No. _____

In The Supreme Court of the United States

GREG ELOFSON,

Petitioner,

v.

STEPHANIE BIVENS, ET AL..,

Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

APPENDIX

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APPENDIX:

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NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 17-16538
D.C. No. 5:15-cv-05761-BLF

GREG STEVEN ELOFSON,
Plaintiff-Appellant,
v.
STEPHANIE BIVENS; et al.,
Defendants-Appellees.

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Beth Labson Freeman, District Judge, Presiding
Submitted August 6, 2019**

Before: GOODWIN, LEAVY, and SILVERMAN, Circuit Judges.

Greg Steven Elofson appeals pro se the district court's judgment dismissing Elofson's action alleging that defendants violated his constitutional rights

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

under 42 U.S.C. § 1983, the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 et seq., and other federal and state laws in connection with the guardianship and conservatorship of his father and a related state-court action. We have jurisdiction under 28 U.S.C. § 1291. We review the district court's dismissal de novo. *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1068 (9th Cir. 2015) (personal jurisdiction); *Porter v. Osborn*, 546 F.3d 1131, 1136 (9th Cir. 2008) (qualified immunity). We may affirm on any ground supported by the record. *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1121 (9th Cir. 2008). We affirm.

The district court properly rejected Elofson's argument that RICO confers personal jurisdiction over Dougherty-Elofson, Bivens, Theut, and McCollum because Elofson failed to allege facts showing "that there is no other district in which a court will have personal jurisdiction over all of the alleged coconspirators." *Butcher's Union Local No. 498, United Food & Comm. Workers v. SDC Inv., Inc.*, 788 F.2d 535, 538-39 (9th Cir. 1986); *see* 18 U.S.C. § 1965(b).

Dismissal of the claims against Scaringelli was proper because Elofson failed to show any basis for the court to extend personal jurisdiction over him. *See Ranza*, 793 F.3d at 1068 (personal jurisdiction comports with due process only if the defendant has "minimum contacts with the forum state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice" (citation and internal quotation marks omitted)); *Butcher's Union Local No. 498*, 788 F.2d at 538-39.

The district court properly determined that Mudd was entitled to qualified immunity because Elofson failed to allege facts showing that Mudd violated his clearly established constitutional rights. *See Pearson v. Callahan*, 555 U.S. 223, 232 (2009) (government officials are entitled to qualified immunity where there is no violation of plaintiff's constitutional right or the right at issue was not "clearly established" at the time of the alleged violation); *see also Porter*, 546 F.3d at 1137 ("[O]nly official conduct that 'shocks the conscience' is cognizable as a due process violation." (citation omitted)).

In concluding that Elofson lacked standing to bring claims against Mudd on his father's behalf, the district court did not err in taking judicial notice of orders filed by the Arizona probate court. *See Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001) ("A court may take judicial notice of 'matters of public record' without converting a motion to dismiss into a motion for summary judgment."). The record does not support Elofson's contention that the district court improperly relied on Mudd's declaration in dismissing the claims.

We reject Elofson's contention that dismissal of the claims against Mudd violated Elofson's Seventh Amendment jury right.

The district court did not abuse its discretion in dismissing without leave to amend because Elofson could not cure the deficiencies in his complaint. *See Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc) (leave to amend should be given unless the deficiencies in the complaint cannot be cured by amendment).

We do not consider matters not specifically and distinctly raised and argued in the opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009) (per curiam).

Scaringelli's pending request for judicial notice of the Arizona probate court docket (Docket Entry No. 49) is GRANTED.

AFFIRMED.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Case No. 15-cv-05761-BLF

GREG STEVEN ELOFSON,
Plaintiff,
v.
STEPHANIE MCCOLLUM,
Defendant.

ORDER GRANTING DEFENDANT MCCOLLUM'S MOTION TO DISMISS WITHOUT LEAVE TO AMEND
[Re: ECF 153]

The last defendant remaining in this action, Stephanie McCollum, seeks dismissal of the operative first amended complaint ("FAC") pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(2) for lack of subject matter jurisdiction and lack of personal jurisdiction, respectively. After completion of briefing, the Court issued an order submitting the motion without oral argument and vacating the hearing which had been scheduled for June 29, 2017. Order Submitting Motion Without Oral Argument, ECF 160. For the reasons discussed below, the motion to dismiss is GRANTED WITHOUT LEAVE TO AMEND.

I. BACKGROUND

Plaintiff Greg Steven Elofson ("Elofson"), proceeding *pro se*, filed this action to challenge Arizona state court orders relating to the guardianship and conservatorship of his father, Milo Elofson ("Milo").[1] The underlying facts are well-known to the parties and the Court and need not be recited in full here. In brief, the operative FAC alleges misconduct by several persons who either participated in Milo's Arizona guardianship and conservatorship proceedings or honored orders issued in those proceedings. *See* FAC, ECF 29. The defendants include: Milo's step-daughter, Pam Dougherty-Elofson ("Dougherty-Elofson"); Elofson's former attorney, Stephanie Bivens ("Bivens"); Milo's court-appointed attorney, Paul Theut ("Theut"); Milo's court-appointed guardian and conservator, Stephanie McCollum ("McCollum"); McCollum's attorney, Lawrence Scaringelli ("Scaringelli"); an employee of Monterey County Adult Protective Services, Steven Mudd ("Mudd"); and Community Memorial Hospital.

The FAC asserts twenty-one claims: (1) relief from the Arizona state court guardianship order; (2) relief from the Arizona state court conservatorship order; (3) relief from the Arizona state court conservatorship order; (4) relief from the Arizona state court guardianship order; (5) breach of duty; (6) attorney malpractice; (7) attorney malpractice; (8) breach of fiduciary duty; (9) defamation; (10) negligent infliction of emotional distress; (11)

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[1] The Court intends no disrespect in referring to Milo Elofson by his first name. It does so only to distinguish him from Plaintiff Greg Elofson.

financial elder abuse; (12) violation of civil rights under 42 U.S.C. § 1983; (13) human trafficking in violation of 18 U.S.C. § 1595; (14) violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"); (15) abuse of process; (16) violation of civil rights under 42 U.S.C. § 1983; (17) violation of civil rights under 42 U.S.C. § 1983; (18) defamation; (19) violation of civil rights under 42 U.S.C. § 1983; (20) defamation; and (21) wire fraud.

On February 13, 2017, the Court granted motions to dismiss brought by six of the seven defendants named in the FAC, without leave to amend. *See* Order Granting Motions to Dismiss First Amended Complaint Without Leave to Amend, ECF 149. The Court noted that the seventh defendant, McCollum, had not yet been served with the summons and complaint. *Id.* at 1 n.2. Because the Magistrate Judge previously assigned to this case granted Elofson's motion to proceed in forma pauperis, Elofson was entitled to have the United States Marshals Service effect service of process on McCollum. Order Granting Leave to Proceed In Forma Pauperis, ECF 6. It appears from the docket that the original summons could not be located by the United States Marshals Service, and that the summons was reissued as to McCollum. Reissued Summons, ECF 150. The docket does not reflect the date upon which service was effected on McCollum, but on March 30, 2017, McCollum filed the present motion to dismiss.

II. DISCUSSION

Elofson sues McCollum, Milo's court-appointed guardian and conservator, for breach of fiduciary

duty (Claim 8), defamation (Claim 9), negligent infliction of emotional distress (Claim 10), financial elder abuse (Claim 11), violation of civil rights under § 1983 (Claims 12 and 19), trafficking (Claim 13), RICO violations (Claim 14), abuse of process (Claim 15), defamation (Claim 20), and wire fraud (Claim 21). Before turning to the substance of McCollum's motion to dismiss these claims, the Court addresses the admissibility of documents submitted by both parties.

The Court may consider evidence beyond the four corners of the complaint when considering a motion to dismiss for lack of subject matter jurisdiction or for lack of personal jurisdiction. *See Safe Air For Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004) (subject matter jurisdiction); *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1068 (9th Cir. 2015) (personal jurisdiction). Such evidence must be admissible. *See Lavinia Aircraft Leasing, LLC v. Piper Aircraft Inc.*, No. CV-16-02849-PHX-DGC, 2017 WL 1326140, at *3 (D. Ariz. Apr. 11, 2017) (to defeat a motion to dismiss for lack of personal jurisdiction, the plaintiff has the burden to make a prima facie showing "based on admissible evidence"); *Yhudai v. Mortg. Elec. Registration Sys., Inc.*, No. CV 15-05035 MMM (JPRx), 2015 WL 5826777, at *7 n.38 (C.D. Cal. Oct. 2, 2015) ("In the Ninth Circuit, however, admissible evidence is required to carry a party's burden of showing that the district court has subject matter jurisdiction to hear an action.").

McCollum requests judicial notice of numerous documents filed in the Arizona guardianship and conservatorship proceedings entitled *In the Matter of the Guardianship and Conservatorship of Milo Elofson*, Maricopa County Superior Court case no.

PB 2013-050520. *See* Def.'s RJN, ECF 153-2. Those documents are attached to and authenticated by McCollum's declaration. *See* McCollum Decl., ECF 153-3. McCollum's request for judicial notice is GRANTED. *See Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) ("We may take judicial notice of court filings and other matters of public record.").

Elofson also submits documents for the Court's consideration, including what appears to be an Arizona state court order appointing McCollum as Milo's conservator; a letter from an attorney named John Paul Parks, dated July 15, 2016; and what appears to be an investigative finding regarding alleged misconduct by McCollum in connection with her appointment as guardian in another case unrelated to Milo's case. *See* Pl.'s Opp., ECF 155. Those documents are merely appended to Elofson's opposition brief; they are not authenticated. Accordingly, they are inadmissible and may not be considered by the Court. *See Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 773 (9th Cir. 2002) ("Authentication is a condition precedent to admissibility.") (internal quotation marks and citation omitted omitted).

Even if it were to consider the evidence submitted by Elofson, that evidence would not alter the Court's analysis, as the documents are irrelevant to the jurisdictional issues raised by McCollum's motion to dismiss. The first document, which appears to be an order appointing McCollum as Milo's conservator, does not add any relevant information, as the fact of that appointment is not in dispute. Pl.'s Opp. Exh. A, ECF 155-2. The second document, a letter from an attorney named John

Paul Parks, appears to be a response to an inquiry made by an Arizona law firm on behalf of Elofson. Pl.'s Opp. Exh. B, ECF 155-4. In the letter, Mr. Parks states that he does not have any original will or estate planning documents for Milo Elofson; that he previously had mailed a copy of his file relating to Milo Elofson to Greg Elofson; and that he could not disclose any other information under the rules governing attorney-client confidentiality. *Id.* Finally, the third document, which appears to be an investigative finding regarding McCollum's alleged misconduct in connection with another Arizona guardianship unrelated to Milo's guardianship, does not speak to McCollum's contacts with California or any other issue relevant to this Court's jurisdiction over the claims or the parties. Pl.'s Opp. Exh. C, ECF 155-6.

Having clarified which documents may be considered in addressing McCollum's motion, the Court turns to the asserted grounds for dismissal, lack of subject matter jurisdiction and lack of personal jurisdiction.

A. Rule 12(b)(1) – Subject Matter Jurisdiction

A party may challenge the Court's subject matter jurisdiction by bringing a motion to dismiss under Federal Rule of Civil Procedure 12(b)(1). "A Rule 12(b)(1) jurisdictional attack may be facial or factual." *Safe Air*, 373 F.3d at 1039 (9th Cir. 2004). In a facial attack, the movant asserts that the lack of subject matter jurisdiction is apparent from the face of the complaint. *Id.* In a factual attack, the movant disputes the truth of allegations that otherwise would give rise to federal jurisdiction. *Id* "In

resolving a factual attack on jurisdiction, the district court may review evidence beyond the complaint without converting the motion to dismiss into a motion for summary judgment." *Id.* "The court need not presume the truthfulness of the plaintiff's allegations." *Id.* Once the moving party has presented evidence demonstrating the lack of subject matter jurisdiction, the party opposing the motion must present affidavits or other evidence sufficient to establish subject matter jurisdiction. *Id.* Such evidence must be admissible. *Yhudai*, 2015 WL 5826777, at *7 n.38.

McCollum mounts a factual attack to subject matter jurisdiction, asserting that the evidence makes clear that the present action is a de facto appeal of the numerous Arizona state court rulings that were adverse to Elofson, and thus that this Court lacks subject matter jurisdiction under the *Rooker-Feldman* doctrine. The *Rooker-Feldman* doctrine bars a federal district court from reviewing the final determinations of a state court. *See Dist. of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923).

