remaining three groups of Defendants for

two reasons: first, that the "ends of justice" jurisdiction provision of RICO (*see* 18 U.S.C. § 1965(b)), which permits a court to exercise jurisdiction in certain instances over non-resident participants in a RICO conspiracy even if the court otherwise lacks personal jurisdiction over the defendant, applies here; and second, that the Court has specific jurisdiction over each Defendant group under the three-prong effects test articulated in *Calder v. Jones,* 465 U.S. 783 (1984).[11] The Downes, Cartwright, and Sibling Defendants all move separately to dismiss Plaintiff's SAC for lack of personal jurisdiction.

The Court first considers Plaintiff's "ends of justice" jurisdiction argument. The Court then considers the actions that Plaintiff alleges give rise to specific jurisdiction over the remaining three Defendant groups. The Court finds neither persuasive, and holds that it lacks personal jurisdiction over the remaining Defendants.

1. This Court Does Not Have Jurisdiction Over the Remaining Defendants Under The Ends of Justice Provision of RICO, 18 U.S.C. § 1965(b)

Under 18 U.S.C. § 1965(b), a court may exercise personal jurisdiction over non-resident participants

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[11] Plaintiff does not allege that this Court has general jurisdiction over the Sibling, Downes, or Cartwright Defendants. (*See* Opp. To Cartwright Mot. To Dismiss at 4; Opp. To Sibling Mot. To Dismiss at 4; Opp. To Downes Mot. To Dismiss at 3)

in an alleged RICO conspiracy, even if those parties would otherwise not be amenable to jurisdiction in that court. This so-called "ends of justice" provision permits a court, consistent with the purpose of the RICO statute, to "enable plaintiffs to bring all members of a nationwide RICO conspiracy before a court in a single trial." *Butcher's Union Local No. 498, United Food & Comm. Workers v. SDC Inv., Inc. (Butcher's Union),* 788 F.2d 535, 538 (9th Cir. 1986). This power is not unlimited, however. In order for a Court to exercise personal jurisdiction through the "ends of justice" provision, "the court must have personal jurisdiction over at least one of the participants in the alleged multi-district conspiracy and the plaintiff must show that there is *no other district* in which a court will have personal jurisdiction over *all* of the alleged co-conspirators." *Id.* at 539 (emphasis added). The burden is on the plaintiff to "adduce evidence that there is no other district" that could hale all of the alleged co-conspirators before its courts. *See Barantsevich v. VTB Bank,* 954 F.Supp.2d 972, 989, 990 (C.D. Cal. 2013) ("While it is not clear that there is another district that could exercise jurisdiction over all defendants, plaintiff has the burden of showing affirmatively that this is the case.").

In Judge Koh's Dismissal Order, the Court informed Plaintiff that, though it had jurisdiction over Mr. Zusman because he is a California resident, that Plaintiff had not sufficiently alleged that no other district could exercise jurisdiction over all the alleged co-conspirators. Judge Koh stated:

> Despite Plaintiff's claims that no other district will have jurisdiction over Zusman, the FAC states that he was a member of a conspiracy with six Oregon defendants, *see* FAC ¶ 8, and that his involvement in the conspiracy was his representation of two Oregon residents in connection with an estate established under Oregon law, *id.* Moreover, Susman's law firm has an office in Oregon. *See* Downes Reply at 4. Accordingly, the Court finds that an Oregon court may have jurisdiction over all of the RICO defendants. As such, jurisdiction under 18 U.S.C. § 1965(b) is inappropriate.

(Dismissal Order at 21)

Defendants contend that Plaintiff has not cured this deficiency, and does not sufficiently allege that no other district, namely the District of Oregon, could exercise jurisdiction over all of the alleged RICO co-conspirators. In response, Plaintiff contends that he has alleged enough facts to show that Edward Zusman is not subject to personal jurisdiction in Oregon. The Court agrees with Defendants.

Plaintiff's SAC states that "Defendant Zusman's contacts with the state of Oregon are not sufficient to allow that state to exercise personal jurisdiction over him." (SAC ¶ 8) To support this conclusion, Plaintiff contends that, though Mr. Zusman's firm has an office in Portland, Oregon, Zusman himself is "only affiliated with the San Francisco, California,

partnership branch location" (*id.*), is licensed to practice law "only in California" (*id.*), and that there is "no reason to believe" that the Oregon attorneys affiliated with Markun Zusman's Oregon office were involved in the alleged RICO conspiracy. (*Id.*)

Plaintiff's pleadings, though not quite cursory, do not meet his burden to show affirmatively that the District of Oregon cannot exercise jurisdiction over Mr. Zusman. The factual circumstances surrounding Plaintiff's expansive allegations against Mr. Zusman prevent the Court from affirmatively finding that jurisdiction in Oregon would be unavailable. Plaintiff alleges, as he did in his FAC, that Mr. Zusman was a member of a conspiracy with Oregon defendants, which involved his representation of two Oregon residents – Susan Bond and Irene Rupert – in connection with an Oregon estate. Mr. Zusman is a named partner in a law firm with an office in Oregon – mere allegations that Mr. Zusman is only registered to practice in California, and that he is "only affiliated with the San Francisco" location of his firm, are not sufficient to meet Plaintiff's affirmative obligation to show that Mr. Zusman could not be haled to court in Oregon for his contacts in this lawsuit: particularly as this Circuit has held that being an out-of-state attorney is insufficient by itself to preclude personal jurisdiction over a lawyer. *See, e.g., Sher v. Johnson,* 911 F.2d 1357, 1363 (9th Cir. 1990).

A plaintiff seeking to exercise jurisdiction pursuant to RICO's "ends of justice" provision faces a high hurdle. It is the plaintiff's burden to affirmatively show that no other district could

exercise jurisdiction over all the alleged co-conspirators. Here, Plaintiff contends that Mr. Zusman's contacts with Oregon "are insufficient" for him to be subject to personal jurisdiction there. (SAC ¶ 8) This Court finds that Plaintiff has not stated enough facts by which this Court could find that the District of Oregon could not exercise jurisdiction over Mr. Zusman, a named partner in a law firm with an office in Oregon, who allegedly participated in a conspiracy regarding an Oregon estate while representing two Oregon residents. As such, the Court finds that "there is no indication in this case that justice requires" the exercise of jurisdiction in this district, *see LeDuc v. Ky. Cent. Life Ins. Co., 814 F.Supp.* 820, 826 (N.D. Cal. 1992), and declines to exercise jurisdiction under 18 U.S.C. § 1965(b). Jurisdiction over the three remaining groups of Defendants must be determined based on a traditional specific jurisdiction inquiry.

2. Plaintiff Fails to Show that the Sibling, Downes, and Cartwright Defendants are Subject to Specific Jurisdiction in this Court

Plaintiff contends that this Court has specific jurisdiction over each of the three remaining Defendant groups. The Ninth Circuit has established a three-prong test for determining whether a non-resident defendant is subject to specific personal jurisdiction:

> (1) The non-resident defendant must purposefully direct his activities or consummate some transaction with the

> forum or resident thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws;
> (2) the claim must be one that arises out of or relates to the defendant's forum-related activities;
> (3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e., it must be reasonable.

Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 802 (9th Cir. 2004) (citing *Lake v. Lake*, 817 F.2d 1416, 1421 (9th Cir. 1987). Plaintiff bears the burden of proof with regards to the first two elements, *see, e.g., Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990), and, if Plaintiff satisfies his burden at to those elements, the burden then shifts to Defendants to "present a compelling case" that exercising jurisdiction over them would be unreasonable. *See, e.g., Burger King Corp. Rudzewicz*, 471 U.S. 462, 476 (1985).

