No. 20 – 1348

IN THE UNITED STATES SUPREME COURT

TRUE HARMONY ET AL.,

Petitioner,

v.

STATE DEPT. OF JUSTICE OF THE STATE OF CALIFORNIA ET AL.

Respondent.

On Appeal from the Denial of the Writ of Mandamus to Recuse
Federal District Court Judge Hon. J. Kronstadt
U.S. Court of Appeals for Ninth Circuit Case No. 20-72115

SUPPLEMENT TO THE PETITION FOR WRIT OF CERTIORARI

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SUPPLEMENT TO PETITION FOR WRIT OF CERTIORARI IN TRUE HARMONY V. STATE OF CALIFORNIA DEPT. OF JUSTICE, NO. 20-1348

FOREWORD

On April 13, 2021, Hon. J. Kronstadt, whom this petition seeks to have recused, entered an order dismissing the action with prejudice. *See attachment no. 1, Appendix hereto (hereinafter "Order").* Hon. J. Kronstadt decided without the benefit of live argument that some Plaintiffs lacked standing to bring some causes of action in the Second Amended Complaint, and that the *Rooker-Feldman* notion defeated jurisdiction pursuant to *F.R.Civ.P. 12(b)(1) and 12(b)(6). Ibid.*

Hon. J. Kronstadt incorrectly applied the federal law of standing and *Rooker-Feldman*, and subordinated the federal law to state law restrictions on Plaintiffs' standing and state law of *res judicata*. Plaintiffs pleaded independent causes of action for denial of the constitutional right of access to courts and denial of civil rights secured by the *Bankruptcy Act*, federal common law, and the *Bankruptcy Clause* and the *Supremacy Clause* of the U.S. Constitution, which survive the *Rooker-Feldman* cut-off according to this Court's precedent in *Exxon-Mobil Corp. v. Saudi Basic Industries Corp. (2005) 544 U.S. 280*. The Judge applied state law limitations on standing to bring the fraud cause of action under the *Uniform Supervision of*

Charitable Trusts Act and improperly found facts against the Plaintiffs relating to their standing to sue under federal law.

The Judge's bias in favor of state law for the Defendants and against the federal law that completely preempts state law offends both *28 U.S.C. §455* and the *Due Process of the Laws Clauses of Amendments Five and Fourteen of the U.S. Constitution* is overt and obvious. As Judge B. Fletcher wrote in her concurring opinion in *Bianchi v. Rylersdaam (9th Cir. 2003) 334 F. 3d 895,* the federal court always has jurisdiction to examine the bias of a judge in spite of *Rooker-Feldman*. The opportunity is hereby presented to this Court to grant the petition to reverse the

denial of recusal and this order of April 13, 2021 at the same time.

Herein, Dept. of Justice of State of California and Xavier Becerra are referred to as the *"State."*

DISCUSSION

The attached order dated April 13, 2021 in the *Appendix* is riddled with legal and factual errors. Plaintiffs discuss herein only two reasons cited by the Judge for his dismissal with prejudice of the Second Amended Complaint, because these two reasons alone prove the actual bias of the judge below requested for recusal *("the judge"*) and the lack of impartiality to a reasonable observer. And these reasons are (1) *Rooker-Feldman [Rooker v. Fidelity Trust (1923) 263 U.S. 413* and *District of Columbia Court of Appeals v. Feldman (1983) 460 U.S. 462]*, and (2) lack of standing.

Rooker-Feldman:

(1) An action must be dismissed without prejudice for lack of jurisdiction, including *Rooker-Feldman*. *Mains v. Citibank N.A. (7th Cir. 2017) 852 F. 3d 669.* The Judge abused a federal court's discretion in dismissing the Second Amended Complaint with prejudice.

(2) The Judge ignored Plaintiffs' argument that their attack on the judgments which are void because they violated the automatic stay in bankruptcy are independent causes of action. *Exxon Mobil Corp. v. Saudi Basic Industries Corp.; supra; Fontana Empire Center LLC v. City of Fontana (9th Cir. 2003) 307 F. 3d 987.* They are independent causes of action because Congress authorized the federal bankruptcy

courts to award damages, fees and equitable relief against intentional violations of the automatic stay of the debtor, *11 U.S.C. §362(k)*, and others including the debtor after the bankruptcy dismisses the case under the contempt authority of the bankruptcy court in *11 U.S.C. §105*. And they are independent causes of action because in the Ninth Federal Circuit Court of Appeals at least, a judgment intentionally violating the automatic stay in bankruptcy is void. *In re Sambo's Restaurants, Inc. (9th Cir. 1985) 754 F. 2d 811; see Eskanos & Adler v. Leetien (9th Cir. 2002) 309 F. 3d 1210.*

(4) The Judge assumed that the arbitration award transferred title to the Property prior to the bankruptcy, and that the bankruptcy is irrelevant

to the judgment ordering True Harmony to transfer title in 2008. *See Order at p. 15 of 26*. But Plaintiffs have documentary and testimonial evidence obtained in 2020 that the arbitration awards were the result of frauds on the court involved in misrepresentations by Rosario Perry and Norman Solomon that the State Attorney General approved the fake settlement agreement, and that the arbitration required by the fake settlement agreement was binding, when it clearly was non-binding. Furthermore, Plaintiffs feasibly alleged a first cause of action for denial of constitutional right of access to court including concealment of this evidence. *Christopher v. Harbury (2002) 536 U.S. 403*.

The Defendants' several frauds involving the continuing misrepresentation of the arbitration to multiple courts is important because solely the arbitrator awarded title to be transferred to 1130 South Hope Street Investment Associates LLC (California) by clerk's deeds (and the Los Angeles superior court confirmed the non-binding award). In contrast, the Los Angeles court of appeals' opinion in 2007, the fake settlement agreement and the superior court's judgments in 2005 enforcing the fake settlement agreement merely required a split of ownership between True Harmony and Norman Solomon's Hope Park Lofts, LLC, and not a transfer of title. *See the Petition for the Writ at p. 21 – 24 at 26.*

True Harmony transferred title to 1130 South Hope Street Investment Associates LLC *("Delaware LLC"*) by deed in February 2008. The judgment in June 2008 against True Harmony confirming the arbitrator's award of title to 1130 South Hope Street Investment Associates LLC *("California LLC")* could have been attacked in bankruptcy by the Delaware LLC as a fraudulent conveyance, because the judgment is not self-executing. However, the defendants Rosario Perry and Norman Solomon fraudulently obtained an order lifting the automatic stay by misrepresenting for the third or fourth time to the courts that the arbitration was binding, this time to the bankruptcy court in 2010.

(5) The judgment in June 2008 confirming the arbitrator's award could have been avoided as a preferential transfer under *Bankruptcy Code §547* within one year of bankruptcy between related entities, since 1130 South Hope Street Investment Associates LLC ("California LLC") and True Harmony are obviously related entities. *Contra Order, at pp. 14 - 16 of 26*. The fake settlement agreement, and the order of the Los Angeles superior court and the Los Angeles appeals court defines these entities as related by 50% ownership. The Judge's (as-a-state-court judge) judgment dated June 3, 2009 which stated that 1130 South Hope Street Investment Associates LLC was never cancelled, attempted to relate itself back to the so-called fraudulent

transfer of the property from True Harmony to the Delaware LLC in February of 2008, is also not self-executing, and therefore it defines the Delaware LLC and the California LLC as related entities for the purpose of the Bankruptcy Code. *See Petition for the Writ of Certiorari at pp. 22 – 26.*

(6) This Judge plainly erred in his assumption that True Harmony and the Delaware LLC are not *alter egoes*. *Order at p. 15 of 26*. The Judge's state court judgment confirming an arbitration award and dated June 3, 2009 (inside bankruptcy) attempted to relate the cancellation of the articles of the California LLC to the date of the transfer of title between True Harmony and the Delaware LLC. Thus the Judge's own

judgment in 2009 (inside bankruptcy) defined the Plaintiffs, contrary to the conclusion of the *Order at p. 15*. The Defendant's pleadings in the action in which the Judge entered the judgment inside bankruptcy (BC385560) also defined them as *alter egoes*.