The Court twice has determined that it lacks subject matter jurisdiction over all of the federal claims at issue here. The Court first addressed the application of *Rooker-Feldman* when it denied Elofson's application for a temporary restraining order. *See* Order Denying Plaintiff's Motion for Appointment of Counsel; Denying Plaintiff's Application for a Temporary Restraining Order; and Granting Plaintiff's Motion for Leave to File an Amended Complaint, ECF 23. Elofson subsequently filed the operative FAC, adding among other things

a lengthy discussion of the *Rooker-Feldman* doctrine and his opinions as to why *Rooker-Feldman* does not apply to his claims. *See* FAC, ECF 29. The Court considered those amendments when it addressed motions to dismiss brought by six of the seven named defendants. *See* Order Granting Motions to Dismiss First Amended Complaint Without Leave to Amend, ECF 149. The Court once again concluded that *Rooker-Feldman* bars Elofson's federal claims, and in particular determined that all of Elofson's federal claims against McCollum and her attorney, Scaringelli, "depend upon the asserted invalidity of the Arizona state court orders regarding Milo's guardianship and conservatorship." *Id.* at 27-28.

McCollum argues that under the reasoning set forth in the Court's prior orders, Elofson's federal claims against her are barred by *Rooker-Feldman*. In opposition, Elofson simply disagrees with the Court's application of the *Rooker-Feldman* doctrine. The Court has considered Elofson's arguments against the backdrop of the documents from the Arizona proceedings submitted by McCollum, and it remains persuaded that all of Elofson's federal claims against McCollum are barred.

The purpose of the *Rooker-Feldman* doctrine "is to protect state judgments from collateral federal attack. Because district courts lack power to hear direct appeals from state court decisions, they must decline jurisdiction whenever they are 'in essence called upon to review the state court decision.'" *Doe & Assocs. Law Offices v. Napolitano*, 252 F.3d 1026, 1030 (9th Cir. 2001) (quoting *Feldman*, 460 U.S. at 482 n.16). The *Rooker-Feldman* doctrine precludes not only review of decisions of the state's highest court, but also those of its lower courts. *See Dubinka*

v. Judges of Superior Court, 23 F.3d 218, 221 (9th Cir. 1994). "*Rooker-Feldman* may also apply where the parties do not directly contest the merits of a state court decision, as the doctrine prohibits a federal district court from exercising subject matter jurisdiction over a suit that is a de facto appeal from a state court judgment." *Reusser v. Wachovia Bank, N.A.*, 525 F.3d 855, 859 (9th Cir. 2008) (internal quotation marks and citation omitted). "A federal action constitutes such a de facto appeal where claims raised in the federal court action are inextricably intertwined with the state court's decision such that the adjudication of the federal claims would undercut the state ruling or require the district court to interpret the application of state laws or procedural rules." *Id.* (internal quotation marks and citation omitted).

Elofson's federal claims against McCollum are inextricably intertwined with the Arizona state court proceedings and resulting orders, and Elofson could not prevail on those claims without undercutting the Arizona orders. For example, Claims 12 and 19, asserted under § 1983, allege that the Arizona state court proceedings deprived Plaintiff and Milo of due process and free association rights protected under the Fourteenth Amendment. Claim 13 for trafficking and Claim 14 for RICO violations allege that Defendants' control over Milo's assets and person pursuant to the Arizona state court orders constitute human trafficking and racketeering activity. Claim 21 for wire fraud alleges that McCollum and Scaringelli committed wire fraud when they asserted McCollum's rights as Milo's guardian and conservator in communications to Mudd and Community Memorial Hospital. All of these claims

are premised on the asserted illegality of the Arizona court's rulings and actions taken pursuant to those rulings. Accordingly, they are subject to dismissal under the *Rooker-Feldman* doctrine for lack of subject matter jurisdiction.

Having concluded that all federal claims remaining in the FAC are subject to dismissal, the Court declines to exercise supplemental jurisdiction over Elofson's state law claims. "A district court 'may decline to exercise supplemental jurisdiction' if it 'has dismissed all claims over which it has original jurisdiction.'" *Sanford v. MemberWorks, Inc.*, 625 F.3d 550, 561 (9th Cir. 2010) (quoting 28 U.S.C. § 1367(c)(3)). "'[I]n the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction doctrine – judicial economy, convenience, fairness, and comity – will point toward declining to exercise jurisdiction over the remaining state-law claims.'" *Id.* (quoting *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n. 7 (1988)). Here, the case is still at the pleading stage. Under these circumstances, the Court perceives no reason to exercise supplemental jurisdiction over Elofson's state law claims.

B. Rule 12(b)(2) – Personal Jurisdiction

A party may challenge the Court's personal jurisdiction over it by bringing a motion to dismiss under Federal Rule of Civil Procedure 12(b)(2). When a defendant raises a challenge to personal jurisdiction, the plaintiff bears the burden of establishing that jurisdiction is proper. *Ranza*, 793 F.3d at 1068. The plaintiff may meet that burden by

submitting affidavits and discovery materials. *Id.* "Where, as here, the defendant's motion is based on written materials rather than an evidentiary hearing, the plaintiff need only make a prima facie showing of jurisdictional facts to withstand the motion to dismiss." *Id.* (internal quotation marks and citation omitted). "[T]he plaintiff cannot simply rest on the bare allegations of its complaint," but when evaluating the plaintiff's showing, the court must accept uncontroverted allegations in the complaint as true and resolve factual disputes created by conflicting affidavits in the plaintiff's favor." *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004) (internal quotation marks and citation omitted). Such evidence must be admissible. *See Lavinia Aircraft Leasing,* 2017 WL 1326140, at *3.

McCollum seeks dismissal for lack of personal jurisdiction based on her declaration stating that she resides in Mesa, Arizona; she is a licensed fiduciary only in the State of Arizona; she has not spent any significant time in California other than an eighteen-month period spent working at an architectural firm in California, which occurred thirty-six years ago; she does not do business or advertise in California; and she does not own or lease property in California. McCollum Decl. ¶¶ 29-31, ECF 153-3. Elofson asserts that McCollum is subject to personal jurisdiction in this Court under RICO's "ends of justice" provision, 18 U.S.C. § 1965(b). Although he argued in opposition to other defendants' Rule 12(b)(2) motions that personal jurisdiction existed under California's long-arm statute, Elofson does not make that argument with respect to McCollum. Because Elofson has the burden to establish

personal jurisdiction, the Court limits its consideration of personal jurisdiction to the RICO statute asserted in his brief.

Under 18 U.S.C. § 1965(b), a district court may exercise personal jurisdiction over non-resident participants in an alleged RICO conspiracy, even if those parties otherwise would not be subject to the court's jurisdiction, if "the ends of justice" so require. This "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.*, 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 coconspirators." *Id.* at 539.

Elofson asserts a single claim under RICO (Claim 14), in which he alleges that Dougherty-Elofson, Bivens, Theut, Scaringelli, and McCollum engaged in a pattern of racketeering activity. FAC ¶¶ 586-605, ECF 29. All five of the alleged conspirators are alleged to be residents of Arizona. FAC ¶ 119.[2] Because the United States District

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[2] The parties' residences are listed in an unnumbered paragraph subheaded "PARTIES" located between paragraph 119 and 120. *See* FAC at pp. 40-41, ECF 29. For ease reference, the Court treats this unnumbered paragraph as part of paragraph 119.

Court for the District of Arizona would have personal jurisdiction over all the alleged coconspirators, the "ends of justice" provision does not apply.

Elofson asserts that Defendants Mudd and Community Memorial Hospital, both California residents, are RICO coconspirators. Pl.'s Opp. at 15-16, ECF 155. However, Mudd and Community Memorial Hospital are not named as coconspirators in the FAC, and the Court previously concluded that Elofson could not amend his pleading to make out a plausible claim that Mudd and Community Memorial Hospital were part of the alleged conspiracy. *See* Order Granting Motions to Dismiss First Amended Complaint Without Leave to Amend, ECF 149. The Court therefore dismissed Elofson's claims against Mudd and Community Memorial Hospital without leave to amend. *Id.* Elofson nonetheless argues in opposition to McCollum's motion that he should be granted leave to amend to add conspiracy allegations against Mudd and Community Memorial Hospital. Elofson did not seek reconsideration of the Court's order dismissing his claims against Mudd and Community Memorial Hospital when it issued, and he has not presented any factual or legal basis for reconsideration of that ruling now.

Moreover, as discussed above, Elofson has the burden of coming forward with *evidence* sufficient to make a prima facie showing of personal jurisdiction. Elofson has not submitted any admissible evidence in opposition to McCollum's motion.

C. Conclusion

In conclusion, McCollum has presented evidence showing that this Court lacks subject matter jurisdiction over Elofson's federal claims and lacks personal jurisdiction over her. Elofson has not satisfied his burden to present evidence sufficient to establish the existence of subject matter jurisdiction or to make a prima facie showing of personal jurisdiction. Accordingly, McCollum's motion to dismiss is GRANTED WITHOUT LEAVE TO AMEND.

This order is without prejudice to Elofson's pursuit of his claims in an appropriate forum having both subject matter jurisdiction over the claims and personal jurisdiction over the parties.

III. ORDER

(1) Defendant McCollum's motion to dismiss for lack of subject matter jurisdiction is GRANTED WITHOUT LEAVE TO AMEND as to the federal claims alleged in the FAC. Absent a viable federal claim, the Court DECLINES to exercise supplemental jurisdiction over the state law claims alleged in the FAC.
(2) Defendant McCollum's motion to dismiss for lack of personal jurisdiction is GRANTED WITHOUT LEAVE TO AMEND.
(3) This order is without prejudice to Plaintiff Elofson's litigation of his claims in an appropriate forum.

Dated: July 6, 2017

/s/
BETH LABSON FREEMAN
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Case No. 15-cv-05761-BLF

GREG STEVEN ELOFSON,
Plaintiff,
v.
STEPHANIE BIVENS, et al.,
Defendants.

ORDER GRANTING MOTIONS TO DISMISS FIRST AMENDED COMPLAINT WITHOUT LEAVE TO AMEND
[Re: ECF 48, 51, 70, 82, 102, 106]

Plaintiff Greg Steven Elofson ("Elofson"), proceeding pro se, filed this action to challenge Arizona state court orders relating to the guardianship and conservatorship of his father, Milo Elofson ("Milo").[3] Elofson seeks relief from those orders under Federal Rule of Civil Procedure 60, and he additionally asserts numerous federal and state law claims against persons who were either involved in the Arizona proceedings or helped return Milo to Arizona after Elofson moved him out of state in violation of court orders.

Before the Court are motions to dismiss filed by six of the seven defendants named in the operative

[3] The Court intends no disrespect in referring to Milo Elofson by his first name. It does so only to distinguish him from Plaintiff Greg Elofson.

first amended complaint ("FAC").[4] For the reasons discussed below, Elofson's claims against all moving parties are DISMISSED WITHOUT LEAVE TO AMEND.

I. BACKGROUND

This action arises from the circumstances surrounding the conservatorship of Elofson's father, Milo. Elofson claims that Milo suffered from vascular dementia and that Milo's step-daughter, Pam Dougherty-Elofson, abused Milo's trust by withdrawing $74,000 from Milo's bank account to pay off the mortgage on her house. FAC ¶¶ 130-31, ECF 29. When Milo discovered the missing funds, he asked Elofson for help in figuring out what had happened. *Id.* ¶ 134. Elofson retained an attorney, Stephanie Bivens, to advise him about protecting Milo's finances from Dougherty-Elofson. *Id.* ¶ 138. Bivens suggested that Milo be conserved and place under Elofson's guardianship. *Id.* ¶ 139. However, Bivens later informed Elofson that he could not be appointed as Milo's conservator because he could not be bonded. *Id.* ¶ 146. Elofson claims that he decided to proceed with a petition for temporary guardianship of Milo, but not a conservatorship. *Id.* ¶¶ 151-57. However, according to Elofson, Bivens nonetheless filed a petition for both permanent guardianship and permanent conservatorship of Milo and forged Elofson's signature on that document. *Id.* ¶ 158.

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[4] It does not appear that the seventh defendant, Stephanie McCollum, has been served with the summons and complaint. That circumstance will be addressed in a separate order.