With regards to the first prong, when a case sounds in tort, the Court is concerned with whether the Defendants have "purposefully directed" their activities at the forum state. To determine purposeful direction, the Court engages in a three-part test, first articulated in *Calder v. Jones*, 465 U.S. 783 (1984), which requires that the defendant in question "(1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state." *See Yahoo! Inc. v. La*

Ligue Contre Le Racisme, 433 F.3d 1199, 1206 (9th Cir. 2006) (en banc). Failing to sufficiently plead any one of these three elements is fatal to Plaintiff's attempt to show personal jurisdiction. *Brayton Purcell LLP v. Recordon & Recordon,* 606 F.3d 1124, 1128-29 (9th Cir. 2010). Though there are no requirements that the defendants come into physical contact with the forum *see id.* at 1129, the Supreme Court has held that "the plaintiff cannot be the only link between the defendant and the forum." *Walden v. Fiore,* -- U.S. --, 134 S.Ct. 1115, 1123 (2014). Further, "mere injury to a forum resident *is not a sufficient connection to the forum.*" *Id.* at 1125 (emphasis added).

In Judge Koh's Dismissal Order, the Court noted that Plaintiff's FAC included six intentional acts that could suffice for purposes of specific personal jurisdiction (Dismissal Order at 23), but found that none of the acts were sufficient to confer jurisdiction in a California court. (*Id.* at 23-28) As the Plaintiff has been given the opportunity to amend, the Court now engages in an analysis of the acts Plaintiff contends were committed by each of the three Defendant groups, as pled in the SAC and as described further in his briefing, and finds that none of the acts is purposefully directed at California such that this Court can exercise jurisdiction over the Downes, Cartwright, or Sibling Defendants.

i. Acts Allegedly Committed by the Downs Defendants

In his Opposition to the Downes Motion to Dismiss (ECF 116), Plaintiff argues that his SAC pleads personal jurisdiction over the Downes Defendants based on three acts: (1) "the purposeful direction and targeting of Plaintiff in June of 2009," (2) "the knowingly false declaration Downes submitted to a California Federal Court to Support the Joint Motion to Dismiss in *Rupert I*," and (3) the "extrinsic fraud that was successfully practiced on Judge Fogel", during *Rupert I.* (ECF 116 at 24 (capitalization omitted)).

Plaintiff does not specifically articulate which acts he alleges amount to Defendants' "purposeful direction and targeting" of him in June 2009, but from a review of his SAC, the Court construes this to mean the two letters sent by Mr. Downes, in his capacity representing Susan Bond and Irene Rupert, to Plaintiff in California. Judge Fogel's Order has already held that these two letters are insufficient to confer jurisdiction. *Rupert I,* 2010 WL 3618662, at *4 ("None of Defendants' alleged conduct [in sending the letters] has any nexus with California other than the fact that William happens to reside in California."). Plaintiff pleads no new jurisdictional facts about the letters in his SAC (*see* SAC ¶¶ 59-62), and as such the Court agrees with Judge Fogel's finding that the sending of these two letters fails to amount to purposeful direction toward California.

Plaintiff's two other personal jurisdiction allegations describe conduct that took place before Judge Fogel in *Rupert I*: a declaration submitted by Mr. Downes, and the general act of litigating the

case, which Plaintiff contends resulted in the Downes Defendants practicing "extrinsic fraud" on the court. (*See, e.g.,* ECF 116 at 24) However, neither of these activities can reasonably confer jurisdiction upon the Downes Defendants. Plainly, a plaintiff cannot sue out-of-state defendants in his home forum and then contend that activities undertaken by defendants and their lawyers in that litigation is "purposefully directed" at that forum state. In *Rupert I,* Plaintiff forced Defendants to appear in California court by virtue of his filing a lawsuit. The Downes Defendants appeared as counsel in *Rupert I* for the purpose of challenging personal jurisdiction. Defendants succeeded in having the case dismissed for lack of personal jurisdiction. It would be downright strange for a court to exercise personal jurisdiction over a party based on that party's conduct, as defendants, in successfully challenging personal jurisdiction on a Rule 12(b)(2) motion to dismiss. Such a reading would permit the conduct of plaintiffs, rather than the purposeful actions of defendants, to drive the personal jurisdiction analysis, an approach clearly rejected by the Supreme Court in *Walden v. Fiore. See* 134 S.Ct. 1115, 1125.[12]

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[12] In his Opposition to the Downes Defendants' Motion to Dismiss, Plaintiff briefly argues that the Defendants have consented to jurisdiction because they "have not presented a narrowly focused challenge to personal jurisdiction," instead making additional arguments as to why the claims should be dismissed that go beyond a Rule 12(b)(2) motion to dismiss. (*See* Opp. To Downes Mot. to Dismiss at 25) Plaintiff cites no law for this proposition. A party does not waive a jurisdictional defense simply because that defense is raised *concurrently* with other defenses. *See United States v. Ligas,* 549 F.3d 497 (7th

As such, none of the actions undertaken by Mr. Downes in representing Susan Bond and Irene Rupert is sufficient for this Court to exercise jurisdiction over him, or his law firm. As such, Plaintiff's claims against the Downes Defendants are DISMISSED WITH PREJUDICE.

ii. Acts Allegedly Committed by the Cartwright Defendants

Plaintiff contends, in his Opposition to the Cartwright Defendants' Motion to Dismiss, that Mr. Whitman and Ms. Johansson have committed a number of acts with regard to the alleged RICO conspiracy. Plaintiff argues that these acts confer upon this Court jurisdiction over the various Cartwright Defendants. Plaintiff is incorrect.

Specifically, Plaintiff contends that Mr. Whitman committed nine "RICO predicate acts." (*See* SAC App'x A at 8-12) These acts can be summarized as (1) serving Plaintiff, in California, with several documents from the proceedings in Oregon court, (2) sending an allegedly "forged" Schedule A from the Samuel Rupert Trust to

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Cir. 2008) ("[T]he federal rules permit defendants to simultaneously seek relief and raise a jurisdictional defense without waiving that defense.") (compiling cases); *see also Gates Learjet Corp. Jensen,* 743 F.2d 1325, 1330 (9th Cir. 1984). The Downes Defendants did not seek to dismiss under Rule 12(b)(2) after bringing a motion to dismiss on other grounds. As such, their jurisdictional defense was raised concurrently with their other arguments regarding reasons to dismiss this action, and the Court does not find that they have consented to jurisdiction before it.

Plaintiff in California, (3) sending several letters to Plaintiff, at his address in California, regarding the Oregon proceedings, and (4) engaging in an allegedly improper *ex parte* communication with an Oregon judge regarding the Oregon proceedings. (*See* Opp. To Cartwright Mot. to Dismiss at 13-14)

These acts each fall squarely within the type of communications that Judge Fogel's Order in *Rupert I* found do not confer jurisdiction upon this Court, as the communications concerned the estate planning decisions of Oregon trusts and an Oregon proceeding. *Rupert I* at *4. As Judge Koh held in her Dismissal Order, "the fact that Plaintiff received papers in California does not convert these Oregon-based activities into express aiming at California." (Dismissal Order at 26 (finding further that Oregon law *required* Defendants to mail notices to Plaintiff regarding the Oregon proceedings, *see* Or. Rev. Stat. § 130.035 (2010) This Court is presented with no new information in the SAC or its Appendix A that would cause it to rule contrary to these two reasoned orders, which comport with the Supreme Court's recent holding in *Walden v. Fiore,* 131 S.Ct. 1115 (2014).