The Judge's assumption that the Plaintiffs are not *alter egoes* is patently false, and the automatic stay of the Delaware LLC applied to its *alter ego*, True Harmony. *Havelock v. Taxel (In re Pace) (9th Cir. 1995) 67 F. 3d 187; United States v. Dos Cabezas Corp. (9th Cir. 1993) 995 F. 2d 1486.* And True Harmony has a letter from the State Franchise Tax Board that the Delaware LLC is formed as a holding company for holding title to True Harmony's property, and approving

it as a nonprofit mutual benefit corporation therefore. The automatic stay in the bankruptcy of the holding company organized for the purpose of the bankruptcy clearly applied to its subsidiary, True Harmony. *Ibid.*

The Judge always has worn, and continues to wear too many hats as a state court judge usurping the power of the State's Secretary of State to decide that his judgment in 2009 relates back to a time of fraudulent cancellation of articles of a limited liability company for the purpose of imputing the time of transfer of title to the Property as of the date in June 2008 of the judgment of title confirming the arbitration award, as though the judgment is a contract under contract law, but the judgment like the

contract is fraudulent. A federal court judge must reviewing the relationship between the entities involved in the transfer by deed and by judgment according to federal law where, as here, it controls state law as alleged throughout the Second Amended Complaint.

The Judge's order deprives Plaintiffs of the services of an impartial decisionmaker to a reasonable observer, and Due Process of the Laws because of his personal interest in defending the intent of the relation back of his state court judgment inside bankruptcy from attack under bankruptcy law.

(7) The causes of action at civil rights attacking the state court judgments that violated the automatic stay in bankruptcy (ie. the *"inside*

bankruptcy" judgment dated June 3, 2009, and judgments within *Bankruptcy Code §108* including the judgment dated March 15, 2010 fewer than thirty days after the bankruptcy court ordered the stay lifted, and the judgment dated April 22, 2010, the result of the so-called trial on March 15, 2010) are not *de facto* appeals under *Rooker-Feldman* because these judgments affect *"core"* issues and are preempted by the Bankruptcy Clause of the United States Constitution. The core issue is the turnover of property of the estate here of 1130 South Hope Street Investment Associates LLC (Delaware) which filed for bankruptcy on May 7, 2009, because the clerks deeds to 1130 South Hope Street Investment Associates LLC (California)

were recorded within 90 days on February 18, 2009. The complete preemption of the *1978 Bankruptcy Act* is established by a decision of this court arising under the *1898 Bankruptcy Act*, *Kalb v. Feuerstein (1940) 308 U.S. 433* which Congress impliedly re-enacted.

The pleadings' allegations of complete preemption of state law concerning the violations of the automatic stay are like a *Dormant Bankruptcy Clause* analog of its *Dormant Commerce Clause* counterpart. *See Camp Newfounds/Owatonna v. Town of Harrison (1997) 520 U.S. 564; compare Central Virginia Community College v. Katz (2006) 546 U.S. 356.*

(8) Because the Judge treated the *Rooker-Feldman* issue as an issue pertaining solely to

identity of parties and issues, *see Order at pp. 15 – 17 of 26*, the Judge disregarded the warning in *Exxon-Mobil* against application of *Rooker-Feldman* as a *res judicata* rule. The Order *de facto* applies state law instead of the federal law that is required for all issues pertaining to alleged violations of the automatic stay including *res judicata*. *Kalb v. Feuerstein, supra; see eg., In re Benalcazar (Bank. N.D. Ill. 2002) 283 B. R. 514.*

The disguised application of *res judicata* under the cloak of the *Rooker-Feldman* rule resulted in another systematic repetition of denial of *Due Process of the Laws*, in a bootstrap repetition of the many violations of adequate notice and opportunity to be heard under Due Process of the Laws already committed by the

state courts in the prior judgments that the Judge res judicated *sub silentio*.

The state court concluded in *True Harmony v. Perry (no. BC546574)* in sustaining the demurrer to the pleading therein (also a Second Amended Complaint) that Mr. Perry's failure to advise True Harmony of his conflict of interest in doing a business deal with a client, that Mr. Perry's testimony against True Harmony in the hearings on the fake settlement agreement and his involuntary waiver of privilege, that Mr. Perry's fraud on the courts of representing the approval of settlement agreement by the State's attorney general, and of causing the State's attorney general to fail to represent True Harmony, was not fraud on the court. *See Order,*

p. 13 of 26. This is not binding on the federal court in an action brought in the public interest. Under federal law fraud on the court does not depend on the designation of extrinsic fraud or not. *See Order, at pp. 18 – 21 of 26; United States v. Throckmorton (1878) 98 U.S. 61.*

(9) The Order failed to discuss the pleading's allegation that the third cause of action anticipated Defendants' defenses under federal bankruptcy law and federal taxation law which creates jurisdiction arising under federal law according to *Grable & Sons Metal Products Inc. v. Darue Engineering & Mfg. (2005) 545 U.S. 308.* There is jurisdiction arising under a federal question of the fraud under the *Uniform Supervision of Charitable Trusts Act,* because

fraud was not before the court in True Harmony v. Perry BC546574). And the *"sham"* exception to the *Noerr-Pennington* doctrine [*Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc. (1961) 365 U.S. 127 and United Mine Workers v. Pennington (1965) 381 U.S. 657*] and the Defendants' many violations of ethical rules of attorney's responsibilities to client defeats the litigation privilege.

Standing:

(10) The Judge deemed the allegations of the Second Amended Complaint attacking the violations of bankruptcy law inadequate. Therefore he ignored these allegations in dismissing injury in fact for standing of some Plaintiffs. The Defendants caused denial of

constitutional right of access to courts because they suppressed discovery of their previous frauds on the court and frauds on State, in the context of later actions in which they asserted *res judicata* as a defense and the interpleader action in which the court lacked all jurisdiction. *Order, at p. 11 of 26; see Christopher v. Harbury, supra.* The Order concluded that Mr. Thomas committed misconduct that defeated his standing to attack the violations of Plaintiff's civil rights, because it conveniently ignored the denial of constitutional right of access to courts.

(11) The Judge misunderstood the Plaintiffs' standing argument regarding taxpayer liability. *Order at pp. 11 - 12 of 26.* The Judge accepted State's argument that restitution of $1.6 million

of sales proceeds is infinitesimally small for the court to remedy (incredibly, State made this argument in motion documents). Is this why the Judge did not evaluate the evidence offered by Plaintiff that the value of the property is $5.5 million? *Order at p. 7 of 26*. Because the larger amount is also a trifle? In defense of the motions, Plaintiffs cited decisions involving taxpayer standing against municipalities, because the taxpayer (fourth) cause of action concerns the direct relationship of the mismanagement of the Charitable Properties section of the State (Department of Justice) of this action concerning this property to all known charitable properties supervised by this one section of the State (Dept.

of Justice).[1] State is *"on the hook"* to explain its negligence akin to legal malpractice here.