Elofson states that he did not know that Bivens had filed a forged petition requesting both guardianship and conservatorship of Milo. FAC ¶ 171. However, he questioned other aspects of Bivens' representation, and his relationship with her began to deteriorate. *Id.* ¶¶ 164-169. He ultimately fired her. *Id.* ¶ 175. During the same time frame, the Arizona court appointed an attorney named Paul Theut to represent Milo and appointed Elofson as Milo's temporary guardian. *Id.* ¶¶ 168, 172. The court later removed Elofson as Milo's guardian and appointed a licensed Arizona fiduciary named Stephanie McCollum as Milo's guardian and conservator. *Id.* ¶¶ 205, 210, 306. Elofson claims that Theut and Bivens, along with McCollum and her attorney, Lawrence Scaringelli, committed fraud on Elofson and the Arizona court throughout the guardianship and conservatorship proceedings. *Id.* ¶¶ 168-306. Elofson also claims that he was denied due process in the Arizona state court proceedings, asserting among other things that he was not given adequate notice of certain hearings and other events. *Id.*

During the course of the Arizona proceedings, Elofson requested leave of court to move Milo to California, where Elofson resided. FAC ¶ 269, ECF 29. That request was denied. *Id.* Elofson nonetheless "traveled, with Milo, to California," FAC ¶ 302, and took up residence with him there, FAC ¶ 307. The Arizona state court found Elofson in civil contempt of court. FAC ¶ 304.

In January 2015, Elofson contacted Monterey County Social Services to request a part-time caregiver for Milo. FAC ¶ 307, ECF 29. Monterey County Social Services contacted Monterey County

Adult Protective Services, which contacted McCollum. *Id.* ¶¶ 312-13. Elofson claims that McCollum and her attorney, Scaringelli, informed Monterey County Adult Protective Services that Elofson had financially abused Milo and was responsible for missing monies from Milo's estate. *Id.* ¶ 313. In February 2015, Steven Mudd of Monterey County Adult Protective Services, Monterey Police officers, and medical personnel went to Elofson's residence and transported Milo to Natividad Medical Center. *Id.* ¶¶ 314-17.[5] Elofson removed Milo from Natividad the following day. *Id.* The Arizona state court subsequently issued a fiduciary arrest warrant for Elofson. *Id.* ¶ 320.

In September 2015, Elofson took Milo to Community Memorial Hospital ("Community Hospital") in Ventura, California, for evaluation "because of Milo's strong urge to wander throughout that night." FAC ¶ 321-22, ECF 29. Community Hospital communicated with McCollum and her attorney, Scaringelli, and was informed that Elofson had kidnapped Milo. *Id.* ¶ 326. Community Hospital put Milo under twenty-four hour security oversight with standing orders to prevent Elofson from entering the hospital or seeing Milo. *Id.* ¶¶ 329-332. Two weeks later, Scaringelli emailed Elofson to inform him that Milo was back in Arizona. *Id.* ¶ 333.

Elofson claims that although Milo was in good physical health when he arrived at Community Hospital, he deteriorated quickly once removed from Elofson's care. FAC ¶¶ 331-36, ECF 26. At the time Elofson filed the FAC, he was gravely concerned for his father, alleging that Milo was suffering from bed

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[5] The FAC alleges that this event occurred in February 2014, but this appears to be a typographical error.

sores, a kidney infection, dehydration, and starvation. *Id.* ¶ 335. The FAC asserts claims against Dougherty-Elofson (Milo's step-daughter), Bivens (Elofson's former attorney), Theut (Milo's court-appointed attorney), McCollum (Milo's guardian and conservator), Scaringelli (McCollum's attorney), Mudd (employee of Monterey County Adult Protective Services), and Community Hospital.

The FAC, spanning 168 pages and including 685 paragraphs of allegations, asserts twenty-one claims: (1) relief from the Arizona state court guardianship order; (2) relief from the Arizona state court conservatorship order; (3) relief from the Arizona state court conservatorship order; (4) relief from the Arizona state court guardianship order; (5) breach of duty; (6) attorney malpractice; (7) attorney malpractice; (8) breach of fiduciary duty; (9) defamation; (10) negligent infliction of emotional distress; (11) financial elder abuse; (12) violation of civil rights under 42 U.S.C. § 1983; (13) human trafficking in violation of 18 U.S.C. § 1595; (14) violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"); (15) abuse of process; (16) violation of civil rights under 42 U.S.C. § 1983; (17) violation of civil rights under 42 U.S.C. § 1983; (18) defamation; (19) violation of civil rights under 42 U.S.C. § 1983; (20) defamation; and (21) wire fraud. The prayer requests that this Court set aside as null and void the Arizona state court guardianship and conservatorship orders and award compensatory, statutory, and punitive damages, as well as attorneys' fees and costs.

Approximately three months after Elofson filed the FAC, he informed the Court that Milo had passed away and requested that the Court order an

autopsy to determine the cause of death. Pl.'s Emergency Ex Parte Motion to Compel Emergency Autopsy, ECF 80. The Court denied that request after determining that it lacks authority to order the Pinal County, Arizona Medical Examiner to perform an autopsy. Order Denying Plaintiff's Emergency Ex Parte Motion to Compel Autopsy, ECF 84.

Defendants Dougherty-Elofson, Bivens, Theut, Mudd, Community Hospital, and Scaringelli seek dismissal of the FAC under various theories, discussed below. In addition, Scaringelli has filed a special motion to strike under California Code of Civil Procedure § 425.16. The Court addresses the motions of each defendant in turn.

II. DOUGHERTY-ELOFSON

Elofson sues Dougherty-Elofson, Milo's step-daughter, for breach of duty (Claim 5), trafficking (Claim 13), and RICO violations (Claim 14). She seeks dismissal under Federal Rule of Civil Procedure 12(b)(2) for lack of personal jurisdiction. In support of her motion, she submits a declaration stating that she is a resident of Arizona; she has not lived in, traveled to, or been physically present in California in more than twenty years; and she does not conduct business in California. Dougherty-Elofson Decl. ¶¶ 2-4, ECF 51-1.

When a defendant raises a challenge to personal jurisdiction, the plaintiff bears the burden of establishing that jurisdiction is proper. *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1068 (9th Cir. 2015). The plaintiff may meet that burden by submitting affidavits and discovery materials. *Doe v. Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001). "Where, as

here, the defendant's motion is based on written materials rather than an evidentiary hearing, the plaintiff need only make a prima facie showing of jurisdictional facts to withstand the motion to dismiss." *Ranza*, 793 F.3d at 1068 (internal quotation marks and citation omitted). "[T]he plaintiff cannot simply rest on the bare allegations of its complaint," but when evaluating the plaintiff's showing, the court must accept uncontroverted allegations in the complaint as true and resolve factual disputes created by conflicting affidavits in the plaintiff's favor." *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004) (internal quotation marks and citation omitted). "However, plaintiff's evidence must be admissible." *Joseph Saveri Law Firm, Inc. v. Michael Criden P.A.*, No. C-14-01740 (EDL), 2014 WL 3673313, at *2 (N.D. Cal. July 23, 2014) (citing *Nicosia v. De Rooy*, 72 F. Supp. 2d 1093, 1097 (N.D. Cal. 1999)).

Elofson asserts that Dougherty-Elofson is subject to personal jurisdiction in this Court under both California's long-arm statute and RICO's "ends of justice" provision, 18 U.S.C. § 1965(b). The Court addresses those arguments in turn.

A. California's Long-Arm Statute

Where no applicable federal statute governs personal jurisdiction, "the law of the state in which the district court sits applies." *Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1129 (9th Cir. 2003). "California's long-arm statute allows courts to exercise personal jurisdiction over defendants to the extent permitted by the Due Process Clause of the United States Constitution."

Id. "[D]ue process requires that the defendant 'have certain minimum contacts' with the forum state 'such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.'" *Ranza*, 793 F.3d at 1068 (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)) (internal quotation marks and citation omitted). "The strength of contacts required depends on which of the two categories of personal jurisdiction a litigant invokes: specific jurisdiction or general jurisdiction." *Id.* at 1068. General jurisdiction lies when the defendant's contacts "are so continuous and systematic as to render [it] essentially at home in the forum State." *Daimler AG v. Bauman*, 134 S. Ct. 746, 761 (2014) (internal quotation marks and citation omitted). A nonresident that is subject to the court's general jurisdiction may be sued for claims "arising from dealings entirely distinct" from the forum-related activities. *Id.* (internal quotation marks and citation omitted) (emphasis omitted). In contrast, specific jurisdiction exists when the defendant's contacts with the forum state are more limited but the plaintiff's claims arise out of or relate to those contacts. *Id.* at 754. General jurisdiction is referred to as "all-purpose" jurisdiction whereas specific jurisdiction is referred to as "case-specific" or "case-linked" jurisdiction. *Ranza*, 793 F.3d at 1069 n.2 (citations omitted).

Elofson does not argue that Dougherty-Elofson is subject to general jurisdiction in California – he argues only that she is subject to specific jurisdiction. Courts in the Ninth Circuit employ a three-prong test when determining whether a nonresident defendant may be subject to specific personal jurisdiction in a forum:

> (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.

Schwarzenegger, 374 F.3d at 802. "The plaintiff bears the burden of satisfying the first two prongs of the test." *Id.* If the plaintiff succeeds in doing so, the burden shifts to the defendant to "set forth a 'compelling case' that the exercise of jurisdiction would not be reasonable." *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1076 (9th Cir. 2011) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476-78 (1985)).

1. Purposeful Direction or Availment

"Purposeful direction" and "purposeful availment" are two distinct concepts, the former most often used in suits sounding in tort and the latter in suits sounding in contract. *Schwarzenegger*, 374 F.3d at 802. Purposeful availment may be found when the defendant executes or performs a contract in the forum state or otherwise "purposefully avails itself of the privilege of conducting activities within

the forum State, thus invoking the benefits and protections of its laws." *Id.* (internal quotation marks and citation omitted). "In return for these benefits and protections, a defendant must – as a quid pro quo – submit to the burdens of litigation in that forum." *Id.* (internal quotation marks and citation omitted). "A showing that a defendant purposefully directed his conduct toward a forum state, by contrast, usually consists of evidence of the defendant's actions outside the forum state that are directed at the forum, such as the distribution in the forum state of goods originating elsewhere." *Id.* at 803. "The Supreme Court has held that due process permits the exercise of personal jurisdiction over a defendant who purposefully directs his activities at residents of a forum, even in the absence of physical contacts with the forum." *Id.* (internal quotation marks, citation, and brackets omitted).

Here, a purposeful direction analysis is most appropriate. Elofson sues Dougherty-Elofson for breach of fiduciary duty – a tort – and for statutory claims that are more akin to tort than contract. In asserting those claims, Elofson does not contend that Dougherty-Elofson availed herself of the privileges of doing business in California, but rather that she committed intentional acts aimed at California.

Purposeful direction is evaluated under the "effects" test first articulated in *Calder v. Jones*, 465 U.S. 783 (1984). Under that test, "a defendant purposefully directed his activities at the forum if he: (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." *Picot v. Weston*, 780 F.3d 1206, 1212 (9th Cir. 2015) (internal quotation marks and citation

omitted). Analysis of those factors must focus on the "defendant's contacts with the forum state itself, not the defendant's contacts with persons who reside there." *Walden v. Fiore*, 134 S. Ct. 1115, 1122 (2014).

a. Commission of an Intentional Act

Under the *Calder* effects test, Elofson first must demonstrate that Dougherty-Elofson committed an intentional act. In this context, "intent" refers to "an intent to perform an actual, physical act in the real world, rather than an intent to accomplish a result or consequence of that act." *Schwarzenegger*, 374 F.3d at 806. Elofson identifies three intentional acts by Dougherty-Elofson: emailing Elofson to solicit his agreement to embezzle Milo's funds, embezzlement of the funds, and speaking with Elofson by telephone to solicit his agreement to embezzle more of Milo's funds. Pl.'s Opp. at 12-13, ECF 69. All three of those actions constitutes intentional acts under the effects test.

b. Expressly Aimed at the Forum State

Elofson has not shown, however, how those intentional acts were aimed at California. It is clear from the record that Milo resided in Arizona at the relevant time. Thus the conduct described by Elofson boils down to one Arizona resident's solicitations to embezzle, and actual embezzlement of, the funds of another Arizona resident. Elofson suggests that the conduct was directed at California because it violated a number of California statutes, including California Penal Code § 503 (defining the term "embezzlement"), California Penal Code § 515

(providing that the elder or dependent status of a victim may be an aggravating circumstance), California Probate Code § 4231.5 (attorney in fact's breach of duty), and California Welfare and Institutions Code § 15610.30 (defining financial elder abuse). However, because both Dougherty-Elofson and Milo were Arizona residents at the time of the alleged solicitation and embezzlement, California statutes do not apply.

Elofson also argues that the embezzlement was aimed at California because he had a "beneficiary interest" in Milo's estate and he resides in California. Even if Dougherty-Elofson knew that embezzlement of *Milo's* funds might injure *Elofson* in some way, such knowledge does not establish that Dougherty-Elofson's alleged embezzlement of an Arizona resident's funds in Arizona was expressly *aimed* at California. "[M]ere injury to a forum resident is not a sufficient connection to the forum" to establish personal jurisdiction. *Walden*, 134 S. Ct. at 1125. Thus Elofson has failed to satisfy the "expressly aimed" prong of the *Calder* effects test.