Plaintiff further contends that Ms. Johansson committed eleven different "RICO predicate acts," which can be summarized as the sending of writs of garnishment to California and Nebraska, to enforce an Oregon state court judgment demanding that Plaintiff pay attorney's fees. These acts ultimately resulted in funds being removed from Plaintiff's checking account. (*See* SAC App'x A at 14 (discussing RICO Predicate Acts 52-54); *see also*

SAC ¶ 114)) Judge Koh's Dismissal Order has already held that these actions do not confer jurisdiction, holding that "any harm which occurred to Plaintiff occurred during the Oregon Proceedings when an Oregon Court ordered him to pay attorney's fees and costs." (Dismissal Order at 26) Plaintiff's contention that the sending of these writs of garnishment violates the California Sister-State Money Judgments Act also fails to show personal jurisdiction. *See, e.g., Michael v. New Century Fin. Servs.*, -- F.Supp.2d--, 2014 WL 4099010, at *8 (N.D. Cal. Aug. 20, 2014) (citing *Menken v. Emm,* 503 F.3d 1050 (9th Cir. 2007), for the proposition that "[m]ere allegations that the Defendants have failed to domesticate a foreign judgment" do not permit a court to exercise personal jurisdiction over those defendants).

The Cartwright Defendants are Oregon lawyers and an Oregon law firm whose contacts with California were limited to their representation of clients in Oregon litigation. They did not avail themselves of California as a forum. Plaintiff has not shown that their actions amount to the necessary contacts by which it would be just for the Cartwright Defendants to be haled into California court in this litigation. *Cf. Sher v. Johnson,* 911 F.2d 1357, 1363 (9th Cir. 1990).

As such, the Court GRANTS the Cartwright Defendants' Motion to Dismiss, WITH PREJUDICE.

iii. Acts Allegedly Committed by the Sibling Defendants

Finally, Plaintiff alleges that his siblings, Susan Bond and James Rupert, committed myriad acts in the alleged RICO conspiracy. The Court has reviewed the entirety of the allegations against Susan Bond and James Rupert in order to determine which acts can be considered to be in any way "directed at" California. The allegations against Susan Bond can be summarized to include: (1) the acts comprising "RICO Stage 1," regarding Susan's management of the trust assets; (2) the acts comprising "RICO Stage 2," where Susan Bond and Gile Downes are alleged to have repeated "the Big Lie" in letters sent to Plaintiff; (3) her actions during the litigation before Judge Fogel in *Rupert I,* comprising "RICO Stage 3", and (4) her participation with the Cartwright Defendants in the sending of documents to Plaintiff in California regarding the Oregon litigation, comprising "RICO Stage 4." The allegations against James Rupert are less numerous, comprising only (1) the sending of an email to Plaintiff where he allegedly repeats "the Big Lie" and expresses his support for Susan's actions, and (2) his participation in "obtaining one of the corrupt Oregon judgments." (Opp. To Sibling Mot. to Dismiss at 16)

The Court finds that these activities do not confer personal jurisdiction over either of the Sibling Defendants. Many of these allegations have already been found insufficient in both *Rupert I* and Judge Koh's Dismissal Order. Despite being provided the opportunity to amend his claims in the SAC in order to state facts supporting jurisdiction, Plaintiff has instead mainly re-alleged the same arguments that have now been twice rejected by judges of this

District. The Court addresses each of Plaintiff's allegations in turn.[13]

First, Susan's actions in managing trust assets have been found insufficient to confer jurisdiction upon this Court by both Judge Fogel in *Rupert I* and Judge Koh in the Order dismissing the FAC. (*See, e.g., Rupert I* at *4; *see also* Dismissal Order at 23-24) The Court agrees with their findings: that the alleged trust mismanagement took place in Oregon, and that any alleged emails or letters sent from Oregon to California were with regard to Oregon estate planning decisions, undertaken on behalf of an Oregon resident. (*See id.* at 24) Plaintiff pleads no new facts that tie Ms. Bond's management of the trust to this forum.

In his SAC and briefing, Plaintiff again reiterates his argument that Susan "moved" trust assets to California from Michigan (SAC ¶ 47).

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[13] In his Opposition to the Sibling Defendants' Motion to Dismiss, Plaintiff argues that "judicial estoppel should stop the Sibling Defendants from being heard to argue that Oregon is an alternative forum" in which this case can be heard. (Opp. To Sibling Mot. to Dismiss at 21) (original capitalization omitted). Plaintiff contends in his briefing, as he did at oral argument, that he is civilly dead in Oregon. (*See, e.g., id.* at 22) Plaintiff, however, misapprehends the nature the Court's jurisdictional inquires. The Court needs to determine, for Plaintiff's § 1965(b) jurisdiction argument, whether *any* other forum could possibly hale all Defendants before it. *See LeDuc,* 814 F.Supp. 820, 826. Having found that Oregon could possibly have jurisdiction over all Defendants in this action, the Court then must engage in a specific jurisdiction inquiry with regard to the Downes, Cartwright, and Sibling Defendants. There is no reason why judicial estoppel would cause this Court to find personal jurisdiction over any of the Defendants in California.

Plaintiff failed, however, to engage in any way with the finding in Judge Koh's Order, which held that Plaintiff did not show *how* the trust assets were "located" in California. (Dismissal Order at 14-15) In his SAC, Plaintiff reasserts that the trust assets, at the time held by Beacon Investment Company, were transferred to three accounts held by Charles Schwab Institutional, which was "located solely in San Francisco, California." (SAC ¶ 47) A single allegation that a Defendant opened an investment account with a company located in California is not sufficient to subject a party to personal jurisdiction in California. Plaintiff cites no law supporting this proposition, and the Court is aware of none. Courts addressing *general* jurisdiction over corporate entities have concerned themselves with whether those entities hold bank accounts in the forum state as one piece of the jurisdictional inquiry. *See, e.g.,* James M. Brogan, *Personal Jurisdiction After* Goodyear *and* McIntyre: *One Step Forward; One Step Backward?* 34 U. Penn. J. Int't L. 811, 816 (2013) (discussing relevant facts in general jurisdiction inquiries over corporate defendants). In this case, however, the Court is engaged in a specific jurisdiction inquiry, regarding a non-corporate Defendant, and is faced with only the allegation that several investment accounts were opened with a company based in California. Plaintiff does not allege that Susan Bond traveled to California to open the accounts, nor even that Susan Bond knew that Charles Schwab was a California corporation when the accounts were opened. He further does not cite case law in support of his argument. As such, Plaintiff again fails to show any reason why the act of opening these investment accounts

suffices for purposes of haling Susan Bond into any California court.

Second, as this Court has already found above, any actions Susan allegedly took alongside Mr. Downes in regard to sending letters to Plaintiff that included "the Big Lie" were found by Judge Fogel in *Rupert I* not to confer jurisdiction. *Rupert I* at *4. This Court agrees with Judge Fogel, and finds that exercising jurisdiction over Susan Bond because of her role in these letters would not comport with *Walden v. Fiore,* 134 S.Ct. 1115, 1122 ("[The] minimum contacts analysis looks to the defendant's contacts with the forum State itself, not the defendant's contacts *with persons who reside there* . . . .[T]he plaintiff cannot be the only link between the defendant and the forum." (emphasis added).

Third, any actions undertaken by Susan Bond before Judge Fogel in *Rupert I,* including the filing of her declaration in that action (*see* SAC App'x A at 6 (discussing RICO Predicate Acts 26-28)), fail to confer jurisdiction for the same reasons as noted above with regard to the Downes Defendants – it would require a tortured reading of the law of personal jurisdiction to allow Plaintiff to hale Susan Bond into court in this District merely because she filed a declaration and participated in litigating a successful motion to dismiss *for lack of personal jurisdiction* after Plaintiff sued her in this district. Responding to a lawsuit, particularly when that response contends that the court lacks personal jurisdiction over the party, is not purposeful availment. *Cf. Walden,* 134 S.Ct. 1115, 1123 (describing the personal jurisdiction inquiry as

focused on the "intentional conduct by the defendant that creates the necessary contacts with the forum"). Here, Plaintiff created Defendants' contacts with the forum by virtue of filing suit here.