(12) The Judge adopted and endorsed State's argument that federal common law does not apply to the registered public charity. *Order, p. 12 of 26*. But the State in its motion herein denied jurisdiction under *Amendment Eleven of the U. S. Constitution*, despite that it could have consented to jurisdiction of this action. The State has discriminated against the Plaintiffs by failing to perform the mandatory duty as *parens patriae* to represent Plaintiffs in court without cost to

[1] True Harmony was deprived of eighteen total properties because of the fraud of its officers that originally caused the loss of title to the 1130 Hope Street property. Rosario Perry's cross-complaint for True Harmony in the state superior court in 2004 sought to recover title to seven of these properties.

enforce the cease and desist order. State apparently perceives that *Internal Revenue Code Section 501(c)(3)* charities are potent competition with local nonprofit corporations, and the scope federal charities, if not restrained, could surpass the activities of *"local"* nonprofit entities.

Plaintiffs pleaded that there is a basis in the American common law tradition for the claim of fraud on a charitable trust or corporation under *parens patriae* that is acceptable as federal common law, which avoids the discrimination injury that the politically motivated State has caused to Plaintiffs. The waiver of the State's sovereign immunity under the *Bankruptcy Clause of the U.S. Constitution* is another reason

to apply federal common law. *Cf. Central Va. Community College, supra*. The Bar Association's boycott of Plaintiffs' attorney at law is a reason to apply a federal rule including the federal law of ethical responsibilities of attorneys at law. *U.S. v. Throckmorton, supra*.

The Judge concludes his order with the statement that judges have discretion to dismiss with prejudice because they have discretion to protect *"the integrity of 'their orders.'" Order, at p. 26 of 26*. But in reality the only orders and judgments that the Judge's order protects are the state court's judgments under state law in prior actions, which must be subordinated to federal law to protect the integrity of the federal court's jurisdiction and federal law.

CONCLUSION

The Judge's order is contaminated by the discriminatory state's bias against the federal government and the federal courts, and the statute and the *Due Process of the Laws of Amendments Five and Fourteen* requires recusal.

May 4, 2021

/s/ Jeffrey G. Thomas
Attorney at law for
Petitioners

APPENDIX
COURT'S ORDER IN TRUE HARMONY v. STATE DEPT. OF JUSTICE, no. 20-cv-00170, U.S. DIST. CT. CENT. DIST. CAL.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	SA CV20-00170 JAK (ADSx)	Date	April 13, 2021
Title	True Harmony et al v. The Department of Justice of the State of California et al		

Present: The Honorable	JOHN A. KRONSTADT, UNITED STATES DISTRICT JUDGE

T. Jackson	Not Reported
Deputy Clerk	Court Reporter / Recorder
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Not Present	Not Present

Proceedings: **(IN CHAMBERS) ORDER RE MOTION TO DISMISS SECOND AMENDED COMPLAINT (DKT. 82);**

MOTION TO DISMISS PURSUANT TO FED. R. CIV. PROC. 12(B)(1) AND 12(B)(6) (DKT. 85);

MOTION TO DISMISS THE FOURTH AND FIFTH CAUSES OF ACTION IN PLAINTIFFS' SECOND AMENDED COMPLAINT (DKT. 88);

MOTION TO DISMISS FOR LACK OF JURISDICTION AND FAILURE TO STATE A CLAIM (DKT. 90);

CORRECTED MOTION TO DISMISS (DKT. 110)

EX PARTE APPLICATION TO REQUIRE SUSPENDED ATTORNEY JEFFREY G. THOMAS ESQ. TO PROVIDE ADDRESSES AND PHONE NUMBERS FOR EACH OF HIS FORMER CLIENTS (DKT. 146)

JS-6: CASE TERMINATED

On January 27, 2020, True Harmony, Ray Haiem and Jeffrey G. Thomas brought this action against the following parties: the "Department of Justice of the State of California"[1]; Xavier Becerra, both personally and in his official capacity[2]; Rosario Perry; Norman Solomon; Hugh John Gibson; BIMHF LLC; Hope Park Lofts 2001-02910056 LLC; 1130 Hope Street Investment Associates, LLC; and 50 unnamed Defendants. Dkt. 1. On May 31, 2020, True Harmony, Haiem, and Thomas filed a Second Amended Complaint, which added 1130 South Hope Street Investment Associates, LLC as a Plaintiff.

[1] Plaintiffs treat this agency as distinct from the California Attorney General, notwithstanding the Attorney General's supervision and control of the Department of Justice. *See* Cal. Govt. Code § 15000 ("There is in the State Government a Department of Justice. The department is under the direction and control of the Attorney General.").

[2] Becerra subsequently resigned as Attorney General to become the United States Secretary of Health and Human Services. Governor Newsom subsequently appointed Rob Bonta as the Attorney General. https://www.gov.ca.gov/2021/03/24/governor-newsom-to-submit-assemblymember-rob-bontas-nomination-for-attorney-general-to-the-state-legislature/.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	SA CV20-00170 JAK (ADSx)	Date	April 13, 2021
Title	True Harmony et al v. The Department of Justice of the State of California et al		

Dkt. 69 (the "SAC"). The SAC was accepted as the operative filing. Dkt. 75.

On June 19, 2020, Defendant BIMHF LLC filed a Motion to Dismiss Second Amended Complaint (the "BIMHF Motion" Dkt. 82)). On the same date, Norman Solomon, Hope Park Lofts 2001-02910056 LLC and 1130 Hope Street Investment Associates LLC filed a Motion to Dismiss Pursuant to Fed. R. Civ. Proc. 12(b)(1) and (6) (the "Solomon Motion" (Dkt. 85)). On June 22, 2020, California Attorney General Xavier Becerra's Motion to Dismiss the Fourth and Fifth Causes of Action in Plaintiffs' Second Amended Complaint was filed (the "California Motion" (Dkt. 88)). On June 22, 2020, Defendant Rosario Perry filed a motion to dismiss the Second Amended Complaint. Dkt. 90. Perry filed a corrected motion to dismiss on August 3, 2020 (the "Perry Motion" (Dkt. 110)).

Plaintiffs filed an opposition to the California Motion on July 29, 2020 (the "California Opposition" (Dkt. 106)). On August 17, 2020, Plaintiffs filed oppositions to the BIMHF Motion and the Perry Motion ("BIMHF Opposition" (Dkt. 112)) ("Perry Opposition" (Dkt. 113)). On the same day, all Plaintiffs except Thomas filed an opposition to the Solomon Motion, and Thomas filed a separate opposition to that Motion (the "Solomon Oppositions" (Dkt. 114; Dkt. 115)).

The moving parties filed replies in support of the Motions ("Solomon Replies" (Dkts. 123-24)), ("BIMHF Reply" (Dkt. 127)); ("Perry Reply" (Dkt. 132)); ("California Reply" (Dkt. 136)).

Pursuant to L.R. 7-15, it was determined that the issues presented by the Motions could be decided without a hearing, and the Motions were taken under submission. Dkt. 137. For the reasons stated in this Order, the Motions are **GRANTED**, and the SAC is **DISMISSED WITH PREJUDICE**.

I. Factual Background

A. The Parties

True Harmony is alleged to be a nonprofit public benefit corporation organized under the laws of the state of California. SAC ¶ 1. Ray Haiem is alleged to be a citizen of California, who pays federal and state income taxes, and the largest donor to True Harmony. *Id.* ¶ 2. 1130 South Hope Street Investment Associates LLC (the "Delaware LLC") is alleged to be a Delaware limited liability company organized by the officers of True Harmony in 2008. *Id.* ¶ 3.