To the extent that Dougherty-Elofson's telephone call and emails with Elofson, a California resident, can be considered independent intentional acts that were aimed at California, those acts – as distinguished from the embezzlement itself – did not harm Elofson, as discussed below.

c. Causing Harm Likely to be Suffered in the Forum State

The final prong of the *Calder* test requires the plaintiff to show that the defendant caused harm that the defendant knows is likely to be suffered in

the forum state. As discussed above, Elofson has not shown that Dougherty-Elofson's alleged embezzlement of Milo's funds was aimed at California. Even if Elofson had made that showing, he has not established that the embezzlement harmed him. Elofson argues that the embezzlement harmed him because he had a "beneficiary interest" in Milo's estate. To the extent that Elofson is arguing that he would have inherited the funds had they not been embezzled, Elofson has not submitted evidence that he is Milo's heir and any speculation that the funds would have remained in Milo's estate absent the embezzlement is just that – speculation. Finally, even if Elofson had shown that the embezzlement caused him harm, "[t]he proper question is not where the plaintiff experienced a particular injury or effect but whether the defendant's conduct connects him *to the forum* in a meaningful way." *Walden*, 134 S. Ct. at 1125 (emphasis added). Any incidental injury that Elofson may have suffered as a result of one Arizona resident, Dougherty-Elofson, embezzling funds from another Arizona resident, Milo, is insufficient to connect Dougherty-Elofson to California in a meaningful way.

Finally, to the extent that Dougherty-Elofson's telephone conversation and emails with Elofson are sufficient to satisfy the first two prongs of the effects test, they are insufficient to satisfy the third prong because those communications did not harm Elofson. Elofson makes clear in the FAC and the briefing on Dougherty-Elofson's motion that he rejected her solicitations of wrongdoing in no uncertain terms. Thus the communications, as distinct from the

alleged embezzlement itself, do not satisfy the purposeful direction prong of *Schwarzenegger.*

2. Arising Out Of

The Ninth Circuit has dubbed the second prong of *Schwarzenegger's* specific jurisdiction inquiry as the "but for test." *In re Western States Wholesale Nat. Gas Antitrust Litig.*, 715 F.3d 716, 742 (9th Cir. 2013). "Under the 'but for' test, a lawsuit arises out of a defendant's contacts with the forum state if a direct nexus exists between those contacts and the cause of action." *Id.* (internal quotation marks and citation omitted). That test is not satisfied here because to the extent that Elofson's claims against Dougherty-Elofson for breach of duty (Claim 5), trafficking (Claim 13), and RICO violations (Claim 14) arise out of Dougherty-Elofson's alleged embezzlement of funds in Arizona, such embezzlement does not constitute a contact with California for the reasons discussed above. Moreover, Dougherty-Elofson's alleged embezzlement of Milo's funds was certainly not dependent on any act completed by Elofson, as evidenced by his alleged refusal to participate in the scheme.

3. Reasonableness

Elofson has not met his burden to make out a prima facie case on the first two *Schwarzenegger* prongs. Accordingly the burden does not shift to Dougerty-Elofson to address the reasonableness of requiring her to defend this suit in California. Moreover, given that the record does not suggest any

meaningful contacts between Dougherty-Elofson and California, this Court's exercise of personal jurisdiction over her would be unreasonable.

B. RICO's "Ends of Justice" Provision

Under 18 U.S.C. § 1965(b), a district court may exercise personal jurisdiction over non-resident participants in an alleged RICO conspiracy, even if those parties otherwise would not be subject to the court's jurisdiction, if "the ends of justice" so require. This "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.*, 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 coconspirators." *Id.* at 539.

Elofson asserts a single claim under RICO (Claim 14), in which he alleges that Dougherty-Elofson, Bivens, Theut, Scaringelli, and McCollum engaged in a pattern of racketeering activity. FAC ¶¶ 586-605, ECF 29. Elofson acknowledges that all five of the alleged conspirators are residents of Arizona. FAC ¶ 119.[6] Because the United States

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[6] The parties' residences are listed in an unnumbered paragraph subheaded "PARTIES" located between paragraph

District Court for the District of Arizona would have personal jurisdiction over all the alleged coconspirators, the "ends of justice" provision does not apply.

Elofson asserts that he could amend his pleading to allege that Mudd and Community Hospital, both California residents, are RICO coconspirators. Elofson contends that if such an amendment were permitted, the "ends of justice" provision would apply because this Court then would have personal jurisdiction over at least one coconspirator and this would be the only district in which all of the alleged coconspirators could be sued. However, Elofson has not offered any facts to suggest that he plausibly could allege that Mudd and Community Hospital participated in a RICO conspiracy with the Arizona residents.

Indeed, any such allegations would be inconsistent with the allegations set forth in the current FAC. For example, Elofson alleges that McCollum and Scaringelli "falsely reported" to Mudd that Elofson "was responsible for missing monies from Milo Elofson's estate and that Plaintiff Elofson therefore had financially abused Milo Elofson." FAC ¶ 313, ECF 29. Elofson also alleges that when Mudd and six Monterey police officers "stormed" Elofson's residence and removed Milo to a medical facility, "Mudd claimed that Defendants McCollum and Scaringelli indicated that there were missing monies from Milo Elofson's estate because of Plaintiff Elofson." *Id.* ¶ 314. Elofson alleges that "Scaringelli offered this as a statement of fact" even though

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119 and 120. *See* FAC at pp. 40-41, ECF 29. For ease reference, the Court treats this unnumbered paragraph as part of paragraph 119.

"Stephanie McCollum and Lawrence Scaringelli knew it was false." *Id.* ¶ 458. He also asserts that the false statements of McCollum and Scaringelli "were the single proximate cause of several Monterey County police officers descending on Greg's and Milo's abode." *Id.* ¶ 459.

Elofson repeats these allegations in various forms throughout the FAC, alleging for example that "Stephanie McCollum and Lawrence Scaringelli made a false report to a government agency, when they reported to Steve Mudd of Monterey County Adult Protective Services that Greg Elofson was responsible for missing monies, taken from Milo Elofson." *Id.* ¶ 463. Elofson makes clear that Mudd was "[a]cting on Stephanie McCollum's and Lawrence Scaringelli's statements" when Mudd "acted to confine Milo Elofson within the Natividad Medical Center." *Id.* ¶ 464. Given these allegations that McCollum and Scaringelli lied to Mudd *and* that Mudd relied on those lies in bringing Monterey police officers to seize Milo, Elofson could not plausibly allege that in fact Mudd was not relying in good faith on information received from McCollum and Scaringelli but actually was a RICO coconspirator. *See Airs Aromatics, LLC v. Opinion Victoria's Secret Stores Brand Mgmt., Inc.*, 744 F.3d 595, 600 (9th Cir. 2014) ("A party cannot amend pleadings to directly contradict an earlier assertion made in the same proceeding.") (internal quotation marks, citation, and brackets omitted).

The FAC contains similar allegations regarding Community Hospital, for example, that "Defendants McCollum and Scaringelli [committed] the second act of Wire Fraud by communicating to Community Memorial Hospital that Plaintiff Elofson had

'kidnapped' Milo Elofson, which is elder abuse, and per se defamation." FAC ¶ 681, ECF 29. The FAC also alleges that "Milo was put in isolation at Community Medical Center in Ventura California, at the orders of Defendants McCollum and Scaringelli." *Id.* ¶¶ 565, 641. Given these allegations that McCollum and Scaringelli informed Community Hospital that Elofson had kidnapped Milo, and that Community Hospital followed the direction of McCollum and Scaringelli in isolating Milo from Elofson, Elofson could not plausibly allege that in fact Community Hospital did not rely on McCollum and Scaringelli but rather was a RICO coconspirator. *See Airs Aromatics*, 744 F.3d at 600.

Accordingly, the "ends of justice" provision does not apply and Elofson could not plausibly amend his pleading to add facts that would trigger application of the provision.

C. Conclusion

In conclusion, Elofson has neither satisfied his burden of making out a prima facie case of personal jurisdiction under California's long-arm statute nor demonstrated that personal jurisdiction lies under RICO's "ends of justice" provision. Consequently, Dougherty-Elofson's motion to dismiss for lack of personal jurisdiction is GRANTED.

III. BIVENS

Elofson sues Bivens, his former attorney, for relief from judgment (Claim 1), attorney malpractice (Claim 6), trafficking (Claim 13), and RICO violations (Claim 14). She seeks dismissal under

Rule 12(b)(2) for lack of personal jurisdiction. Bivens submits her own declaration stating that she resides in Arizona; is licensed to practice law only in Arizona and does practice in Arizona; does not own property, advertise, attend trade shows, or conduct business in California; and has traveled to California only for short vacations. Bivens Decl. ¶¶ 3-7, ECF 71. Elofson does not dispute any of those facts. Instead, he argues that Bivens is subject to personal jurisdiction in this Court under both California's long-arm statute and RICO's "ends of justice" provision, 18 U.S.C. § 1965(b).

A. California's Long-Arm Statute

1. Purposeful Direction or Availment

Because Elofson's attorney malpractice claim against Bivens sounds in tort and his other claims against her are more in the nature of torts than contracts, a purposeful direction analysis is appropriate. As set forth above, under that test, "a defendant purposefully directed his activities at the forum if he: (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." *Picot*, 780 F.3d at 1212.

a. Commission of an Intentional Act

Under the *Calder* effects test, Elofson first must demonstrate that Bivens committed an intentional act. Elofson contends that Bivens committed the following intentional acts: she maintains a nationwide website which utilizes "viral marketing";

contracted to represent Elofson in the Arizona guardianship and conservatorship proceedings; communicated with Elofson by telephone and email regarding that representation; submitted to the Arizona state courts documents that Elofson had notarized in California; and filed forged documents in the Arizona proceedings.

As evidence of those intentional acts, Elofson submits a request for judicial notice accompanied by several documents, including screen shots of what appear to be a website maintained by Bivens' law firm, a fee agreement between Elofson and Bivens' law firm, email communications between Elofson and Bivens, and documents relating to Milo's guardianship proceedings. *See* Pl.'s RJN, ECF 87. Bivens objects to Elofson's request for judicial notice, asserting that the proffered documents are not appropriate subject matter for judicial notice. The Court agrees and thus denies the request for judicial notice. Moreover, the documents are inadmissible, as they are not authenticated. However, even if it were to consider all of the documents submitted by Elofson, and to assume that Bivens committed each of the asserted acts, the Court would conclude that Elofson has failed to show purposeful direction under the *Calder* effects test for the reasons discussed below.

b. Expressly Aimed at the Forum State

Elofson has failed to show that Bivens' intentional acts, described above, were expressly aimed at California. Elofson contends that Bivens' law firm expressly aimed marketing efforts at California by means of the firm's interactive website.

The Ninth Circuit has "struggled with the question whether tortious conduct on a nationally accessible website is expressly aimed at any, or all, of the forums in which the website can be viewed." *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1229 (9th Cir. 2011). It is clear that merely operating a passive website that is accessible in the forum state does not satisfy the express aiming prong of the effects test. *Id.* However, "operating even a passive website in conjunction with something more – conduct directly targeting the forum – is sufficient." *Id.* (internal quotation marks and citations omitted). When considering whether a nonresident defendant has done something more, the Ninth Circuit has "considered several factors, including the interactivity of the defendant's website, the geographic scope of the defendant's commercial ambitions, and whether the defendant individually targeted a plaintiff known to be a forum resident." *Id.* (internal quotation marks and citations omitted).

Based on this record, it does not appear that the firm's website is particularly interactive. Bivens states in her declaration that potential clients may submit their name, email address, and telephone number, and ask a question. Bivens Decl. ¶ 4, ECF 71. Bivens responds only to inquiries based on Arizona law involving Arizona elders. *Id.* Bivens practices exclusively in the area of elder law, estate planning, and special needs law. *Id.* ¶ 3. Based on the unauthenticated documents submitted by Elofson, it appears that an individual viewing the law firm's website can sign up for an online email, and may forward such online email to others. *See* Pl.'s RJN, ECF 87. There is no indication that products may be purchased through the website or

that the website offers any special information or incentives to California residents. There is no indication that Bivens' law firm targets California residents. To the contrary, Elofson states that he "found defendant Bivens through her website," indicating that he was actively looking for a lawyer to represent him with respect to Milo and searched the Internet for such a lawyer. Bivens states in her declaration that she is licensed to practice law only in Arizona. The "something more" required to find personal jurisdiction based on the website is missing. "If the defendant merely operates a website, even a highly interactive website, that is accessible from, but does not target, the forum state, then the defendant may not be haled into court in that state without offending the Constitution." *DFSB Kollective Co. v. Bourne*, 897 F. Supp. 2d 871, 881 (N.D. Cal. 2012) (internal quotation marks and citation omitted).