Fourth, and finally, Plaintiff contends that Susan's participation in the sending of documents regarding the Oregon litigation, including the allegedly fraudulent Schedule A, writs of garnishment, and various pleadings, confers jurisdiction. They do not, for the reasons articulated above regarding Ms. Johansson. (*See supra* at 21)

The only acts Susan Bond committed in California were those attendant to her responsibilities in trust management in Oregon, in response to litigation undertaken in Oregon courts, or to challenge the lack of personal jurisdiction in this District. None of these contacts were "expressly aimed" at California sufficient to meet the requirements of the *Calder* effects test. The focus, pursuant to the Supreme Court's ruling in *Walden,* must be on the forum, not the plaintiff. Here, Plaintiff is attempting to have his own actions drive the jurisdictional analysis, which they simply cannot do. *Walden,* 134 S.Ct. 1115, 1126 ("*[I]t is the defendant,* not the plaintiff or third parties, *who must create* contacts with the forum state.") (emphasis added).

The allegations against James Rupert, in contrast with those against Susan Bond, are new in the SAC. Though new, they are not persuasive. First, Plaintiff alleges that James Rupert sent him an email in which he repeated "the Big Lie" and

expressed his support for Susan Bond's actions in the Oregon court proceedings. (SAC App'x A at 12 (RICO Predicate Act 42); SAC ¶ 94) Courts have been clear that the sending of a single email, or even a series of emails, by itself, does not amount to purposeful availment. *See, e.g., Barrett v. Catacombs Press,* 44 F.Supp.2d 717, 729 (E.D. Pa. 1999) (finding that two emails sent from a defendant to a plaintiff resident in the forum "d[id] not show purposeful availment"); *Machulsky v. Hall,* 210 F.Supp.2d 531, 542 (D.N.J. 2002) (holding that "minimal correspondence" via email "does not constitute sufficient minimum contacts "for purposes of personal jurisdiction). Though the Supreme Court reserved the question of virtual contacts and their effects on personal jurisdiction in *Walden,* a recent circuit court addressing this question has found that "[t]he connection between the place where an email is opened and a lawsuit is entirely fortuitous," and that "as a practical matter, email does not exist in any location at all." *Adv. Tactical Ordinance Sys., LLC v. Real Action Paintball, Inc.,* 751 F.3d 796, 802-03 (7th Cir. 2014). This Court by no means holds that emails can never give rise to purposeful availment of a forum, but finds that in this case, where an undated letter was sent as an attachment to an email, from a defendant to a forum-resident plaintiff, that such a singular contact does not constitute purposeful availment.

Second, the allegation that James Rupert "participated in obtaining one of the corrupt Oregon judgments" does not give rise to jurisdiction for the reasons offered above regarding Ms. Johansson and Ms. Bond. (*See, e.g., supra* at 21, 23) Plaintiff does

not plead that James Rupert undertook any actions directed at California with regard to his participation as a party in this Oregon case, Case No. CV11050251 (SAC ¶ 92), but instead claims that "James fully supported all of the Oregon litigation activities" and "ratified" those activities in the email he sent to Plaintiff discussed above. (*See id.* at ¶ 94)

The Sibling Defendants have not purposefully availed themselves of California as a forum, and as such the exercise of jurisdiction over them would be improper under *Calder v. Jones* and *Walden v. Fiore.* As such the Court GRANTS the Sibling Defendants' Motion to Dismiss, WITH PREJUDICE.

C. Downes Defendants' Motion for Sanctions

The Downes Defendants bring a Motion for Sanctions, pursuant to Rule 11, alleging that Plaintiff's SAC "adds no new factual allegations concerning the [Downes] Defendants' ties to this jurisdiction." (Mot. for Sanctions at 7) Claiming that "a reasonable inquiry" would have revealed to Plaintiff that his claims are barred in this Court for a lack of personal jurisdiction, the Downes Defendants request that this Court award them monetary sanctions and impose upon Plaintiff a pre-filing order. (*Id.* at 19)[14] Defendants' Motion is

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[14] Defendants also argue that Plaintiff's "history of vexatious litigation" and prior placement on the California Vexatious Litigant list is relevant to the Motion for Sanctions. (*See, e.g.,* Reply, ECF 135 at 3) Plaintiff states that he had been removed from the California Vexatious Litigant list as of May 29, 2013.

similar to a motion for sanctions preciously denied by Judge Koh with regard to the first round of motions to dismiss Plaintiff's FAC. (ECF 101)

Rule 11 "provides for the imposition of sanctions when a filing is frivolous, legally unreasonable, or without factual foundation, or is brought for an improper purpose." *See Estate of Blue v. Cnty. Of Los Angeles,* 120 F.3d 982, 983 (9th Cir. 1997). However, "what is objectively reasonable for a *pro se* litigant and for an attorney may not be the same." *Yack v. Wash. Mut. Inc.,* 2008 WL 3842918, at *2 (N.D. Cal. Aug. 14, 2008).

The Court ultimately declines to award sanctions in this instance. Plaintiff was granted leave to amend in Judge Koh's Dismissal Order. Though this Court's Order dismissing Plaintiff's action is the third Order granting motions to dismiss for lack of personal jurisdiction, Plaintiff has attempted in each circumstance to amend his complaints to allege new facts. He has ultimately been unsuccessful, and this Court is dismissing the entirety of his action, with prejudice.

Judge Koh's prior Order expressed a concern that Plaintiff's "repeated lawsuits may suggest that Plaintiff is bringing this action in 'bad faith' in response to the California and Oregon judgments"

(Opp. to Mot. for Sanctions at 14) The Court is not persuaded that Plaintiff's former placement on the Vexatious Litigant list is relevant to this Motion for Sanctions, and the Court declines to engage with the Downes Defendants' argument that Plaintiff obtained his removal from the list by "omitting from the record at least five other cases to which he was a party." (Reply at 3)

issued against him. (Order Denying Defs.' Mot. for Sanctions, ECF 101 at 19 n.1) The undersigned shares Judge Koh's concern. Plaintiff obviously disagrees with the outcomes in *Rupert I* and the Oregon litigation. He has expressed in numerous documents before this Court his belief that "the Big Lie" has prevented him from receiving his rightful disbursement of his parents' trust assets and from fulfilling the role of successor trustee. Plaintiff's arguments have been unsuccessful, and the Court now dismisses his action with prejudice. California courts simply do not have jurisdiction over Plaintiff's claims – nor will they, even if Plaintiff sought, as he suggested during oral argument and in his briefing on the Motion for Sanctions, to add new "RICO Stage 6" Defendants regarding the instant proceedings. (*See* Opp. to Mot. for Sanctions at 18)

However, any attempt by Plaintiff to refile this action against these parties in this District, or another California court, having been told by three different judges that these courts lack personal jurisdiction over three sets of Defendants, would show bad faith, harassment, and a desire to needlessly increase the cost of litigation for the parties involved, such that an appropriate sanction, including monetary sanctions, would likely be warranted.

IV. ORDER

Plaintiff clearly disagrees with at least four other courts' rulings regarding his parents' trust and their management. Plaintiff, however, fails to

state a claim against the Zusman Defendants and this Court lacks personal jurisdiction over the Downes, Cartwright, and Sibling Defendants. For the foregoing reasons, IT IS HEREBY ORDERED that:

1. The Zusman Defendants' Motion to Dismiss is GRANTED, WITH PREJUDICE.

2. The Downes Defendants' Motion to Dismiss is GRANTED, WITH PREJUDICE.

3. The Cartwright Defendants' Motion to Dismiss is GRANTED, WITH PREJUDICE.

4. The Sibling Defendants' Motion to Dismiss is GRANTED, WITH PREJUDICE.

5. The Downes Motion for Sanctions is DENIED.

The Clerk shall close the file.

IT IS SO ORDERED.