Jeffrey Thomas is alleged to be a citizen of California, who is an attorney, and who pays federal and state income taxes. *Id.* ¶ 4.

The "Department of Justice of the State of California" is alleged to be the law enforcement agency of the state. *Id.* ¶ 5. Xavier Becerra is alleged to have been the Attorney General of the State of California. *Id.* ¶ 6. Because the rationale for suing the Attorney General and the Department of Justice as separate entities is not clear, these parties are referred to as the "Government Defendants" throughout this Order.

Rosario Perry is alleged to be a citizen of California who is an attorney. *Id.* ¶ 7.

Hope Park Lofts 2001-02910056, LLC ("Hope Park") is alleged to be a California limited liability

company. *Id.* ¶ 8. Hope Street Investment Associates LLC (the "California LLC") is also alleged to be a California limited liability company. *Id.* ¶ 9.

Norman Solomon is alleged to be a citizen of California who is an attorney and a real estate broker. *Id.* ¶ 12.

BIMHF, LLC is alleged to be a California limited liability company. *Id.* ¶ 13.

Hugh John Gibson is alleged to be a citizen of California who is an attorney. *Id.* ¶ 14.

B. Allegations in the SAC

The SAC alleges fraud and legal error that occurred during state court proceedings concerning the real property located at 1130 South Hope Street, Los Angeles, California (the "Property").

1. The Quiet Title Action (Case No. BC247718, Appeal No. B183928)

It is alleged that in 2001, Solomon caused an entity that he controls to bring a quiet title action against True Harmony. Dkt. 69 at 3. Perry allegedly represented True Harmony in that action. *Id.* It is alleged that True Harmony prevailed at trial, but that Perry produced "out of thin air" a "fake" settlement agreement. *Id.* The settlement agreement, a copy of which is attached to the SAC, attributed ownership of the property to the California LLC, as a joint venture between Hope Park and True Harmony. *Id.* It is alleged that this settlement only provided for nonbinding arbitration, because the typed word "binding" had been crossed out and initialed by Perry and Rick Edwards. *Id.*[3] It is also alleged that Perry had "conflicts of interests as True Harmony's attorney at law and as a witness testifying against True Harmony involuntarily waiving its attorney-client privilege." *Id.* ¶ 27. It is then alleged that there was a "conspiracy for a continuous business transaction with Defendant Perry as self-appointed manager of [the California LLC], without advising True Harmony of its rights to independent legal advice and written consent to the conflict of interest in a continuing business transaction with their former client." *Id.* ¶ 28.

It is alleged that True Harmony filed an appeal in which it challenged the validity of the settlement agreement. *Id.* at 7. It is alleged that True Harmony did not brief "the issue of Cal. Corp. Code § 5913, or the CAL AG's approval," or "the lack of control of TRUE HARMONY OF A 50% - 50% split in ownership or control of the 'new' entity or joint venture, or the lack of approval by the California [A]ttorney [G]eneral." *Id.* It is alleged that Justice Mosk wrote the opinion on the appeal in which it was determined that these issues had been waived, and that this opinion was erroneously labeled as that of a majority of the panel. *Id.* at 7-8.[4] It is alleged that this decision by the California Court of Appel violated the Fourteenth Amendment, failed to defer to federal law and federal common law, and exceeded the jurisdiction of the court. *Id.* ¶¶ 57-58.

It is then alleged that an arbitration was held before retired Judge William Schoettler ("Schoettler"), who is alleged to be a "chum" of Defendants. *Id.* at 8. Schoettler allegedly made an arbitration award that

[3] Edwards is not identified in the SAC. However, documents submitted by the parties reflect that Rick Edwards was counsel for True Harmony in the appeal of the Quiet Title Action.

[4] The opinion was not published, but is available on Westlaw. *Hope Park Lofts, LLC v. True Harmony, Inc.*, No. B183928, 2007 WL 841770 (Cal. Ct. App. Mar. 21, 2007).

ordered True Harmony to transfer title to the California LLC. *Id.* It is further alleged that this award was confirmed in the Quiet Title Action, but that this was a "fake *'non-binding*' post-appeal judgment." *Id.* at 8-9 (emphasis in original).

2. The Arbitration Action (Case No. BC385560)

It is alleged that True Harmony cancelled the articles of Hope Park and the California LLC, formed the Delaware LLC, and transferred title to the Delaware LLC. *Id.* at 9. It is alleged that Defendants then filed a petition with the Superior Court to compel arbitration (Case No. BC385560 (the "Arbitration Action")), using a false copy of the Settlement Agreement which provided for "binding" arbitration. *Id.* at 10. Although True Harmony allegedly raised this objection to the Superior Court, it nevertheless issued an order compelling arbitration. *Id.*

It is then alleged that an arbitration was held in January 2009, notwithstanding True Harmony's objection that it did not have sufficient time to prepare. *Id.* It is alleged that the arbitration proceeded without True Harmony appearing, and that Schoettler awarded title of the Property to the California LLC, and awarded $1 million in damages and attorney's fees against True Harmony (the "February 2009 Award"). *Id.* at 10.

It is then alleged that True Harmony caused the Delaware LLC to file for bankruptcy on May 6, 2009. *Id* (the "Bankruptcy Proceedings"). On June 3, 2009, the Superior Court allegedly entered a judgment confirming the February 2009 Award against True Harmony. *Id.* (the "June 3, 2009 Judgment"). It is alleged that this action was in violation of the automatic stay that applied due to the bankruptcy. *Id.* at 10-11.

It is next alleged that in December 2009, the Superior Court considered a motion for summary judgment on a cause of action for declaratory judgment against True Harmony in the Arbitration Action. *Id.* at 11. It is alleged that this cause of action affected the Delaware LLC's title to the Property. *Id.* It is alleged that the Superior Court granted the motion, but stayed its effectiveness, and that this was another violation of the automatic stay. *Id* (the "Summary Judgment Order").

It is then alleged that the Bankruptcy Court granted the California LLC prospective relief from the automatic stay. *Id.* at 11. It is alleged that the Superior Court then proceeded to trial on March 15, 2010, despite True Harmony's request for a continuance. *Id.* It is alleged that True Harmony and the Delaware LLC were not represented at trial, and that the denial of a reasonable continuance constituted a third violation of the automatic stay. *Id.*

It is then alleged that, on March 15, 2010, the Summary Judgment Order was entered against the Delaware LLC. *Id.* at 12. It is alleged that this was also a violation of the automatic stay. *Id.* Finally, it is alleged that the entry of judgment after trial in favor of Defendants violated the automatic stay. *Id.*

3. The Sale of the Property

It is alleged that in July 2011, Defendants relied on the "moot" judgments in the Arbitration Action to sell the Property. *Id.* It is alleged that this was despite an April 2011 letter from the Government Defendants, which is attached to the SAC. *Id.*; *id.* at 76 (the "Cease and Desist Letter").