Elofson also asserts that personal jurisdiction may be found based upon Bivens' purposeful availment of the privileges of doing business in California, as evidenced by Bivens' communications with him and use of documents executed and notarized by him in California. The Ninth Circuit has held that out-of-state legal representation does not, in and of itself, establish purposeful availment of the privilege of conducting business in the forum state. *Sher v. Johnson*, 911 F.2d 1357, 1363 (9th Cir. 1990). In *Sher*, Florida attorneys represented a California client in litigation before a Florida court, sent letters and bills to California, and traveled to California several times to meet with their client. Those acts were not sufficient to establish a California court's personal jurisdiction over the

Florida attorneys. *Id.* The Court perceives no meaningful distinction between the facts of *Sher* and those in the present case. Bivens represented Elofson, a California client, in Arizona state court proceedings and communicated with him about those proceedings.[7] Thus this case is unlike others in which personal jurisdiction has been found based upon the out-of-state attorneys' representation of a California resident *in California proceedings. See, e.g., Dillon v. Murphy & Hourihane, LLP*, No. 14-CV-01908-BLF, 2014 WL 5409040, at *9 (N.D. Cal. Oct. 22, 2014).

c. Causing Harm Likely to be Suffered in the Forum State

Elofson argues that Bivens' fraud on the Arizona court caused foreseeable harm to him in California because Bivens' conduct was contrary to his express wishes and because he lost his legal rights as Milo's beneficiary and durable power of attorney. Elofson also argues that he was harmed by Bivens' fees, which harmed his beneficiary interest in Milo's estate. Even assuming that Elofson did suffer harm in California, as discussed above, such harm was not the result of conduct expressly aimed at California. Moreover, such harm to Elofson is insufficient to establish personal jurisdiction of Bivens in California absent other meaningful contacts with the forum state. *See Walden*, 134 S. Ct. at 1122.

2. Arising Out Of

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[7] Because Bivens never represented Elofson in a California court, Elofson's argument that Bivens put herself within the purview of the California State Bar is without merit.

As noted above, the inquiry to be asked when considering the "arising out of" prong is whether there is a direct nexus between the claims and the defendant's contacts with the forum state. *See In re Western States*, 715 F.3d at 742. There is no nexus here, because Elofson's claims for relief from judgment (Claim 1), attorney malpractice (Claim 6), trafficking (Claim 13), and RICO violations (Claim 14) arise from Bivens' representation of him in Arizona and not from any contacts with California.

3. Reasonableness

Elofson has not met his burden to make out a prima facie case against Bivens on the first two *Schwarzenegger* prongs. Accordingly the burden does not shift to Bivens to address the reasonableness of requiring her to defend this suit in California. Moreover, given that this record does not suggest any meaningful contacts between Bivens and California, this Court's exercise of personal jurisdiction over her would be unreasonable.

B. RICO's "Ends of Justice" Provision

As discussed above, RICO's "ends of justice" provision does not apply, because the FAC alleges that all coconspirators reside in Arizona such that the United States District Court for the District of Arizona would have personal jurisdiction over all coconspirators.

C. Conclusion

In conclusion, Elofson has neither satisfied his burden of making out a prima facie case of personal jurisdiction under California's long-arm statute nor demonstrated that personal jurisdiction lies under RICO's "ends of justice" provision. Consequently, Bivens' motion to dismiss for lack of personal jurisdiction is GRANTED.

IV. THEUT

Elofson sues Theut, Milo's court-appointed attorney, for relief from judgment (Claim 2), relief from judgment (Claim 3), attorney malpractice (Claim 7), breach of fiduciary duty (Claim 8), financial elder abuse (Claim 11), civil rights violations under § 1983 (Claim 12), trafficking (Claim 13), and RICO violations (Claim 14). Theut seeks dismissal under Rule 12(b)(2) for lack of personal jurisdiction and under Rule 12(b)(3) for improper venue.

Theut submits his own declaration stating that he has been an Arizona resident for twenty-nine years, he is licensed to practice law only in Arizona, and his law firm's only office always has been located in Arizona. Theut Decl. ¶¶ 3-4, ECF 104. Theut also states that he is not licensed to practice law in California, he does not own property in California, his law firm does not maintain a website or advertise in California, and in undertaking Milo's representation he did not consent to jurisdiction in California. *Id.* ¶¶ 5-7. Finally Theut states that he has been to California only during vacation and only during one or two weeks in his lifetime. *Id.* ¶ 8.

Elofson does not dispute those facts, but he asserts that Theut is subject to personal jurisdiction in this Court under California's long-arm statute and RICO's "ends of justice" provision. Elofson also argues that venue is proper in this Court.

A. California's Long-Arm Statute

1. Purposeful Direction or Availment

Because Elofson's claims against Theut for attorney malpractice and breach of fiduciary duty sound in tort and his other claims against Theut are more in the nature of torts than contracts, a purposeful direction analysis is appropriate. The test for purposeful direction is discussed as follows.

a. Commission of an Intentional Act

Under the *Calder* effects test, Elofson must demonstrate that Theut committed an intentional act. Elofson does not identify any intentional act committed by Theut in his opposition to Theut's motion. To the contrary, he asserts in his brief that "Theut did nothing to intervene" when Scaringelli and McCollum were "trafficking" Milo. Pl.'s Opp. at 11, ECF 124. Elofson also asserts that by aiding and abetting Scaringelli and McCollum, "Theut injected himself into the forum state of California, under *Walden*, engaging the social services function of Monterey County." *Id.* at 12. Elofson does not actually state that Theut spoke to any employee of the Monterey County Social Services department. Nor does he allege as much in his FAC. All the contacts with Monterey County personnel are

alleged to have been made by McCollum and Scaringelli.

Because Elofson has the initial burden of making out a prima facie case with respect to purposeful direction, his failure to articulate any commission of an intentional act by Theut is fatal to his assertion of specific jurisdiction over Theut.

B. RICO's "Ends of Justice" Provision

As discussed above, RICO's "ends of justice" provision does not apply, because the FAC alleges that all coconspirators reside in Arizona such that the United States District Court for the District of Arizona would have personal jurisdiction over all coconspirators.

C. Conclusion

In conclusion, Elofson has neither satisfied his burden of making out a prima facie case of personal jurisdiction under California's long-arm statute nor demonstrated that personal jurisdiction lies under RICO's "ends of justice" provision. Consequently, Theut's motion to dismiss for lack of personal jurisdiction is GRANTED. In light of this ruling, the Court need not reach Theut's alternative motion to dismiss for improper venue.

V. MUDD

Elofson sues Mudd, the Monterey County Adult Protective Services employee who allegedly brought six police officers to remove Milo from Elofson's residence in February 2015, only for violation of civil

rights under § 1983 (Claim 16). Mudd seeks dismissal under Federal Rule of Civil Procedure 12(b)(6), arguing that the FAC fails to allege facts sufficient to state a claim upon which relief may be granted and that it appears on the face of the FAC that he is entitled to qualified immunity.

A. Failure to State a Claim

"A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted 'tests the legal sufficiency of a claim.'" *Conservation Force v. Salazar*, 646 F.3d 1240, 1241-42 (9th Cir. 2011) (quoting *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001)). When determining whether a claim has been stated, the Court accepts as true all well-pled factual allegations and construes them in the light most favorable to the plaintiff. *Reese v. BP Exploration (Alaska) Inc.*, 643 F.3d 681, 690 (9th Cir. 2011). However, the Court need not "accept as true allegations that contradict matters properly subject to judicial notice" or "allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008) (internal quotation marks and citations omitted). While a complaint need not contain detailed factual allegations, it "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible when it "allows the court to draw

the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

Claim 16 alleges that Mudd "used the power of the government, Adult Protective Service, which is funded by the United States, to falsely imprison Milo Elofson and deprive him of his liberty . . . without Due Process of Law under the 14th Amendment of the U.S. Constitution." FAC ¶ 647, ECF 29. Claim 16 goes on to allege that "in sequestering Milo Elofson from his only living family member, Greg Elofson, Steven Mudd violated Greg Elofson's rights to Freedom of Association under the 14th Amendment of the United States Constitution." *Id.* ¶ 648.

To the extent that Elofson seeks redress for Milo's alleged false imprisonment, Mudd requests that the Court take judicial notice of documents filed in the Arizona state court. *See* Mudd's RJN, ECF 48-1. That request is granted. *See Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) ("We may take judicial notice of court filings and other matters of public record."). The Arizona filings show that Elofson did not have legal custody of Milo when Mudd allegedly falsely imprisoned him; Elofson had removed Milo from Arizona to California in violation of court orders. *See* Mudd's RJN, ECF 48-1. Accordingly, because Elofson was not Milo's conservator at the time in question, and did not have legal custody of Milo, he lacks standing to bring a § 1983 claim on Milo's behalf for false imprisonment without due process of law. *See Collins v. West Hartford Police Dep't*, 324 Fed. App'x 137, 139 (2d Cir. 2009). Accordingly, Mudd's motion to dismiss Claim 16 to the extent it is based on Milo's alleged false imprisonment is GRANTED.

To the extent that Elofson seeks redress for deprivation of Milo's company, "[t]he substantive due process right to family integrity or to familial association is well established." *Rosenbaum v. Washoe Cnty.*, 663 F.3d 1071, 1079 (9th Cir. 2011). A child may assert a Fourteenth Amendment due process claim if he or she is deprived of the companionship and society of a parent through official conduct. *Lemire v. Cal. Dep't of Corrs. & Rehab.*, 726 F.3d 1062, 1075 (9th Cir. 2013). "Only official conduct that shocks the conscience is cognizable as a due process violation." *Id.* (internal quotation marks and citation omitted). As noted above, the records submitted by Mudd establish that Elofson removed Milo from Arizona in violation of state court orders and without permission of Milo's duly appointed guardian and conservator, McCollum. Under those circumstances, Mudd's actions – removing Milo from Elofson's custody and taking him to a medical facility for evaluation – cannot be said to shock the conscience. Elofson argues that "having six police officers storm your home, take away your father to a location unknown, demanding that you do not follow or try to find him, *does* shock the conscience." Pl.'s Opp. at 11, ECF 56. The Court has not located a single case suggesting that Mudd's utilization of local authorities to retrieve Milo shocks the conscience. However, even assuming for purposes of this motion that Elofson's allegations are sufficient to make out a constitutional violation, Mudd is entitled to qualified immunity for the reasons discussed below.

B. Qualified Immunity

Mudd argues that even if the Court were to conclude that Elofson has stated a viable claim for relief, dismissal is appropriate on the ground of qualified immunity. "The doctrine of qualified immunity shields government officials performing discretionary functions from liability for damages 'insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Dunn v. Castro*, 621 F.3d 1196, 1198-99 (9th Cir. 2010) (quoting *Harlow v. Fitzgerald,* 457 U.S. 800, 818 (1982)). In analyzing whether a government official is entitled to qualified immunity, the court looks at two distinct questions: (1) whether the facts alleged, construed in the light most favorable to the injured party, establish the violation of a constitutional right; and (2) whether the right was clearly established such that a reasonable government official would have known that his conduct was unlawful in the situation he confronted. *Id.* at 1199. Courts may exercise their discretion in deciding "which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand." *Pearson v. Callahan,* 555 U.S. 223, 242 (2009).

"[T]he Supreme Court has 'repeatedly . . . stressed the importance of resolving immunity questions at the earliest possible stage in litigation.'" *Dunn*, 621 F.3d at 1199 (quoting *Hunter v. Bryant,* 502 U.S. 224, 227 (1991)). "Qualified immunity confers upon officials a right, not merely to avoid standing trial, but also to avoid the burdens of such pretrial matters as discovery." *Id.* (internal

quotation marks and citations omitted). Although the first prong of the qualified immunity analysis calls for a factual inquiry, the second prong "is solely a question of law for the judge." *Id.* (internal quotation marks and citations omitted). "As to the second prong, the relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Id.* (internal quotation marks, citation, and brackets omitted).

"A court, when deciding whether there has been a violation of a clearly established right for qualified immunity, must strike the proper balance in defining that right." *Dunn*, 621 F.3d at 1200. If the right is defined too generally, it will bear no relationship to the objective legal reasonableness that is the touchstone of the inquiry. *Id.* "[T]he right the official is alleged to have violated must have been "clearly established" in a more particularized, and hence more relevant, sense: The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Id.* (internal quotation marks and citation omitted).