Dated: September 22, 2014

/s/ Beth Labson Freeman
BETH LABSON FREEMAN
United States District Judge

APPENDIX D - Order Denying Plaintiff's Motion For Relief From Final Judgment, USDC for the Northern District of California, Case No. 5:12-cv-05292-BLF; Filed January 6, 2015

No. 12-cv-05292 BLF

WILLIAM RUPERT

v.

SUSAN BOND, et al.,

Order Denying Plaintiff's Motion For Relief From Final Judgment
[Re: ECF 161]

Plaintiff William Rupert moves for relief from final judgment related to this Court's September 22, 2014 Order dismissing the above-captioned case for lack of personal jurisdiction.[1] All Defendants oppose. The Court finds this motion appropriate for

[1] The Court had not yet entered judgment in this action when Plaintiff filed this motion. Civil Local Rule 7-9(a) requires a party to seek leave of court before filing a motion for reconsideration if judgment has not been entered. *See, e.g., Samet v. Procter & Gamble,* 2014 WL 1782821, at *2 (N.D. Cal. May 5, 2014). However, Plaintiff, who is pro se, filed his motion within 28 days of the Court granting the dismissal with prejudice. It is reasonable to believe that Plaintiff felt it necessary to file this motion within 28 days of that dismissal order so that he could seek reconsideration of the Court's ruling. The Court thus adjudicates the motion as filed and briefed.

determination without oral argument, *see* Civil L.R. 7-1(b), and DENIES Plaintiff's motion.

I. LEGAL STANDARDS

A court can, pursuant to Federal Rule of Civil Procedure 59(e), alter or amend a judgment upon a showing of one of four grounds: "(1) the motion is necessary to correct manifest errors of law or fact; (2) the moving party presents newly discovered or previously unavailable evidence; (3) the motion is necessary to prevent manifest injustice; or (4) there is an intervening change in controlling law." *Turner v. Burlington N. Santa Fe R.R.*, 338 F.3d 1058, 1063 (9th Cir. 2003). A motion brought under Rule 59 is not an opportunity for a party to re-litigate the claims that were before the Court prior to judgment, but is instead an "extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." *Kona Enterps., Inc. v. Estate of Bishop,* 229 F.3d 877, 890 (9th Cir. 2000) ("A Rule 59€ motion may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation," and should not be granted "absent highly unusual circumstances.").[2]

II. DISCUSSION

A. An Intervening Change in Controlling Law

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[2] Plaintiff initially also sought relief under Rule 60(b) in his motion, but withdrew that argument in his Reply. *See* ECF 169 at 5-6.

Plaintiff argues that a September 2, 2014 case from the Ninth Circuit, *Levitt v. Yelp! Inc.*, 765 F.3d 1123 (9th Cir. 2014), "clarifies the standards for civil extortion and attempted extortion" and would permit Plaintiff to amend his SAC to allege violations of the Hobbs Act.

Plaintiff's argument is without merit. Plaintiff's ability to state a Hobbs Act claim is immaterial to the Court's finding that it lack personal jurisdiction over the parties due to their insufficient contacts with California. Even more critically, Plaintiff does not articulate any way in which *Levitt* changes the Ninth Circuit's standards for stating a Hobbs Act violation. In *Levitt,* the Ninth Circuit simply applied the relevant case law of the circuit, including *Sosa v. DirecTV, Inc.*, 437 F.3d 923 (9th Cir. 2006), to the facts before it. *Levitt* thus does not set forth a new rule with regard to the Hobbs Act and, as such, is not an "intervening change in law." *See, e.g., United States v. Iron Mountain Mines, Inc.*, 2010 WL 1854118, at *3 (E.D. Cal. May 6, 2010).

B. Manifest Errors of Law

Plaintiff claims that the Court made nine separate manifest errors of law in its Dismissal Order. *See* Mot. at 8-21. A manifest error of law is not merely one in which the party disagrees with the Court, but instead is the "wholesale disregard, misapplication, or failure to recognize controlling precedent on the part of the court." *Oto v. Metro. Life Ins. Co,* 224 F.3d 601, 606 (7th Cir. 2000) ("A manifest error is not demonstrated by the disappointment of the losing party."). Plaintiff

essentially challenges three of the Court's legal determinations: (1) that the Defendants were not subject to personal jurisdiction in California, (2) the Court's application of the *Noerr-Pennington* doctrine to this case, and (3) Susan Bond's status as trustee.

1. Personal Jurisdiction

Plaintiff makes four arguments relevant to the Court's determination that the Defendants were not subject to personal jurisdiction in California.

First, Plaintiff argues that Defendant Susan Bond consented to jurisdiction in California. Plaintiff, in his Opposition to the Sibling Defendants' motion to dismiss, *see* ECF 121, did not once argue that Ms. Bond consented to jurisdiction in California. This is simply a new argument about personal jurisdiction with regard to one Defendant, and a Rule 59(e) motion is not an appropriate avenue to obtain post-judgment re-argument of claims that were, or could have been, raised earlier in the litigation. *See, e.g., NL Indus., Inc. v. Commercial Union Ins. Co.*, 935 F.Supp. 513, 515-16 (D.N.J. 1996).

Second, Plaintiff contends that the Court's application of the three-prong *Calder* effects test for personal jurisdiction was in error, and is inconsistent with *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797 (9th Cir. 2004). The Court did not commit manifest error in its determination that the Sibling, Downes, and Cartwright Defendants did not purposefully direct their suit-related activities toward California. *See, e.g.,*

Dismissal Order at 26 (citing *Sher v. Johnson,* 911 F.2d 1357, 1363 (9th Cir. 1990)). A Rule 59(e) motion is not an opportunity for Plaintiff to obtain reconsideration because he disagrees with the Court's application of controlling law, but rather is available only if the Court manifestly disregards the law. *See Oto,* 224 F.3d 601, 606 ("A manifest error is not demonstrated by the disappointment of the losing party.").

Third, Plaintiff contends that the Court erred in relying on *Walden v. Fiore,* 134 S.Ct. 1115 (2014), arguing that this Court has "misunderst[ood] the limited holdings that were made in *Walden.*" Mot. at 17. The Court did not commit manifest error in finding that *Walden* precluded the Court from exercising jurisdiction over parties based on the actions of the Plaintiff. *See, e.g.,* Dismissal Order at 23, 24.[3] Moreover, the Court's adherence to *Walden* was limited, and directed to a specific issue regarding personal jurisdiction. The Court primarily applied the *Calder* effects test in evaluating the SAC. *See* Dismissal Order at 22-30.

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[3] On January 5, 2015, Plaintiff filed a "Second Statement of Recent Decisions" which included three opinions from other district courts in which *Walden v. Fiore* was cited and where a motion to dismiss for lack of personal jurisdiction was denied. *See* ECF 171. The Court has reviewed these three cases, and finds that they do not alter its personal jurisdiction determination, and in fact provide support for its interpretation of the Supreme Court's holding in *Walden,* as each case includes a discussion of *Walden's* finding that it is only a defendant's purposeful contact with the forum that gives rise to personal jurisdiction.

Fourth, Plaintiff argues that the Court erred in its reliance on *Menken v. Emm,* 503 F.3d 1050, 1061 (9th Cir. 2007). Plaintiff argues that *Menken* is inapplicable to this case because "the *Menken v. Emm* case is one in which specific personal jurisdiction was found to exist." Mot. at 19. The Court cited *Menken* in the context of *Michael v. New Century Financial Services,* 2014 WL 4099010 (N.D. Cal. Aug. 20, 2014), and did not err in describing the Ninth Circuit's determination that allegations a defendant failed to domesticate a foreign judgment, standing alone, do not permit a court to exercise personal jurisdiction over those defendants. *See* Dismissal Order at 25-26.

The Court therefore finds that none of its determinations with regard to personal jurisdiction constitute manifest error.