The Cease and Desist Letter is addressed to several Plaintiffs and Defendants, including True Harmony, Haiem, the California LLC, Perry, Solomon, and Hope Park. *Id.* It states that:

> This Office has become aware that the California nonprofit public benefit corporations True Harmony or Ray of Life Charitable Foundation ("Ray of Life"), or both, have a substantial financial interest in 1130 South Hope Street. Further, this Office has learned that the charitable interest in 1130 South Hope Street would constitute all or substantially all of the assets of True Harmony and Ray of Life.
>
> Pursuant to Corporations Code section 5913, the Attorney General must receive written notice 20 days before a charitable corporation "sells, leases, conveys, exchanges, transfers, or otherwise disposes of all or substantially all of its assets… unless the Attorney General has given a written waiver of this section as to the proposed transaction." The Attorney General has not received any such written notice and has given no waiver of notice and intends to review this transaction.
>
> **Accordingly, with regards to 1130 South Hope Street, you are hereby notified to immediately cease all activity with regard to the sale, lease, conveyance, exchange, transfer, and any other activity that would affect title to the property until the requirements of Corporation Code section 5913 have been met.**

Id. at 77-78 (bold in original).

It is alleged that the Cease and Desist Letter has never been withdrawn or rescinded. *Id.* at 13.

4. The Interpleader Action (Case No. BC466413, Appeal No. BC254143)

It is alleged that, following the sale of the Property, Defendants brought an interpleader action to facilitate the distribution of funds from the sale. *Id.* at 13 (the "Interpleader Action"). It is alleged that the Superior Court lacked both *in rem* jurisdiction over the funds and *in personam* jurisdiction over the Defendants. *Id.* It is further alleged that the violation of the Cease and Desist Order was concealed from the Superior Court and Plaintiffs. *Id.*

It is alleged that Thomas represented Haiem in this action, that the Superior Court dismissed Haiem's cross-complaint, and that Thomas filed a motion for relief from the dismissal. *Id.* at 13-14. It is then alleged that, after the motion for relief was denied, Thomas appealed, and that Defendants sought sanctions against him, on the ground that the appeal was frivolous. *Id*. It is alleged that the Court of Appeal granted the sanctions motion and imposed sanctions of $58,650 against Thomas. *Id.* at 14.[5]

5. The Recovery Action and Appeal (Case No. BC546574, Appeal No. B287017)

It is alleged that True Harmony, while represented by Thomas, brought another action in Los Angeles

[5] The opinion was not published by the California courts, but is available on Westlaw. *1130 Hope Street Investment Associates, LLC v. Haiem*, No. B254143, 2015 WL 1897822 (Cal. Ct. App. Apr. 27, 2015).

Superior Court to recover title to the Property. *Id.* at 14 (the "Recovery Action"). Defendants allegedly misused motions under the anti-SLAPP statute and overbroad protective orders to limit discovery. *Id.* at 15. Defendants allegedly filed a demurrer to the Second Amended Complaint on the grounds of collateral estoppel and res judicata. *Id.* at 15. Although True Harmony allegedly argued that the prior judgments were not *res judicata* because they violated the automatic stay, the Superior Court granted the demurrer and dismissed the action. *Id.* at 15-16. It is alleged that the minute order and judgment were entered *ex parte* on April 7, 2017, but were not available in public records. *Id.* at 16. True Harmony allegedly moved for reconsideration on April 17, 2017, but the Defendants allegedly caused the judgment to be entered *ex parte* on May 1, 2017 and May 19, 2017. *Id.*

On October 17, 2017, the Superior Court allegedly denied the motion for reconsideration for lack of jurisdiction. *Id*. It is alleged that Defendants moved for sanctions claiming that the motion was frivolous. Sanctions were assessed against Plaintiffs on November 30, 2017. *Id.*

It is then alleged that True Harmony filed an appeal from the decision, including the award of sanctions. *Id.* The Court of Appeal allegedly dismissed the appeal as untimely, and affirmed the award of sanctions. *Id.* at 16-17. It is alleged that Solomon then moved for sanctions for bringing a frivolous appeal, which the Court of Appeal granted. *Id.*[6]

It is alleged that the Executive Director of the National Association of Attorneys General wrote a letter to Becerra regarding the Recovery Action and the appeal. *Id.* at 17.

II. Evidence Submitted by the Parties

On a motion to dismiss, a court may consider the complaint as well as documents attached to, or incorporated by reference into the complaint, if the latter are matters that are subject to judicial notice. *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). "Even if a document is not attached to a complaint, it may be incorporated by reference into a complaint if the plaintiff refers extensively to the document or the document forms the basis of the plaintiff's claim." *Id*. "The defendant may offer such a document, and the district court may treat such a document as part of the complaint, and thus may assume that its contents are true for purposes of a motion to dismiss under Rule 12(b)(6)." *Id.* "A document is not 'outside' the complaint if the complaint specifically refers to the document and if its authenticity is not questioned." *Branch v. Tunnell*, 14 F.3d 449, 453 (9th Cir. 1994) (quoting *Townsend v. Colum. Operations*, 667 F.2d 844, 848-49 (9th Cir. 1982)).

BIMHF, Solomon, Hope Park and the Delaware submitted Requests for Judicial Notice. *See* Dkt. 83 (the "BIMHF RFN"); Dkt 86 (the "First Solomon RFN"); Dkt. 125 (the "Second Solomon RFN").

Plaintiff did not submit a formal request for judicial notice, but submitted a binder of exhibits, together with a Declaration of Jeffrey G. Thomas. Dkt. 112 at 31.[7]

[6] The opinion was not published by the California courts, but is available on Westlaw. *Thomas v. Solomon*, No. B287017, 2018 WL 6566003 (Cal. Ct. App. Dec. 13, 2008).

[7] Plaintiffs submitted the same declaration and exhibits in connection with each of the four Oppositions. For efficiency, all citations to the declarations and exhibits are to those filed with the BIMHF Opposition, *i.e.*, Dkt. 112.

A. The BIMHF and Solomon RFNs

BIMHF seeks judicial notice of the grant deed by which BIMHF purchased the Property, copies of filings made in the various court proceedings at issue, and copies of judgments entered by the courts in those matters. Dkt. 83. Solomon seeks judicial notice of additional court documents. Dkts. 86, 125.

"[P]leadings filed and orders issued in related litigation are proper subjects of judicial notice under Rule 201." *McVey v. McVey*, 26 F. Supp. 3d 980, 984 (C.D. Cal. 2014). Therefore, the BIMHF RFN, the first Solomon RFN and the Second Solomon RFN are **GRANTED** as to the court documents, i.e., BIMHF's Exhibits B, C, D, E, F, G and H, and Solomon's Exhibits 1-10. The BIMHF RFN is **MOOT** as to the grant deed, because this document is not dispositive of the issues presented by the Motions.

BIMHF, Solomon, Hope Park and the Delaware LLC also seek judicial notice of the pleadings and judgments in *Jeffrey G. Thomas v. Laurie Zelon*, Case No. 2:16-cv-06544-JAK-AJW (*"Thomas v. Zelon*"). Thomas was the Plaintiff in this action and brought claims against several of the Defendants in this matter, including Gibson, Hope Park, Perry and Solomon. To the extent the BIMHF RFN and the Second Solomon RFN seek judicial notice of those documents, they are **MOOT**. The pleadings are not dispositive of the issues presented by the Motion, and the publicly available decisions in these matters will be considered if it is necessary and appropriate to do so.

B. Evidence Submitted by Plaintiffs

Plaintiff submitted 22 exhibits, which are described in the Declaration of Jeffrey G. Thomas. Because the Declaration does not comply with 28 U.S.C. § 1746, and Thomas did not submit a corrected declaration after Solomon, Hope Park and the California LLC objected on that ground, Dkt. 122, the Declaration is construed as a request for judicial notice.

The first three exhibits are documents about the valuation of the Property and its sale to BIMHF. These materials are not subject of judicial notice because their source is not clear. Accordingly, they are not "sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). Nor are they incorporated by reference into the SAC.