Here, the FAC alleges that "Stephanie McCollum and Lawrence Scaringelli made a false report to a government agency, when they reported to Steve Mudd of Monterey County Adult Protective Services that Greg Elofson was responsible for missing monies, taken from Milo Elofson." FAC ¶ 463, ECF 29. The FAC alleges expressly that Mudd was "[a]cting on Stephanie McCollum's and Lawrence Scaringelli's statements" when Mudd "acted to confine Milo Elofson within the Natividad Medical

Center." *Id.* ¶ 464. The Arizona state court documents of which the Court takes judicial notice show that McCollum was Milo's duly appointed guardian and conservator and that Scaringelli was her counsel. *See* Mudd's RJN, ECF 48-1. Thus, addressing the second prong of the qualified immunity analysis only, the question presented by Mudd's motion is whether it was clearly established in February 2015 that an individual who removes an elder relative from his home state in violation of court order, contrary to the wishes of the elder's court-appointed conservator, has a right to retain physical custody of the elder and be free from the efforts of Adult Protective Services and local law enforcement, acting on the directive of the conservator and on court-approved conservatorship papers, to investigate and obtain a medical evaluation of the elder. Elofson has not cited any cases, and the Court has discovered none, indicating that such right was clearly established. Accordingly, even assuming that Elofson has stated a viable claim against Mudd for a constitutional violation, Mudd is entitled to dismissal based on qualified immunity.

C. Conclusion

Elofson's only claim against Mudd, Claim 16, fails to state a claim upon which relief may be granted. Moreover it is clear that Mudd is entitled to qualified immunity on Claim 16. Finally, in light of Mudd's entitlement to qualified immunity, amendment would be futile. Accordingly, Mudd's motion to dismiss under Rule 12(b)(6) is GRANTED WITHOUT LEAVE TO AMEND.

VI. COMMUNITY HOSPITAL

Elofson sues Community Hospital, located in Ventura County, which barred Elofson from seeing Milo and ultimately returned Milo to his conservator, McCollum, for civil rights violations under § 1983 (Claim 17) and defamation (Claim 18). Community Hospital seeks dismissal for improper venue under Rule 12(b)(3) and failure to state a claim under Rule 12(b)(6).

A. Improper Venue

A defense of improper venue may be raised by motion under Federal Rule of Civil Procedure 12(b)(3). When venue is improper, the court "shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." 28 U.S.C. § 1406(a). The plaintiff bears the burden of showing that venue is proper. *See Piedmont Label Co. v. Sun Garden Packing Co.*, 598 F.2d 491, 496 (9th Cir. 1979) ("Plaintiff had the burden of showing that venue was properly laid in the Northern District of California."). "When the plaintiff asserts multiple claims, it must establish that venue is proper as to each claim." *Kaia Foods, Inc. v. Bellafiore*, 70 F. Supp. 3d 1178, 1183 (N.D. Cal. 2014). "However, where venue exists for the principal claim, federal courts will also adjudicate closely related claims, even if there is no independent source of venue for the related claims."
Venue is governed by 28 U.S.C. § 1391(b), which provides as follows:

> (b) Venue in general.--A civil action may be brought in—
> (1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located;
> (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or
> (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.

28 U.S.C. § 1391(b).

Elofson does not argue in his opposition brief that any of these subsections applies here. Subsection (b)(1) clearly does not apply because not all defendants are residents of California, the state in which this judicial district is located. Nor does subsection (b)(2) apply, as the only events described in the FAC which occurred in the Northern District of California are those relating to Defendant Mudd. Those events make up a very small part of the overall circumstances giving rise to this action, which is illustrated by the fact that Mudd is named in only one of the twenty-one claims asserted in the FAC. Consequently, Elofson cannot show that "a substantial part of the events" giving rise to the action occurred in this judicial district. Finally, with respect to (b)(3), Elofson bears the burden of establishing that venue is proper on the basis that there is no other judicial district in which venue

would be proper. *See Piedmont Label Co.*, 598 F.2d at 496. Elofson has not attempted to meet this burden. Instead, he argues that venue is proper under RICO's "ends of justice" provision. That argument is without merit for the reasons discussed above.

The Court has considered whether it would be more appropriate to dismiss the action or transfer it to the United States District Court for the Central District of California, the district in which Community Hospital is located. If the only claims remaining in the case were asserted against Community Hospital, the Court would be inclined to transfer the case. However, Elofson also has claims remaining against McCollum, an Arizona resident who may not be amenable to suit in the Central District of California.[8] The Court therefore concludes that transfer of the entire action to the Central District would be inappropriate, and that dismissal is warranted under the particular facts of this case.

Accordingly, Community Hospital's motion to dismiss for improper venue is GRANTED.

B. Failure to State a Claim

In light of its ruling that Community Hospital is entitled to dismissal for improper venue, the Court need not address Community Hospital's motion to dismiss for failure to state a claim.

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[8] Since McCollum has not moved to dismiss the FAC, the Court has not had occasion to determine whether she is subject to personal jurisdiction in California or where venue might be proper with respect to claims against her. It appears that McCollum has not yet been served with the Summons and FAC.

C. Conclusion

Community Hospital's motion to dismiss for improper venue is GRANTED.

VII. SCARINGELLI

Elofson sues Scaringelli, counsel for Milo's guardian and conservator, McCollum, for relief from Arizona state court orders (Claims 3 and 4), breach of fiduciary duty (Claim 8), defamation (Claim 9), negligent infliction of emotional distress (Claim 10), financial elder abuse (Claim 11), violation of civil rights under § 1983 (Claims 12 and 19), trafficking (Claim 13), RICO violations (Claim 14), abuse of process (Claim 15), and wire fraud (Claim 21). Scaringelli seeks dismissal for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) and for lack of personal jurisdiction under Rule 12(b)(2). He also brings a special motion to strike under California Code of Civil Procedure § 425.16.

Scaringelli submits his own declaration stating that he resides in Arizona, he is admitted to practice law only in Arizona, and he has never practiced law in a state other than Arizona. Scaringelli Decl. ¶ 25, ECF 107. He states that he does not own property in California, operate a business in California, or advertise in California. *Id.* ¶ 26. His contacts with California are limited his residency there between 1988 and 1991 while he attended law school. *Id.* ¶ 25. Elofson does not dispute any of those facts, but he argues that federal subject matter exists and that Scaringelli is subject to personal jurisdiction in this

Court under California's long-arm statute and RICO's "ends of justice" provision.

A. Subject Matter Jurisdiction

A party may challenge the Court's subject matter jurisdiction by bringing a motion to dismiss under Federal Rule of Civil Procedure 12(b)(1). "A Rule 12(b)(1) jurisdictional attack may be facial or factual." *Safe Air For Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). In a facial attack, the movant asserts that the lack of subject matter jurisdiction is apparent from the face of the complaint. *Id.* In a factual attack, the movant disputes the truth of allegations that otherwise would give rise to federal jurisdiction. *Id* "In resolving a factual attack on jurisdiction, the district court may review evidence beyond the complaint without converting the motion to dismiss into a motion for summary judgment." *Id.* "The court need not presume the truthfulness of the plaintiff's allegations." *Id.* Once the moving party has presented evidence demonstrating the lack of subject matter jurisdiction, the party opposing the motion must present affidavits or other evidence sufficient to establish subject matter jurisdiction. *Id.* Such evidence must be admissible. *Ou-Young v. Rea*, No. 5:13-CV-03118-PSG, 2013 WL 5934674, at *2 (N.D. Cal. Nov. 4, 2013) (citing *Ass'n of Am. Med. Colls. v. United States*, 217 F.3d 770, 778 (9th Cir. 2000)).

Scarengelli's challenge to subject matter jurisdiction appears to be a factual one, as he submits a significant amount of documentary evidence for the Court's consideration. Scaringelli asks the Court to take judicial notice of documents

filed in the United States District Court for the Central District of California, where Elofson previously litigated claims similar to those brought here. *See* Scaringelli RJN, ECF 108. That request is granted. *See Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) ("We may take judicial notice of court filings and other matters of public record."). The Court also considers the documents attached to Scaringelli's declaration, which are properly authenticated. *See* Scaringelli Decl., ECF 107. Taken together, those documents give a fairly detailed picture of Scaringelli's involvement in the Arizona guardianship and conservatorship proceedings in his role as counsel for McCollum.

Elofson in turn asks the Court to take judicial notice of numerous documents that he attaches to his opposition brief. *See* Pl.'s Opp., ECF 122, Pl.'s RJN, ECF 123. Those documents are not properly authenticated. Thus they are not considered by the Court except insofar as they are court records of which the Court may take judicial notice. *See Reyn's Pasta Bella,* 442 F.3d at 746 n.6.

Turning to the substance of Scaringelli's claim, he asserts that this record makes clear that the present action is a de facto appeal of the numerous Arizona state court rulings that were adverse to Elofson. Scaringelli points out that this Court previously ruled that it lacked subject matter jurisdiction over the federal claims alleged in Elofson's original complaint, all of which sought relief from Arizona state court orders. *See Order Denying Plaintiff's Motion for Appointment of Counsel; Denying Plaintiff's Application for a Temporary Restraining Order; and Granting*

Plaintiff's Motion for Leave to File an Amended Complaint ("Prior Order"), ECF 23. The Court's ruling was based on the *Rooker-Feldman* doctrine, under which a federal district court lacks authority to review the final determinations of a state court in judicial proceedings. *See Dist. of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923). Scaringelli quotes extensively from the Prior Order, finding a *Rooker-Feldman* bar with respect to the complaint's federal claims and indicating that absent a viable federal claim the Court would decline to exercise supplemental jurisdiction over the complaint's state law claims. *See* Scaringelli Mot. at 2-3. Although Elofson subsequently filed the operative FAC, Scaringelli contends that the amendments do not change the nature of Elofson's claims.

The Court agrees. Elofson has added what amounts to a scholarly discussion of the *Rooker-Feldman* doctrine to his pleading. However, his thorough discussion of many cases addressing that doctrine does not alter this Court's conclusion that all of his federal claims are barred by the doctrine. The purpose of the *Rooker-Feldman* doctrine "is to protect state judgments from collateral federal attack. Because district courts lack power to hear direct appeals from state court decisions, they must decline jurisdiction whenever they are 'in essence called upon to review the state court decision.'" *Doe & Assocs. Law Offices v. Napolitano*, 252 F.3d 1026, 1030 (9th Cir. 2001) (quoting *Feldman*, 460 U.S. at 482 n.16). The *Rooker-Feldman* doctrine precludes not only review of decisions of the state's highest court, but also those of its lower courts. *See Dubinka*

v. Judges of Superior Court, 23 F.3d 218, 221 (9th Cir. 1994).

"*Rooker-Feldman* may also apply where the parties do not directly contest the merits of a state court decision, as the doctrine prohibits a federal district court from exercising subject matter jurisdiction over a suit that is a de facto appeal from a state court judgment." *Reusser v. Wachovia Bank, N.A.*, 525 F.3d 855, 859 (9th Cir. 2008) (internal quotation marks and citation omitted). "A federal action constitutes such a de facto appeal where claims raised in the federal court action are inextricably intertwined with the state court's decision such that the adjudication of the federal claims would undercut the state ruling or require the district court to interpret the application of state laws or procedural rules." *Id.* (internal quotation marks and citation omitted).

As discussed above, Elofson's claims against most defendants are subject to dismissal for lack of personal jurisdiction, failure to state a claim, and improper venue. All of his remaining federal claims – those asserted against Scaringelli and those asserted against McCollum – depend upon the asserted invalidity of the Arizona state court orders regarding Milo's guardianship and conservatorship. Claims 3 and 4, brought under Federal Rule of Civil Procedure 60, directly request that this Court set aside the Arizona state court orders as null and void. Claims 12 and 19, asserted under § 1983, allege that the Arizona state court proceedings deprived Plaintiff and Milo of due process and free association rights protected under the Fourteenth Amendment. Claim 13 for trafficking and Claim 14 for RICO violations allege that Defendants' control over Milo's

assets and person pursuant to the Arizona state court orders constitute human trafficking and racketeering activity. Claim 21 for wire fraud alleges that McCollum and Scaringelli committed wire fraud when they asserted McCollum's rights as Milo's guardian and conservator in communications to Mudd and Community Hospital. All of these claims are inextricably intertwined with the Arizona state court proceedings and resulting orders and therefore are subject to dismissal under the *Rooker-Feldman* doctrine for lack of subject matter jurisdiction..