2. Noerr-Pennington *Immunity*

Plaintiff makes three arguments regarding application of the *Noerr-Pennington* doctrine. First, Plaintiff argues that the Court misconstrued and misapplied the *Noerr-Pennington* doctrine with regard to parties' immunity from suit for conduct engaged in during prior litigation of this family dispute. The Court finds that did not make a manifest error of law in its determination that Defendants were entitled to immunity under *Noerr-Pennington* for their statements to the court during the pendency of *Rupert I. See, e.g.,* Dismissal Order at 14 (citing *Professional Real Estate Investors, Inc. v. Columbia Pictures Indus.,* 508 U.S. 49, 60 n.5 (1993)); *see also Freeman v. Lasky, Haas & Cohler,*

410 F.3d 1180, 1184 (9th Cir. 2005) (holding that *Noerr-Pennington* provides protection to defensive pleadings "because asking a court to deny one's opponents' petition is also a form of petition").

Second, Plaintiff argues that the Court committed manifest error in adjudicating the "sham defense" issue at the pleadings stage. The Ninth Circuit, however, is clear that *Noerr-Pennington* immunity may be decided on the pleadings. *See Freeman,* 410 F.3d 1180, 1184.

Third, Plaintiff contends that *Nunag-Tanedo v. East Baton Rouge Parish School Board,* 711 F.3d 1136 (9th Cir. 2013), demands that *Noerr-Pennington* immunity not be decided at the pleadings stage. Plaintiff's reading of *Nunag-Tanedo* is incorrect. As the Court has stated above, in certain circumstances *Noerr-Pennington* immunity can be determined on the pleadings, *see Freeman,* 410 F.3d 1180, 1184, and *Nunag-Tanedo* did not discuss, let alone overrule, *Freeman.*

The Court therefore finds that none of its determinations with regard to the *Noerr-Pennington* doctrine constitute manifest error.

3. The Trusteeship

Finally, Plaintiff makes two arguments regarding Susan Bond's status as trustee. First, Plaintiff argues that the Court "doesn't seem to appreciate the difference between a trustee *de jure,* or a trustee *de facto,* and an intermeddling trustee *de son tort.*" Mot. at 11. Second, he argues that

King v. Johnson, 178 Cal. App. 4th 1488 (2009), gives him "standing to act, on his own behalf, against a former trustee *de son tort.*" Mot. at 13.

Neither the nature of the trustee, nor the question of whether or not Plaintiff is a beneficiary with standing to bring certain claims, have any bearing on the jurisdictional question on which the Court decided the motion to dismiss. *See, e.g.,* Dismissal Order at 26-28. As such, a motion for reconsideration is an inappropriate avenue by which to argue these two legal claims. *See, e.g., Turner,* 338 F.3d 1058, 1063 (stating that a Rule 59(e) motion is only appropriate to dispute erroneous legal or factual determinations "upon which the judgment is based"). Moreover, the Court did not misunderstand the differences between these types of trustees, and *King v. Johnston* does not in any way discuss personal jurisdiction. *See generally* 178 Cal. App. 4th 1488.

The Court finds that most of Plaintiff's legal arguments are merely an attempt to once again argue the merits of his case. A motion brought under Rule 59(e) is not an appropriate avenue to make such arguments. *See, e.g., Kona Enterprises,* 229 F.3d 877, 890 (9th Cir. 2000).

C. Manifest Errors of Fact

Plaintiff argues that the "Court's Order shows it is confused about what is being alleged in the SAC," Mot. at 21, and alleges two manifest errors of fact. Neither argument is persuasive.

First, Plaintiff argues that the Court misunderstands what he calls the "Big Lie." The Court identified the "Big Lie" as "the statement that Irene Rupert, and not Plaintiff, was the trustee of the Samuel Rupert Trust." Dismissal Order at 4. Plaintiff argues that instead, the "Big Lie" is that Irene Rupert "remain[ed]" the successor trustee to the Samuel Rupert Trust. Mot. at 21. These statements are not factually inconsistent. The Court noted, as Plaintiff does in his Motion for Relief, that the "Big Lie" was stated on June 10, 2009, and involved the nature of the Samuel Rupert trusteeship. *See* Dismissal Order at 4; *see also* Mot. at 21. The Court did not commit manifest error in its description of the "Big Lie," nor did the description impact the Court's determination that there was no personal jurisdiction over Defendants. *See Turner,* 338 F.3d 1058, 1063 (stating that a Rule 59(e) motion is only appropriate to dispute erroneous legal or factual determinations "upon which the judgment is based").

Second, Plaintiff contends that the Court misconstrued and misunderstood Judge Fogel's prior Dismissal Order in *Rupert I.* Mot. at 21-22. Plaintiff alleges that Judge Fogel "found [that] there were intentional acts, and that they had been purposefully direct at the plaintiff, in California." *Id.* at 22. But Judge Fogel's Order explicitly found that the *Calder* effects test had not been satisfied, and that personal jurisdiction could not be exercised

over the defendants in *Rupert I.*[4] Plaintiff's statement is therefore incorrect. The Court thus did not err in its description of Judge Fogel's Order. *See Rupert I,* 2010 WL 3618662, at *4 (N.D. Cal. Sept. 9, 2010).

D. To Prevent Manifest Injustice

A manifest injustice is any "error in the trial court that is direct, obvious and observable, such as a defendant's guilty plea that is involuntary." *See In re Oak Park Calabasas Condominium Ass'n,* 302 B.R. 682, 683 (Bankr. C.D. Cal. 2003) (defining manifest injustice under Rule 59(e)). Neither of Plaintiff's arguments under the manifest injustice prong of Rule 59(e) is persuasive.

First, he alleges, as he has repeatedly throughout this litigation, that Judge Fogel was "misled" about what he terms the "crucial *Hanson v. Denckla* jurisdictional factors (identify (sic) of trustee, location of trustee, and location of trust property)" during *Rupert I. See* Mot. at 22. To support this claim, Plaintiff cites to the court reporter's transcript from the hearing on the motion to dismiss before Judge Fogel. *See id.* at 23-24. The partial transcript cited by Plaintiff, however, contains only a brief colloquy between Judge Fogel and Mr. Zusman regarding the *Calder* effects test, and does not alter the Court's ruling. Plaintiff further does not state how this transcript shows any

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[4] Susan Bond, Irene Rupert, Gile Downes, and the Downes law firm were the only Defendants named by Plaintiff in *Rupert I.* Ms. Rupert, now deceased, is not named as a Defendant in this case.

"manifest injustice" in this Court's Dismissal Order. Instead, his argument is yet another attempt to re-litigate something that has already been before the Court multiple times, which is simply not permitted under Rule 59(e). *See Kona Enterps., Inc.*, 229 F.3d 877, 890.

Second, Plaintiff contends that amendment is possible, and that the Court "refus[ed] to allow plaintiff to fully discuss his ability to amend" at its hearing on his motion. Mot. at 24. On the contrary, at the hearing on the motions to dismiss, which lasted two hours and ten minutes, *cf.* ECF 159, Plaintiff was given a number of opportunities to state ways he could amend the SAC. Plaintiff now makes only a bare assertion that he can "amend to better explain how the alleged frauds upon the courts deprived the proceedings before Judge Fogel, and in Oregon, of their legitimacy." *Id.* The Court has already undertaken a review of *Rupert I* and found no support for Plaintiff's allegation that Judge Fogel was misled, or that he relied on any of the alleged misrepresentations in deciding the motion to dismiss. *See* Dismissal Order at 15-16. Judge Fogel's Order clearly makes no reference to the location of the trustee or trust assets, or of Irene Rupert as the alleged successor trustee. As such, even if Plaintiff were given a fourth opportunity to amend his already prolix 110-page SAC, such amendment would be futile. *See, e.g., Plymouth Cnty., Iowa ex rel. Raymond v. MERSCORP, Inc.*, 287 F.R.D. 449 (N.D. Iowa 2012) (denying under Rule 59(e) a request to amend when the motion did not contain any indication of the substance of the

proposed amendment, and where any amendment would be futile).