The remaining exhibits are documents entered in the court proceedings. Except for Exhibit 9, judicial notice is taken of these documents. However, judicial notice is not taken of the underlying facts presented in them. Rather, judicial notice is taken of the fact that an order was entered or that a court took a certain action. To the extent that Plaintiffs seek judicial notice of official court transcripts or briefs, this request is granted to determine whether certain issues were litigated in the prior proceedings. *See Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) ("To determine what issues were actually litigated in the *Wal–Mart* courts, we take judicial notice of Plaintiffs' briefs in those courts and the transcript of the *Wal–Mart* fairness hearing."); *Holder v. Holder*, 305 F.3d 854, 866 (9th Cir. 2002) ("We take judicial notice of the California Court of Appeal opinion and the briefs filed in that proceeding and in the trial court and we determine that the waiver issue was not actually litigated and necessarily decided here[.]").

Exhibit 9 is a brief identified as one filed in the Quiet Title Action, but Thomas states that certain documents attached to this brief were not attached when it was filed there. Dkt. 114 at 36-37. Given this

apparent discrepancy, the request for judicial notice is denied.

For the foregoing reasons, Plaintiff's Request for Judicial Notice is **GRANTED-IN-PART** and **DENIED-IN-PART**.

C. Sua Sponte Judicial Notice

A court may take judicial notice on its own motion. Fed. R. Evid. 201(c)(1). Because several parties have requested judicial notice of documents about the Bankruptcy Proceedings, judicial notice is taken of the docket in the Bankruptcy Action. *See In re 1130 South Hope Street Investment Associates, LLC*, 2:09-bk-20914-RN (Bankr. C.D. Cal.). Citations to the Bankruptcy Court docket appear in the form "B.R. Dkt. [#]."

III. Positions of the Parties

A. The Motions

BIMHF, Solomon, Hope Park, the Delaware LLC and Perry argue that the claims in the SAC fail because they seeks review of state court judgments, and that the district court lacks jurisdiction under the *Rooker-Feldman* doctrine. In the alternative, they argue that these causes of action are barred by *res judicata*, because they impermissibly seek to relitigate matters decided definitively in prior proceedings. Finally, they argue that no viable civil rights claims are pleaded, because all Defendants are private parties.

Solomon, Hope Park, the Delaware LLC and Perry argue that the Delaware LLC, Haiem and Thomas lack standing to advance causes of actions based on injuries to True Harmony. They also argue that the *Noerr-Pennington* doctrine and California's litigation privilege bar claims based on the prior litigation. BIMHF separately argues that the Third Cause of Action does not state a claim for fraud or fraudulent conveyance.

The Government Defendants argue that the Attorney General is immune from any liability under the Eleventh Amendment. They also argue that the Attorney General cannot be sued in his personal capacity because the SAC seeks injunctive relief. They next argue that the Court lacks subject matter jurisdiction over the Fourth and Fifth Causes of Action for two reasons: (i) Plaintiffs lack standing to advance these claims; and (ii) the *Rooker-Feldman* doctrine bars these claims.

B. The Oppositions

Plaintiffs oppose each Motion. As to *Rooker-Feldman*, Plaintiffs generally argue that the claims are not barred for the following reasons: (i) they challenge orders entered in violation of the Bankruptcy Court's automatic stay; (ii) they challenge illegal policies of the state courts; (iii) they allege a broad conspiracy; and (iv) some of them are brought against persons who were not parties in the state proceedings or are premised on conduct that was not at issue in those proceedings. Similarly, they argue that because proceedings in violation of the automatic stay are void, the state court judgments have no *res judicata* effect. In the alternative, they argue that *res judicata* should not be applied if the Government Defendants intervene to support Plaintiffs.

Relying on *Lugar v. Edmondson Oil Co.*, 457 U.S. 922 (1982), Plaintiffs argue that the SAC states proper civil rights claims. They also argue that BIMHF incorrectly assumes that the Third Cause of Action is brought pursuant to the Uniform Voidable Transfers Act. Plaintiffs argue that it is a common law fraudulent conveyance claim.

Finally, Plaintiffs argue that sovereign immunity could be waived, or that the violations of the automatic stay in bankruptcy mean that sovereign immunity does not apply. They also argue that taxpayer standing has been established.

IV. Analysis

A. Motion to Dismiss under Fed. R. Civ. P. 12(b)(1)

A challenge to subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1) may be brought as a facial challenge to the pleadings or based on proffered evidence. See *White v. Lee,* 227 F.3d 1214, 1242 (9th Cir. 2000) ("Rule 12(b)(1) jurisdictional attacks can be either facial or factual."). In the former, the moving party asserts that the allegations of a complaint are insufficient to establish federal jurisdiction. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). Courts must accept the allegations of the complaint as true in considering such a challenge, *i.e.*, facial attacks are reviewed under the same standard as a motion to dismiss under Fed. R. Civ. P. 12(b)(6). *See Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014). "By contrast, in a factual attack, the challenger disputes the truth of the allegations that, by themselves, would otherwise invoke federal jurisdiction." *Safe Air*, 373 F.3d at 1039. If a factual challenge is made, the district court may "review evidence beyond the complaint without converting the motion to dismiss into a motion for summary judgment." *Id*.

B. Application

1. Standing

a) Legal Standards

Because federal courts are ones of limited jurisdiction, "[a] federal court is presumed to lack jurisdiction in a particular case unless the contrary affirmatively appears." *Stock W., Inc. v. Confederated Tribes*, 873 F.2d 1221, 1225 (9th Cir. 1989) (citing *California ex rel. Younger v. Andrus*, 608 F.2d 1247, 1249 (9th Cir. 1979)). "Article III of the Constitution confines the federal courts to adjudication of actual 'Cases' and 'Controversies.'" *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 590 (1992). "[T]he core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III." *Id*. at 560 (citation omitted). If a plaintiff lacks standing under Article III, an action must be dismissed for lack of subject matter jurisdiction. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 109-10 (1998); *accord Maya v. Centex Corp*., 658 F.3d 1060, 1067 (9th Cir. 2011).

"[T]o satisfy Article III's standing requirements, a plaintiff must show (1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to

merely speculative, that the injury will be redressed by a favorable decision." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc*., 528 U.S. 167, 180-81 (2000) (citing *Lujan*, 504 U.S. at 560-61). When a plaintiff seeks injunctive relief, establishing standing under Article III also requires a showing of "real or immediate threat that the plaintiff will be wronged again -- a 'likelihood of substantial and immediate irreparable injury.'" *City of L.A. v. Lyons*, 461 U.S. 95, 111 (1983) (quoting *O'Shea v. Littleton*, 414 U.S. 488, 502 (1974)).

Standing is not "dispensed in gross." *Oregon Prescription Drug Monitoring Program v. U.S. Drug Enforcement Admin*., 860 F.3d 1228, 1233 (9th Cir. 2017) (quoting *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 734 (2008)). Article III requires "a plaintiff to demonstrate standing for each claim he seeks to press and for each form of relief that is sought." *Id*.

b) Analysis

(1) Whether Parties Other than True Harmony Have Standing to Advance the First Three Causes of Action

The SAC sufficiently alleges that True Harmony and the Delaware LLC owned or had an interest in the Property, and that Defendants' actions deprived them of the right to hold that interest. This type of injury is redressable by a favorable court decision, *i.e.*, by damages or reconveyance of the Property. Defendants' argument that True Harmony was not unlawfully deprived of the Property, Dkt. 85 at 24, goes to the merits of the cause of action, not standing.