Having concluded that all federal claims remaining in the FAC are subject to dismissal, the Court declines to exercise supplemental jurisdiction over the state law claims asserted in the FAC. "A district court 'may decline to exercise supplemental jurisdiction' if it 'has dismissed all claims over which it has original jurisdiction.'" *Sanford v. MemberWorks, Inc.*, 625 F.3d 550, 561 (9th Cir. 2010) (quoting 28 U.S.C. § 1367(c)(3)). "'[I]n the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction doctrine – judicial economy, convenience, fairness, and comity – will point toward declining to exercise jurisdiction over the remaining state-law claims.'" *Id.* (quoting *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n. 7 (1988)). Here, the case is in its early stages. The Court has issued several orders in the case denying Elofson's motions with respect to appointment of counsel, temporary injunctive relief, and the like. However, the present order is the first to address motions to dismiss. Under these circumstances, the Court perceives no reason to exercise supplemental jurisdiction over Elofson's state law claims.

B. Personal Jurisdiction and Special Motion to Strike

In light of the Court's determination that Scaringelli is entitled to dismissal for lack of subject matter jurisdiction, the Court need not reach his alternative motion to dismiss for lack of personal jurisdiction. Moreover, Scaringelli's papers indicate that if it dismisses the claims against him, the Court need not reach his special motion to strike under California Code of Civil Procedure § 425.16. The Court therefore deems that motion to be withdrawn.

C. Conclusion

Scaringelli's motion to dismiss for lack of subject matter jurisdiction is GRANTED.

VIII. LEAVE TO AMEND

The Court has reviewed carefully all of Elofson's arguments, which he has presented quite articulately in his briefing and at the hearing on this matter, and has given careful consideration to whether Elofson might be able to cure the defects noted herein if granted leave to amend. The Court concludes that he could not. The Court has determined that it lacks personal jurisdiction over most of the defendants, and there is no indication on this record that jurisdictional discovery could reveal facts that would alter that determination. As to the two defendants over whom the Court clearly has personal jurisdiction, Mudd and Community Hospital, Mudd has established entitlement to dismissal based on qualified immunity, a defect that

could not be cured by amendment. Community Hospital has established entitlement to dismissal for lack of proper venue, and there is no indication on this record that amendment could alter that analysis. Finally, Scaringelli has demonstrated that all of the remaining federal claims in the FAC are barred by the *Rooker-Feldman* doctrine, again, a defect that could not be cured by amendment. Accordingly, leave to amend is DENIED as to all moving parties.

It is apparent from the record and from the passion with which Elofson has pursued this lawsuit that he cared deeply for his father, Milo. The Court has no doubt that he believes sincerely that injustice has been done and that redress is due. This Court simply is not the proper forum for Elofson's efforts.

IV. ORDER

For the reasons discussed above,

(1) Defendant Dougherty-Elofson's motion to dismiss for lack of personal jurisdiction is GRANTED WITHOUT LEAVE TO AMEND;

(2) Defendant Bivens' motion to dismiss for lack of personal jurisdiction is GRANTED WITHOUT LEAVE TO AMEND;

(3) Defendant Theut's motion to dismiss for lack of personal jurisdiction is GRANTED WITHOUT LEAVE TO AMEND;

(4) Defendant Mudd's motion to dismiss on the basis of qualified immunity is GRANTED WITHOUT LEAVE TO AMEND;

(5) Defendant Community Hospital's motion to dismiss for improper venue is GRANTED WITHOUT LEAVE TO AMEND;

(6) Defendant Scaringelli's motion to dismiss for lack of subject matter jurisdiction is GRANTED WITHOUT LEAVE TO AMEND.

Dated: February 13, 2017

/s/
BETH LABSON FREEMAN
United States District Judge

Constitutional Amendments

1st Amend.
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

4th Amend.
The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

14th Amend.
All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

ACTS

Sherman Act 15 U.S. Code § 5 - Bringing in additional parties:

Whenever it shall appear to the court before which any proceeding under section 4 of this title may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof. (July 2, 1890, ch. 647, § 5, 26 Stat. 210.)

Clayton Act - 15 U.S. Code § 22 - District in which to sue corporation:

Any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.
(Oct. 15, 1914, ch. 323, § 12, 38 Stat. 736.)

Federal Statutes

18 U.S. Code § 1201 – Kidnapping provides in pertinent part:

> (a) Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for...otherwise any person...when—
>
> (1) the person is willfully transported in interstate... commerce ... shall be punished by imprisonment
>
> (b) With respect to subsection (a)(1), above, the failure to release the victim within twenty-four hours ... shall create a rebuttable presumption that such person has been transported in interstate... commerce.
>
> (c) If two or more persons conspire to violate this section and one or more of such persons do any overt act to effect the object of the conspiracy, each shall be punished by imprisonment for any term of years or for life.
>
> (d) Whoever attempts to violate subsection (a) shall be punished by imprisonment for not more than twenty years.

State Statutes

2016 Arizona Revised Statutes
Title 36 - Public Health and Safety

§ 36-564 Guardianship
Universal Citation: AZ Rev Stat § 36-564 (2016)

36-564. Guardianship

A. Guardians for clients acting under the provisions of this chapter shall be appointed pursuant to title 14, chapter 5, articles 1, 2, 3 and 6.

B. The department shall request the appointment of a guardian for minor clients receiving services under the provisions of this chapter if no parent is willing and competent to act, and shall request the appointment of a guardian for adult clients receiving services under the provisions of this chapter if it appears that the appointment of a guardian would be in the client's best interests in accordance with section 14-5304.

C. When no person or corporation is qualified and willing to act as guardian for a client, the department shall notify the public fiduciary of the county where the client is receiving services of the need for appointment of a guardian.

D. Guardianship or conservatorship for persons with developmental disabilities shall be utilized only as is necessary to promote the well-being of the individual, be designed to encourage the development of maximum self-reliance and independence in the individual, and shall be ordered only to the extent necessitated by the individual's actual mental, physical and adaptive limitations.

Arizona Revised Statutes

14-5303. Procedure for court appointment of a guardian of an alleged incapacitated person

A. The alleged incapacitated person or any person interested in that person's affairs or welfare may petition for the appointment of a guardian or for any other appropriate protective order.

B. The petition shall contain a statement that the authority granted to the guardian may include the authority to withhold or withdraw life sustaining treatment, including artificial food and fluid, and shall state, at a minimum and to the extent known, all of the following:

1. The interest of the petitioner.
2. The name, age, residence and address of the alleged incapacitated person.
3. The name, address and priority for appointment of the person whose appointment is sought.
4. The name and address of the conservator, if any, of the alleged incapacitated person.
5. The name and address of the nearest relative of the alleged incapacitated person known to the petitioner.
6. A general statement of the property of the alleged incapacitated person, with an estimate of its value and including any compensation, insurance, pension or allowance to which the person is entitled.
7. The reason why appointment of a guardian or any other protective order is necessary.
8. The type of guardianship requested. If a general guardianship is requested, the petition must state that other alternatives have been explored and why a limited guardianship is not appropriate. If a

limited guardianship is requested, the petition also must state what specific powers are requested.
9. If a legal decision-making, parenting time or visitation order was previously entered regarding an alleged incapacitated person in a marriage dissolution, legal separation or paternity action in this state or another jurisdiction and the petitioner or proposed guardian is a parent of the alleged incapacitated person or a nonparent who has been awarded legal decision-making as to the alleged incapacitated person, the court and case number for that action or proceeding and include a copy of the most recent court order regarding legal decision-making, parenting time and visitation.
10. If the appointment of a guardian is necessary due solely to the physical incapacity of the alleged incapacitated person.
C. On the filing of a petition, the court shall set a hearing date on the issues of incapacity. Unless the alleged incapacitated person is represented by independent counsel, the court shall appoint an attorney to represent that person in the proceeding. The alleged incapacitated person shall be interviewed by an investigator appointed by the court and shall be examined by a physician, psychologist or registered nurse appointed by the court. If the alleged incapacitated person has an established relationship with a physician, psychologist or registered nurse who is determined by the court to be qualified to evaluate the capacity of the alleged incapacitated person, the court may appoint the alleged incapacitated person's physician, psychologist or registered nurse pursuant to this subsection. The investigator and the person conducting the examination shall submit their

reports in writing to the court. In addition to information required under subsection D, the court may direct that either report include other information the court deems appropriate. The investigator also shall interview the person seeking appointment as guardian, visit the present place of abode of the alleged incapacitated person and the place where it is proposed that the person will be detained or reside if the requested appointment is made and submit a report in writing to the court. The alleged incapacitated person is entitled to be present at the hearing and to see or hear all evidence bearing on that person's condition. The alleged incapacitated person is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the court-appointed examiner and investigator, and to trial by jury. The court may determine the issue at a closed hearing if the alleged incapacitated person or that person's counsel so requests.

D. A report filed pursuant to this section by a physician, psychologist or registered nurse acting within that person's scope of practice shall include the following information:

1. A specific description of the physical, psychiatric or psychological diagnosis of the person.

2. A comprehensive assessment listing any functional impairments of the alleged incapacitated person and an explanation of how and to what extent these functional impairments may prevent that person from receiving or evaluating information in making decisions or in communicating informed decisions regarding that person.

3. An analysis of the tasks of daily living the alleged incapacitated person is capable of performing without direction or with minimal direction.
4. A list of all medications the alleged incapacitated person is receiving, the dosage of the medications and a description of the effects each medication has on the person's behavior to the best of the declarant's knowledge.
5. A prognosis for improvement in the alleged incapacitated person's condition and a recommendation for the most appropriate rehabilitation plan or care plan.
6. Other information the physician, psychologist or registered nurse deems appropriate.

14-5307. Substitution or resignation of guardian; termination of incapacity

A. On petition of the ward or any person interested in the ward's welfare, or on the court's own initiative, the court shall substitute a guardian and appoint a successor if it is in the best interest of the ward. The court does not need to find that the guardian acted inappropriately to find that the substitution is in the ward's best interest. The guardian and the guardian's attorney may be compensated from the ward's estate for defending against a petition for substitution only for the amount ordered by the court and on petition by the guardian or the guardian's attorney. When substituting a guardian and appointing a successor, the court may appoint an individual nominated by the ward if the ward is at least fourteen years of age and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice. On petition of the guardian, the court may accept a resignation and make any other order that may be appropriate.

B. The ward may petition the court for an order that the ward is no longer incapacitated or petition for substitution of the guardian at any time. A request for this order may be made by informal letter to the court or judge. A person who knowingly interferes with the transmission of this request may be found in contempt of court.
C. An interested person, other than the guardian or ward, shall not file a petition for adjudication that the ward is no longer incapacitated earlier than one year after the order adjudicating incapacity was entered unless the court permits it to be made on the basis of affidavits that there is reason to believe that the ward is no longer incapacitated.
D. An interested person, other than the guardian or ward, shall not file a petition to substitute a guardian earlier than one year after the order adjudicating incapacity was entered unless the court permits it to be made on the basis of affidavits that there is reason to believe that the current guardian will endanger the ward's physical, mental or emotional health if not substituted.
E. Before substituting a guardian, accepting the resignation of a guardian or ordering that a ward's incapacity has terminated, the court, following the same procedures to safeguard the rights of the ward as apply to a petition for appointment of a guardian, may send an investigator to the residence of the present guardian and to the place where the ward resides or is detained to observe conditions and report in writing to the court.
F. On termination of the incapacity, the supreme court shall transmit the order terminating the incapacity to the department of public safety. The department of public safety shall transmit the

information to the national instant criminal background check system.

14-5309. Notices in guardianship proceedings

A. In a proceeding for a contact order or modification of a contact order pursuant to section 14-5316 or for the appointment or substitution of a guardian of a ward or an alleged incapacitated person other than the appointment of a temporary guardian or temporary suspension of a guardian, notice of a hearing shall be given to each of the following:

1. The ward or the alleged incapacitated person and that person's spouse, parents and adult children.
2. Any person who is serving as guardian or conservator or who has the care and custody of the ward or the alleged incapacitated person.
3. In case no other person is notified under paragraph 1 of this subsection, at least one of that person's closest adult relatives, if any can be found.
4. Any person who has filed a demand for notice.

B. At least fourteen days before the hearing notice shall be served personally on the ward or the alleged incapacitated person and that person's spouse and parents if they can be found within the state. Notice to the spouse and parents, if they cannot be found within the state, and to all other persons except the ward or the alleged incapacitated person shall be given as provided in section 14-1401. Waiver of notice by the ward or the alleged incapacitated person is not effective unless that person attends the hearing.

14-5312. General powers and duties of guardian

A. A guardian of an incapacitated person has the same powers, rights and duties respecting the guardian's ward that a parent has respecting the parent's unemancipated minor child, except that a guardian is not liable to third persons for acts of the ward solely by reason of the guardianship. In particular, and without qualifying the foregoing, a guardian has the following powers and duties, except as modified by order of the court:

1. To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, the guardian is entitled to custody of the person of the ward and may establish the ward's place of abode within or without this state.