III. ORDER

Plaintiff's Motion for Relief is DENIED. The Court shall enter judgment accordingly.

IT IS SO ORDERED.

Dated: January 6, 2015

/s/ Beth Labson Freeman
BETH LABSON FREEMAN
United States District Judge

APPENDIX E - Judgment; USDC for the Northern District of California, Case No. 5:12-cv-05292-BLF; Filed January 6, 2015

No. 12-cv-05292 BLF

WILLIAM RUPERT

v.

SUSAN BOND, et al.,

JUDGMENT

On September 22, 2014, the Court granted with prejudice Defendants' motions to dismiss for lack of personal jurisdiction. ECF 160. On January 6, 2015, the Court denied Plaintiff's motion for reconsideration.

Pursuant to Federal Rule of Civil Procedure 58, the Court ENTERS judgment in favor of Defendants and against Plaintiff. The Clerk of Court shall close the file in this matter.

IT IS SO ORDERED.

Dated January 6, 2015

/s/ Beth Labson Freeman
BETH LABSON FREEMAN
United States District Judge

APPENDIX F – Order Denying Plaintiff's Second Motion to Alter or Amend Judgment; USDC for the Northern District of California; Case No. 5:12-cv-05292-BLF; Filed March 27, 2015

No. 12-cv-05292 BLF

WILLIAM RUPERT

v.

SUSAN BOND, et al.,

Order Denying Plaintiff's Second Motion to Alter or Amend Judgment
[Re: ECF 174]

On September 22, 2014, the Court granted, with prejudice, Defendants' motions to dismiss in the above-captioned action. ECF 160. Thereafter, on October 20, 2014, Plaintiff filed a motion with the Court, pursuant to Federal Rule of Civil Procedure 59(e), to alter or amend the Court's judgment. ECF 161. Though the Court had not yet issued final judgment in the action, the Court adjudicated Plaintiff's motion under Rule 59(e) as requested, stating:

> The Court had not yet entered judgment in this action when Plaintiff filed this motion. Civil Local Rule 7-9(a) requires a party to seek leave of court before filing a motion for reconsideration if judgment has not been

> entered. *See, e.g., Samet v. Procter & Gamble,* 2014 WL 1782821, at *2 (N.D. Cal. May 5, 2014). However, Plaintiff, who is pro se, filed his motion within 28 days of the Court granting the dismissal with prejudice. It is reasonable to believe that Plaintiff felt it necessary to file this motion within 28 days of that dismissal order so that he could seek reconsideration of the Court's ruling. The Court thus adjudicates the motion as filed and briefed.

ECF 172 at 1 n.1.

The Court denied Plaintiff's motion on January 6, 2015, and issued judgment that same day. *See* ECF 172, 173. Plaintiff has now filed a *second* motion to alter or amend the judgment, seeking relief pursuant to Federal Rules of Civil Procedure 59(e) and 60(b). *See* ECF 174. This motion mainly reasserts the arguments Plaintiff previously made in his first motion to alter or amend the judgment. Plaintiff's motion is essentially a motion for reconsideration of his prior motion for reconsideration – something that is not contemplated in the rules of civil procedure or this district's local rules. He provides the Court no case citation for the appropriateness of this request. In his motion, Plaintiff concedes that the Court has adjudicated his request to reconsider the dismissal orders. *See* Mot. at 3 ("Plaintiff's motion for reconsideration . . . was denied.").

Plaintiff does not get to twice seek reconsideration of the Court's dismissal orders

merely because the Court adjudicated his improperly filed Rule 59(e) motion and then issued separate judgment thereafter. Nor does he get to seek reconsideration of the Court's order on his motion for reconsideration. Rule 59(e) is an "extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." *Kona Enterps., Inc. v. Estate of Bishop,* 229 F.3d 877, 890 (9th Cir. 2000). Neither of those interests is furthered by permitting a plaintiff to bring a second motion under Rule 59(e). Nor can Plaintiff attempt to garner relief through a repackaging of his motion to alter or amend judgment as one brought under Rule 60(b), because "[t]he denial of a motion for reconsideration under Rule 59(e) is construed as a denial of relief under Rule 60(b), because "[t]he denial of a motion for reconsideration under Rule 59(e) is construed as a denial of relief under Rule 60(b)." *McDowell v. Calderon,* 197 F.3d 1253, 1255 n.3 (9th Cir. 1999) (citing *Pasatiempo by Pasatiempo v. Aizawa,* 103 F.3d 796, 801 (9th Cir. 1996)); *Barber v. Hawai'i,* 42 F.3d 1185, 1198 (9th Cir. 1994) ("In addition, a denial of a motion for reconsideration under Federal Rule of Civil Procedure 59(e) is construed as one denying relief under Rule 60(b).").

Plaintiff also contends that this second motion seeks to assert several new arguments not raised in his prior motion. *See, e.g.,* Reply to Zusman Opp., ECF 181 at 8-11. But it is precisely a desire to prevent multiple motions for reconsideration from being filed that gives rise to this Circuit's rule that the denial of a motion for reconsideration under Rule 59(e) also serves to deny relief under Rule

60(b). *See, e.g., McDowell* at 1255. As such, the Court DENIES Plaintiff's motion. Plaintiff may not seek further reconsideration.

IT IS SO ORDERED.

Dated: March 27, 2015

/s/ Beth Labson Freeman
BETH LABSON FREEMAN
United States District Judge

APPENDIX G – Order Granting Motion to Dismiss for Lack of Personal Jurisdiction, USDC for the Northern District of California, Case No. 5:09-cv-02758-JF (*Rupert I*) Filed September 9, 2010

No. 5:09-cv-02758-JF

WILLIAM T. RUPERT

v.

SUSAN BOND, et al.,

Order[1] Granting Motion To Dismiss For Lack Of Personal Jurisdiction
[Re: Doc. No. 14]

Defendants moved to dismiss the instant action for lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2). The Court has considered the moving and responding papers and the oral argument presented at the hearing. For the reasons discussed below, the motion will be granted.

I. BACKGROUND

This case arises out of a dispute between two of the three adult siblings regarding control of their parents' assets following the death of their father. Plaintiff William Rupert ("William"), proceeding *pro se,* alleges the following facts in the operative first amended complaint ("FAC"):

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[1] This disposition is not designated for publication in the official reports.

Samuel Rupert (now deceased) and his wife Irene Rupert ("Irene") lived in Michigan for many years. On November 1, 1995, they had estate plans prepared by Alan Price ("Price"), a Michigan attorney. The estate plans included revocable trusts. Under the terms of the trusts, Samuel and Irene were to serve as their own trustees; upon the death of either, the assets of both trusts would be allocated to a Family Trust for the benefit of the surviving spouse and the three children; oldest child Susan Bond ("Bond"), middle child William, and third child James Rupert ("James"). The surviving spouse was to receive all net income from the investment assets of the Family Trust until death, at which point the three children would become the successor beneficiaries entitled to equal distributions of all remaining assets of the Family Trust. If a time came when the surviving parent could not manage his or her affairs, the three children were to be co-successor trustees.

On January 26, 2004, Samuel and Irene asked Price to modify their estate plans to designate William as the first nominated child to succeed them as both successor trustee and personal representative/executor. William lives near Santa Cruz, California. Samuel sent William copies of some of the estate documents; William did not examine the documents closely, but put them in a file cabinet.

Samuel and Irene subsequently moved to Oregon, near Portland, to be near Susan and her husband. In May 2008, Samuel and Irene signed

powers of attorney making Susan their health care agent and attorney-in-fact for non-trust assets. William did not know about these documents.