Haiem's standing has not been sufficiently alleged. The SAC alleges that "the injuries to PLAINTIFFS TRUE HARMONY and HAIEM were joint and indivisible," and that any violations of True Harmony and the Delaware LLC's rights were also violations of Haiem's civil rights. SAC ¶ 67. This conclusory statement does not establish standing. It is also alleged that Haiem was deprived "of his charitable donation to TRUE HARMONY, which TRUE HARMONY was coerced to expend on legal fees and legal expenses to defend against DEFENDANTS' frivolous and sham actions in the courts involving the Property." *Id.* ¶ 68. That a person donated to a charity, is not a sufficient basis to establish that person's standing to sue for any alleged harms suffered by that charity.

Plaintiffs do not address these arguments. Rather, they state that Haiem has standing to sue under the Fourth Cause of Action, because he is a taxpayer. As noted above, standing must be established for each form of relief a plaintiff seeks. *Oregon Prescription Drug Monitoring Program*, 860 F.3d at 1233. That Haiem may have standing to advance the Fourth Cause of Action does not establish his standing to advance others.

Plaintiffs also argue that *Holt v. College of Osteopathic Surgeons*, 61 Cal. 2d 750 (1964) and *L.B. Research and Educ. Found. v. UCLA Found.*, 130 Cal. App. 4th 171 (2005) both confirm that Haiem has standing. This argument is unpersuasive. *Holt* held that minority trustees may sue to enforce the obligations of a charitable corporation. 61 Cal. 2d at 756-57. It is not alleged that Haiem is a minority trustee. *L.B. Research* held that a donor to the University of California, Los Angeles had not created a charitable trust, but a contract subject to a condition subsequent, which could be enforced by a civil action. 130 Cal. App. 4th at 175. Again, there is no allegation that Haiem's donation created a contract. *Cf. Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016) (plaintiffs must "clearly allege facts

demonstrating each element of standing") (internal citation omitted). Finally, both decisions address the capacity to sue under California law, not whether a given injury is sufficient to establish for Article III standing.

As to Thomas, the SAC alleges that the alleged conspiracy to violate the civil rights of True Harmony and the Delaware LLC directly and proximately caused the sanctions imposed on Thomas. SAC ¶ 85. Although these sanctions can be deemed an injury in fact, this conclusory allegation does not establish causation. Rather, it appears from the judicially noticed documents that the Superior Court imposed sanctions as a result of Thomas's misconduct. *See Thomas*, 2018 WL 6566003, at *7 ("Despite our order striking True Harmony's appeal, Thomas filed an opening brief on behalf of both True Harmony and himself. The appeal addressed the merits of the underlying case and demurrer, and was not limited to the sanctions order. Solomon again corresponded with Thomas asking him to withdraw his improper brief. Thomas refused. Solomon then incurred further costs bringing a successful motion to strike the opening brief. Even after we ordered Thomas to limit his brief to the sanctions order, Thomas still argued the underlying judgment and matters unrelated to sanctions in the new opening brief."); *1130 South Hope Street Investment Associates, LLC*, 2015 WL 1897822, at *8 ("Thomas's approach toward this appeal and his unprofessional and at times outrageous conduct toward counsel for Hope Park Lofts show not only that this appeal was frivolous but that it was intended to harass Hope Park Lofts and to drive up its litigation costs."). *Cf. Wash. Env't Council v. Bellon*, 732 F.3d 1131, 1141-42 (9th Cir. 2013) ("Plaintiffs must show that the injury is causally linked or 'fairly traceable' to the [Defendants'] alleged misconduct, and not the result of misconduct of some third party not before the court.").

* * *

For the foregoing reasons, neither Haiem nor Thomas has standing to advance the first three causes of action, except to the extent the Second Cause of Action seeks review of the sanctions entered against Thomas.

(2) Whether Plaintiffs Have Standing to Advance the Fourth Cause of Action

The SAC alleges that Thomas, Haiem and members of True Harmony all pay federal and state income taxes. Based on this, it alleges that they have standing to contest the unlawful "exaction" of taxes. SAC ¶ 113.

Although the nature of the "unlawful exactions of taxes" is not made clear in the SAC, Plaintiffs' theory appears to be that their state taxes increased as a result of the allegedly unlawful sale of property. SAC ¶ 117 ("[C]haritable assets are public assets that may be used in lieu of the welfare budget of the state of California to provide public services to low or no income residents in need of them."); Dkt. 106 at 12 ("It caused increased state taxes to pay for the welfare entitlements to compensate for the loss of charitable assets.").

This theory of injury fails for two reasons. *First*, "a litigant may not assume a particular disposition of government funds in establishing standing[.]" *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 348 (2006). Plaintiff's theory of harm assumes that California necessarily spends additional money on welfare to make up for any money lost by charitable organizations. But it is not alleged nor otherwise suggested that *any* loss of charitable property necessarily results in an increase in welfare spending by the state.

Second, if the alleged loss of charitable funds in fact caused California to increase welfare spending, this would not necessarily require, or result in, the imposition of higher taxes. Instead, the state may choose to reduce other spending. Thus, Plaintiff's theory of injury "requires speculating that elected officials will increase a taxpayer-plaintiff's tax bill to make up a deficit." *Id*. at 344. This type of speculation does not "suffice[] to support standing." *Id*. (citing *ASARCO Inc. v. Kadish*, 490 U.S. 605, 614 (1989) (plurality opinion) and *Warth v. Seldin*, 422 U.S. 490, 509 (1975).

Plaintiffs argue that the test for municipal taxpayer standing is less stringent. However, the SAC does not allege that any Plaintiff is a municipal taxpayer, nor does it identify any municipal expenditures that harmed Plaintiffs. Because this SAC is not the first opportunity for Plaintiffs to allege facts that could support a theory of municipal taxpayer standing, on a pragmatic level, it is too late to do so.

(3) Whether Plaintiffs Have Standing to Advance the Fifth Cause of Action

The SAC alleges that Plaintiffs are "residents of the state, and have standing to require the CAL AG to exercise his discretion to enforce the public trust in charitable assets under the federal common law of public charities registered under Section 501(c)(3) of the Internal Revenue Code." SAC ¶ 127. *See also* Dkt. 106 at 13 ("As residents of the state PLAINTIFFS have standing to sue the government DEFENDANTS under state and federal common law to compel them to reasonably exercise their *parens patriae* powers to conserve and protect public charitable assets.").