2. If entitled to custody of the ward the guardian shall make provision for the care, comfort and maintenance of the ward and, whenever appropriate, arrange for the ward's training and education. Without regard to custodial rights of the ward's person, the guardian shall take reasonable care of the ward's clothing, furniture, vehicles and other personal effects and commence protective proceedings if other property of the ward is in need of protection.

3. A guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment or service.

4. If no conservator for the estate of the ward has been appointed, the guardian may:

(a) Institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform such person's duty.

(b) Receive money and tangible property deliverable to the ward and apply the money and property for support, care and education of the ward, but the guardian may not use funds from his ward's estate for room and board the guardian or the guardian's spouse, parent or child has furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the ward, if notice is possible. He must exercise care to conserve any excess for the ward's needs.

5. A guardian is required to report the condition of the ward and of the estate that has been subject to the guardian's possession or control, as required by the court or court rule.

6. If a conservator has been appointed, all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care and education of the ward shall be paid to the conservator for management as provided in this chapter and the guardian must account to the conservator for funds expended.

7. If appropriate, a guardian shall encourage the ward to develop maximum self-reliance and independence and shall actively work toward limiting or terminating the guardianship and seeking alternatives to guardianship.

8. A guardian shall find the most appropriate and least restrictive setting for the ward consistent with the ward's needs, capabilities and financial ability.

9. A guardian shall make reasonable efforts to secure appropriate medical and psychological care and social services for the ward.

10. A guardian shall make reasonable efforts to secure appropriate training, education and social

and vocational opportunities for his ward in order to maximize the ward's potential for independence.
11. In making decisions concerning his ward, a guardian shall take into consideration the ward's values and wishes.
12. The guardian is authorized to act pursuant to title 36, chapter 32.
13. The guardian of an incapacitated adult who has a developmental disability as defined in section 36-551 shall seek services that are in the best interest of the ward, taking into consideration:
(a) The ward's age.
(b) The degree or type of developmental disability.
(c) The presence of other disabling conditions.
(d) The guardian's ability to provide the maximum opportunity to develop the ward's maximum potential, to provide a minimally structured residential program and environment for the ward and to provide a safe, secure, and dependable residential and program environment.
(e) The particular desires of the individual.
B. Any guardian of a ward for whom a conservator also has been appointed shall control the custody and care of the ward and is entitled to receive reasonable sums for the guardian's services and for room and board furnished to the ward as agreed upon between the guardian and the conservator if the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

14-5405. Notice in conservatorship proceedings

A. In a proceeding for the appointment or substitution of a conservator of a protected person or person allegedly in need of protection, other than the appointment of a temporary conservator or temporary suspension of a conservator, and in a proceeding to continue a conservatorship or other protective order pursuant to section 14-5401, subsection B, notice of the hearing shall be given to each of the following:

1. The protected person or the person allegedly in need of protection if that person is fourteen years of age or older.
2. The spouse, parents and adult children of the protected person or person allegedly in need of protection, or if no spouse, parents or adult children can be located, at least one adult relative of the protected person or the person allegedly in need of protection, if such a relative can be found.
3. Any person who is serving as guardian or conservator or who has the care and custody of the protected person or person allegedly in need of protection.
4. Any person who has filed a demand for notice.

B. At least fourteen days before the hearing notice shall be served personally on the protected person or the person allegedly in need of protection and that person's spouse and parents if they can be found within the state. Notice to the spouse and parents, if they cannot be found within the state, and to all other persons except the protected person or the person allegedly in need of protection shall be given in accordance with section 14-1401. Waiver of notice by the protected person or the person allegedly in need of protection is not effective unless the

protected person or the person allegedly in need of protection attends the hearing.

16 A.R.S. Rules of Civil Procedure, Rule 4.1

Rule 4.1. Service of Process Within Arizona Currentness

(a) Territorial Limits of Effective Service. All process--including a summons--may be served anywhere within Arizona.

(b) Serving a Summons and Complaint or Other Pleading. The summons and the pleading being served must be served together within the time allowed under Rule 4(i). The serving party must furnish the necessary copies to the person who makes service. Service is complete when made.

(c) Waiving Service.

(1) *Requesting a Waiver.* An individual, corporation, or association that is subject to service under Rule 4.1(d), (h)(1)-(3), (h)(4)(A), or (i) has a duty to avoid unnecessary expense in serving the summons. To avoid costs, the plaintiff may notify the defendant that an action has been commenced and request that the defendant waive service of a summons. The notice and request must:

(A) be in writing and be addressed to the defendant and any other person required in this rule to be served with the summons and the pleading being served;

(B) name the court where the pleading being served was filed;

(C) be accompanied by a copy of the pleading being served, two copies of a waiver form prescribed in

Rule 84, Form 2, and a prepaid means for returning the completed form;
(D) inform the defendant, using text provided in Rule 84, Form 1, of the consequences of waiving and not waiving service;
(E) state the date when the request is sent;
(F) give the defendant a reasonable time to return the waiver, which must be at least 30 days after the request was sent; and
(G) be sent by first-class mail or other reliable means.
(2) *Failure to Waive.* If a defendant fails without good cause to sign and return a waiver requested by a plaintiff, the court must impose on the defendant:
(A) the expenses later incurred in making service; and
(B) the reasonable expenses, including attorney's fees, of any motion required to collect those service expenses.
(3) *Time to Answer After a Waiver.* A defendant who, before being served with process, timely returns a waiver need not serve an answer or otherwise respond to the pleading being served until 60 days after the request was sent.
(4) *Results of Filing a Waiver.* When the plaintiff files an executed waiver, proof of service is not required and, except for the additional time in which a defendant may answer or otherwise respond as provided in Rule 4.1(c)(3), these rules apply as if a summons and the pleading being served had been served at the time of filing the waiver.
(5) *Jurisdiction and Venue Not Waived.* Waiving service of a summons does not waive any objection to personal jurisdiction or venue.

(d) Serving an Individual. Unless Rule 4.1(c), (e), (f), or (g) applies, an individual may be served by:
(1) delivering a copy of the summons and the pleading being served to that individual personally;
(2) leaving a copy of each at that individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or
(3) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

(e) Serving a Minor. Unless Rule 4.1(f) applies, a minor less than 16 years old may be served by delivering a copy of the summons and the pleading being served to the minor in the manner set forth in Rule 4.1(d) for serving an individual and also delivering a copy of each in the same manner:
(1) to the minor's parent or guardian, if any of them reside or may be found within Arizona; or
(2) if none of them resides or is found within Arizona, to any adult having the care and control of the minor, or any person of suitable age and discretion with whom the minor resides.

(f) Serving a Minor Who Has a Guardian or Conservator. If a court has appointed a guardian or conservator for a minor, the minor must be served by serving the guardian or conservator in the manner set forth in Rule 4.1(d) for serving an individual, and separately serving the minor in that same manner.

(g) Serving a Person Adjudicated Incompetent Who Has a Guardian or Conservator. If a court has declared a person to be insane, gravely disabled, incapacitated, or mentally incompetent to manage that person's property and has appointed a guardian or conservator for the person, the person must be served by serving the guardian or conservator in the

manner set forth in Rule 4.1(d) for serving an individual, and separately serving the person in that same manner.

(h) Serving a Governmental Entity. If a governmental entity has the legal capacity to be sued and it has not waived service under Rule 4.1(c), it may be served by delivering a copy of the summons and the pleading being served to the following individuals:

(1) for service on the State of Arizona, the Attorney General;

(2) for service on a county, the Board of Supervisors clerk for that county;

(3) for service on a municipal corporation, the clerk of that municipal corporation; and

(4) for service on any other governmental entity:

(A) the individual designated by the entity, as required by statute, to receive service of process; or

(B) if the entity has not designated a person to receive service of process, then the entity's chief executive officer(s), or, alternatively, its official secretary, clerk, or recording officer.

(i) Serving a Corporation, Partnership, or Other Unincorporated Association. If a domestic or foreign corporation, partnership, or other unincorporated association has the legal capacity to be sued and has not waived service under Rule 4.1(c), it may be served by delivering a copy of the summons and the pleading being served to a partner, an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and--if the agent is one authorized by statute and the statute so requires--by also mailing a copy of each to the defendant.

(j) Serving a Domestic Corporation if an Authorized Officer or Agent Is Not Found Within Arizona.

(1) *Generally.* If a domestic corporation does not have an officer or an agent within Arizona on whom process can be served, the corporation may be served by depositing two copies of the summons and the pleading being served with the Arizona Corporation Commission. Following this procedure constitutes personal service on that corporation.

(2) *Evidence.* If the sheriff of the county in which the action is pending states in the return that, after diligent search or inquiry, the sheriff has been unable to find an officer or agent of such corporation on whom process may be served, the statement constitutes prima facie evidence that the corporation does not have such an officer or agent in Arizona.

(3) *Commission's Responsibilities.* The Arizona Corporation Commission must retain one of the copies of the summons and the pleading being served for its records and immediately mail the other copy, postage prepaid, to the corporation or any of the corporation's officers or directors, using any address obtained from the corporation's articles of incorporation, other Corporation Commission records, or any other source.

(k) Alternative Means of Service.

(1) *Generally.* If a party shows that the means of service provided in Rule 4.1(c) through Rule 4.1(j) are impracticable, the court may--on motion and without notice to the person to be served--order that service may be accomplished in another manner.

(2) *Notice and Mailing.* If the court allows an alternative means of service, the serving party must make a reasonable effort to provide the person being

served with actual notice of the action's commencement. In any event, the serving party must mail the summons, the pleading being served, and any court order authorizing an alternative means of service to the last-known business or residential address of the person being served.
(3) *Service by Publication.* A party may serve by publication only if the requirements of Rule 4.1(*l*), 4.1(m), 4.2(f), or 4.2(g) are met and the procedures provided in those rules are followed.
(*l*) Service by Publication.
(1) *Generally.* A party may serve a person by publication only if:
(A) the last-known address of the person to be served is within Arizona but:
(i) the serving party, despite reasonably diligent efforts, has been unable to ascertain the person's current address; or
(ii) the person to be served has intentionally avoided service of process; and
(B) service by publication is the best means practicable in the circumstances for providing the person with notice of the action's commencement.
(2) *Procedure.*
(A) Generally. Service by publication is accomplished by publishing the summons and a statement describing how a copy of the pleading being served may be obtained at least once a week for 4 successive weeks:
(i) in a newspaper published in the county where the action is pending; and
(ii) if the last-known address of the person to be served is in a different county, in a newspaper in that county.

(B) Who May Serve. Service by publication may be made by the serving party, its counsel, or anyone authorized under Rule 4(d).
(C) Alternative Newspapers. If no newspaper is published in a county where publication is required, the serving party must publish the summons and statement in a newspaper in an adjoining county.
(D) Effective Date of Service. Service is complete 30 days after the summons and statement is first published in all newspapers where publication is required.
(3) *Mailing.* If the serving party knows the address of the person being served, it must, on or before the date of first publication, mail to the person the summons and a copy of the pleading being served, postage prepaid.
(4) *Return.*
(A) Required Affidavit. The party or person making service must prepare, sign and file an affidavit stating the manner and dates of the publication and mailing, and the circumstances warranting service by publication. If no mailing was made because the serving party did not know the current address of the person being served, the affidavit must state that fact.
(B) Accompanying Publication. A printed copy of the publication must accompany the affidavit.
(C) Effect. An affidavit that complies with these requirements constitutes prima facie evidence of compliance with the requirements for service by publication.
(m) Service by Publication on an Unknown Heir in a Real Property Action. An unknown heir of a decedent may be sued as an unknown heir and be served by publication in the county where the

action is pending, using the procedures provided in Rule 4.1(*l*), if:
(1) the action in which the heir will be served is for the foreclosure of a mortgage on real property or is some other type of action involving title to real property; and
(2) the heir must be a party to the action to permit a complete determination of the action.

California Code, Code of Civil Procedure - CCP § 1913

(a) Subject to subdivision (b), the effect of a judicial record of a sister state is the same in this state as in the state where it was made, except that it can only be enforced in this state by an action or special proceeding.
(b) The authority of a guardian, conservator, or committee, or of a personal representative, does not extend beyond the jurisdiction of the government under which that person was invested with authority, except to the extent expressly authorized by Article 4 (commencing with Section 2011) of Chapter 8 of Part 3 of Division 4 of the Probate Code or another statute.

Convention on the Rights of Persons with Disabilities art. 12, Dec. 13, 2007, 2515 U.N.T.S. 3).