Samuel died on October 12, 2008 after falling in the shower and hitting his head. Susan immediately took over managing all of Irene's personal and financial affairs. She misled William as to the scope of her authority; William had not examined the documents Samuel had sent him in 2004, and thus did not realize that the estate planning documents included the trust provisions or that he was the first nominated child to succeed Irene as trustee. When William told Susan that he had estate planning documents from 2004, Susan told him that she had superseding documents putting her in charge. William believed her and did not press the matter at that time.

Irene had her ninetieth birthday in January 2009. William attended a surprise party for Irene in Oregon, organized by Susan. At that time, Susan told William that she was removing a high-yield bond portfolio from the management of a Michigan investment firm fired by their parents and giving it over to management by her close fried Kenny Dillon. The parents had hired Dillon in the past but had fired him because his investments did not yield enough money, at which point the parents had hired the Michigan firm.

Over the next few months, William and Susan had several disputes about who should be in charge of Irene's finances. Meanwhile, Irene was calling William, complaining that Susan was not nice to her

and was keeping her in the dark regarding her (Irene's) finances. Susan made several comments about how she did not like Irene. Irene told William that when she called Susan, Susan's husband Bob would not put Susan on the phone and told Irene to talk to the staff at her assisted living facility instead of bothering Susan. At some point Irene told William that Susan had sold the high-yield bond portfolio (discussed above) at a loss. William started asking Susan for an accounting of assets.

At that point, in May 2009, William located the legal documents he'd received in 2004. He realized for the first time that the estate plan included the living trusts and that he was the first nominated successor trustee. William sent numerous letters to Susan accusing her of misconduct and asking her to document her legal authority. In June 2009, William received a letter from Irene stating that he had antagonized the whole family and that if he did not stop sending letters she would cut him out of her will. Shortly, thereafter, William received a letter from Gile Downes ("Downes") of Schulte, Anderson, Downes, Aronson & Bittner, PC, an Oregon law firm purporting to represent Irene. Downes stated that William's prospective inheritance rights had been reduced and that he had been replaced as successor trustee of all of the trusts; that Susan was the successor trustee; that William's prospective inheritance rights would be reduced further if he persisted in writing letters and seeking information; and that William's prospective inheritance rights would be eliminated completely unless William signed an enclosed modification of trust agreement by June 19, 2009.

William filed the instant lawsuit on June 22, 2009, and filed the operative FAC on July 23, 2009. He names Susan, Irene, Downes, and Downes' law firm as Defendants, asserting claims for: (1) intentional interference with economic relations (prospective inheritance and lost successor trustee compensation); (2) conspiracy to interfere with economic relations by replacing William as successor trustee and beneficiary, and by looting the Family Trust; (3) punitive damages; and (4) declaratory relief.

II. DISCUSSION

Because no federal statute governs personal jurisdiction, this Court applies the law of the forum state. *See Love v. Associated Newspapers,* 611 F.3d 601, 608-09 (9th Cir. 2010). California's long-arm statute is co-extensive with federal standards; thus this Court may exercise personal jurisdiction if doing so comports with federal constitutional due process. *Id.* at 609. "For a court to exercise over a nonresident defendant, that defendant must have at least 'minimum contacts' with the relevant forum such that the exercise of jurisdiction 'does not offend traditional notions of fair play and substantial justice.'" *Schwarzenegger v. Fred Martin Motor Co.,* 374 F.3d 797, 801 (9th Cir. 2004) (quoting *International Shoe Co. v. Washington,* 326 U.S. 310, 316 (1945)).

"There are two forms of personal jurisdiction that a forum state may exercise over a nonresident defendant – general jurisdiction and specific jurisdiction." *Boschetto v. Hansing,* 539 F.3d 1011,

1016 (9th Cir. 2008). William concedes that none of the defendants has property interests in California, does business in California or has the kind of regular contacts with California sufficient to give rise to general personal jurisdiction. However, William contends that Defendants' conspiracy to deprive him of significant economic benefit (inheritance and trustee compensation), combined with Defendants' written and telephonic communications to him in California in furtherance of that conspiracy, are sufficient to give rise to specific personal jurisdiction over Defendants.

The Ninth Circuit has articulated a three-prong test for analyzing specific jurisdiction:

> (1) The non-resident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws;
>
> (2) the claim must be one which arises out of or relates to the defendant's forum-related activities; and
>
> (3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e., it must be reasonable.

Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme, 433 F.3d 1199, 1206 (9th Cir.

2006) (quoting *Schwarzenegger*, 374 F.3d at 802).

The first prong, sometimes referred to as the "purposeful availment" prong, "may be satisfied by purposeful availment of the privilege of doing business in the forum; by purposeful direction of activities at the forum; or by some combination thereof." *Id.* "Purposeful availment" is treated differently in tort and contract cases. *Id.* In tort cases, the court inquires "whether a defendant 'purposefully direct[s] his activities' at the forum state, applying an 'effects' test that focuses on the forum in which the defendant's actions were felt, whether or not the actions themselves occurred within the forum." *Id.* (quoting *Schwarzenegger*, 374 F.3d at 803). In civil cases, the court inquires "whether a defendant 'purposefully avails itself of the privilege of conducting activities" or "consummate[s] [a] transaction" in the forum, focusing on activities such as delivering goods or executing a contract. *Id.* (quoting *Schwarzenegger*, 374 F.3d at 802).

Because this is a tort case, the Court applies the "effects" test. "The effects test is satisfied if (1) the defendant committed an intentional act; (2) the act was expressly aimed at the forum state; and (3) the act caused harm that the defendant knew was likely to be suffered in the forum state." *Love*, 611 F.3d at 609. "Where a defendant's 'express aim was local,' the fact that it caused harm to the plaintiff in the forum state, even if the defendant knew that the plaintiff lived in the forum state, is insufficient to

satisfy the effects test." *Id.* (quoting *Schwarzenegger,* 374 F.3d at 807).

Here, Defendants did communicate with William, who resides in California. However, the communications concerned the estate planning decisions of Irene, an Oregon resident. Susan's alleged mistreatment of Irene and alleged mismanagement of trust funds occurred in Oregon. Downes and the members of his law firm are Oregon attorneys; their communications with William related solely to their representation of Irene under Oregon law. None of Defendants' alleged conduct has any nexus with California other than the fact that William happens to reside in California. Under these circumstances, the Court concludes that the "effects" test is not satisfied, and that it would be unreasonable for it to exercise personal jurisdiction over Defendants.

III. ORDER

(1) Defendants' motion to dismiss for lack of personal jurisdiction is GRANTED; and

(2) The Clerk of the Court shall close the file.

DATED: 9/9/2010

/s/ Jeremy Fogel
JEREMY FOGEL
United States District Judge

APPENDIX H - Relevant Statutory Provisions And Judicial Rules; 18 U.S.C. § 1964(a)(b)(c)(d), 18 U.S.C. § 1965(a)(b)(c)(d)

18 U.S.C. § 1964 – Civil Remedies

"(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibit any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons."

"(b) The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper."

"(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains

and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final."

"(d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States."

18 U.S.C. § 1965 – Venue and Process

"(a) Any civil action or proceeding under this chapter against any person may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs."

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"(b) In any action under section 1964 of this chapter in any district court of the United States in which it is shown that the ends of justice require that other parties residing in any other district be brought before the court, the court may cause such parties to be summoned, and process for that purpose may be served in any judicial district of the United States by the marshal thereof."

"(c) In any civil or criminal action or proceeding instituted by the United States under this chapter in the district court of the United States for any judicial district, subpenas issued by such court to compel the attendance of witnesses may be served in any other judicial district, except that in any civil action or proceeding no such subpoena shall be issued for service upon any individual who resides in another district at a place more than one hundred miles from the place at which such court is held without approval given by a judge of such court upon a showing of good cause."

"(d) All other process in any action or proceeding under this chapter may be served on any person in any judicial district in which such person resides, is found, has an agent, or transacts his affairs."