Plaintiffs' theory appears to be that any resident of the state of California has standing to compel the Attorney General to enforce the Uniform Supervision of Trustees Act, *i.e.*, that any resident of the State suffers an injury when this Act is not enforced. This generalized grievance in the proper enforcement of law does not support standing. *See Hein v. Freedom from Religion Found.*, 551 U.S. 587, 601 and n.2 (2007) (collecting cases); *see also Carney v. Adams*, 141 S. Ct. 493, 498 (2020) ("[A]n abstract and generalized harm to a citizen's interest in the proper application of the law does not count as an 'injury in fact.'").[8]

* * *

For the foregoing reasons, Plaintiffs do not have standing to advance the Fourth and Fifth Causes of Action. Because there has been an adequate opportunity to assert these claims, and any further

[8] In the California Opposition, Plaintiffs again assert new theories of standing not alleged in the SAC. Dkt. 106 at 12 ("PLAINTIFFS may assert that the failure of the STATE DEPARTMENT OF JUSTICE and XAVIER BECERRA to allege a cause of action similar COA #3 in their own complaint to the court facilitates a taking of public property as charitable assets without just compensation therefore."). Assuming without deciding that these theories could establish standing, the outcome would not change. The Eleventh Amendment bars injunctive relief against state officers premised on violations of state law. *See Pennhurst State School & Hosp. v. Haldeman*, 465 U.S. 89, 106 (1984). Plaintiff's vague references to "federal common law" do not change the fact that Plaintiffs challenge the "nonenforcement of the cease and desist order," which was issued pursuant to California law. Dkt. 106 at 10. Indeed, Plaintiffs acknowledge that these causes of action could be, and likely are barred by the Eleventh Amendment. *Id.* at 7 ("The GOVERNMENT DEFENDANTS could waive sovereign immunity for the purpose of this one action.").

amendment would almost certainly be futile, these causes of action are **DISMISSED WITH PREJUDICE**.[9]

2. The *Rooker-Feldman* Doctrine

a) Legal Standards

Pursuant to the *Rooker-Feldman* doctrine, district courts do not have jurisdiction of actions that seek to review state court judgments. Appellate jurisdiction over those judgments is exclusive to the Supreme Court. *See* 28 U.S.C. § 1257. The doctrine "is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments. *Rooker-Feldman* does not otherwise override or supplant preclusion doctrine or augment the circumscribed doctrines that allow federal courts to stay or dismiss proceedings in deference to state-court actions." *Exxon-Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 284 (2005).

"To determine whether the *Rooker-Feldman* bar is applicable, a district court must first determine whether the action contains a forbidden de facto appeal of a state court decision." *Bell v. City of Boise*, 709 F.3d 890, 897 (9th Cir. 2013). A de facto appeal exists when "a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and seeks relief from a state court judgment based on that decision." *Id.* The Ninth Circuit has stated that "even if a plaintiff seeks relief from a state court judgment, such a suit is a forbidden de facto appeal only if the plaintiff *also* alleges a legal error by the state court." *Id.* If it is determined that, through a federal proceeding, a plaintiff seeks to bring a "forbidden de facto appeal . . . that federal plaintiff may not seek to litigate an issue that is 'inextricably intertwined' with the state court judicial decision from which the forbidden de facto appeal is brought." *Id.* The "'inextricably intertwined' language from *Feldman* is not a test to determine whether a claim is a de facto appeal, but is rather a second and distinct step in the *Rooker-Feldman* analysis. Should the action *not* contain a forbidden de facto appeal, the *Rooker-Feldman* inquiry ends." *Id.* (italics in original).

To determine whether an action constitutes a de facto appeal, district courts "pay close attention to the *relief* sought by the federal-court plaintiff." *Cooper v. Ramos*, 704 F.3d 772, 777-78 (9th Cir. 2012) (internal citation omitted) (emphasis in original).

b) Application

(1) Whether the First Cause of Action Is Barred by *Rooker-Feldman*

The first cause of action is brought pursuant to 42 U.S.C. § 1983. It seeks three broad forms of relief on the grounds that Defendants' actions violated the Bankruptcy Clause of the U.S. Constitution, the Supremacy Clause of the U.S. Constitution, the Due Process Clause of the U.S. Constitution, the Bankruptcy Act, the Internal Revenue Code, and federal common law. *First,* the First Cause of Action

[9] Although dismissal for lack of jurisdiction is ordinarily without prejudice, dismissal with prejudice is appropriate in this action. See Section V, *infra*.

seeks a declaratory judgment that the transfer of the property to the California LLC violated the civil rights of True Harmony, the Delaware LLC, and Haiem, and that remedial injunctive relief is warranted. *i.e.*, an order compelling 1130 Hope Street Investment Associates LLC to reconvey title to True Harmony and the Delaware LLC.

Plaintiffs acknowledge that this relief requires review of state court judgments, including those entered in the Arbitration Action. Dkt. 114 at 13. Thus, this cause of action contains a forbidden de facto appeal.

Second, this cause of action seeks a declaratory judgment that the sale of the property to BIMHF violated the civil rights of True Harmony and the Delaware LLC. Consequently, Plaintiffs argue that a corresponding injunction is warranted that would require BIMHF to reconvey title to 1130 South Hope Street Investment Associates, LLC, so that it can be reconveyed to True Harmony. It is alleged that the sale was illegal because it was part of the "constitutionally sham and moot invalid judgments in [the Arbitration Action]." SAC ¶ 65. Thus, granting this relief is also contingent on a finding error by the state court in connection with the Arbitration Action. Thus, this claim also seeks a forbidden de facto appeal.

It is also alleged that the sale was illegal because it violated the Cease-and-Desist Order. *Id.* This allegation does not raise a *Rooker-Feldman* issue. The alleged wrong is not a state court judgment, but an "allegedly illegal act[] committed by a party against whom [Plaintiffs] ha[ve] previously litigated." *Noel v. Hall*, 341 F.3d 1148, 1166 (9th Cir. 2003). This type of claim may be barred by issue or claim preclusion.

Third, this cause of action seeks a declaratory judgment that the Interpleader Action was moot and all orders made by the court in that proceeding violated the civil rights of True Harmony, the Delaware LLC, and Haiem. These arguments seek relief from a state court judgment and allege that the orders entered by the state court were in error. This is another forbidden de facto appeal.

Plaintiffs offer three reasons why *Rooker-Feldman* is not applicable to the portions of the First Cause of Action that involve a de facto appeal. None is persuasive.

(a) Bankruptcy Exception to *Rooker-Feldman*

Plaintiffs argue that, because the orders entered in the Arbitration Action violated the automatic stay, they are *void in abnitio* and are not subject to the *Rooker-Feldman* doctrine. State court orders in violation of the automatic stay may be challenged in a federal court, notwithstanding *Rooker-Feldman*. *See In re Gruntz*, 202 F.3d 1074, 1083 (9th Cir. 2000) ("[T]he federal courts have the final authority to determine the scope and applicability of the automatic stay…Thus, the *Rooker-Feldman* doctrine is not implicated by collateral challenges to the automatic stay in bankruptcy."). Plaintiffs identify five alleged violations of the automatic stay:

First, on June 3, 2009, the Superior Court confirmed an arbitration award against True Harmony and Haiem. *See* Dkt. 112-2 at 136 (the "June 2009 Judgment"). The June 2009 Judgment states that the attempted cancellation of the California LLC was not effective, that True Harmony has not held "any interest in the Property that could be transferred or encumbered since October 9, 2003," and that any attempt by True Harmony to transfer an interest in the Property subsequent to October 9, 2003 was void as a matter of law. Plaintiffs argue that the June 2009 Judgment violated the automatic stay

because it affected True Harmony's effort to transfer the Property to the Delaware LLC.

The basis for this argument appears to be that the Property was "property of the estate" under 11 U.S.C. § 541, and was protected by the automatic stay pursuant to 11 U.S.C. § 362(a)(3). This argument fails, because the underlying arbitration award issued by Schoettler had already afforded the same relief, thereby depriving the Delaware LLC of any interest in the Property. *See* Cal. Civ. Proc. Code § 1287.6 ("An award that has not been confirmed or vacated has the same force and effect as a contract in writing between the parties to the arbitration."). Accordingly, as of February 2009, the Delaware LLC had no interest in the Property that could be protected by the automatic stay.[10] Also unpersuasive is Plaintiffs' suggestion that the June 3, 2009 Judgment violated the automatic stay because it would later be used against the Delaware LLC. As the Second Circuit has explained, an automatic stay cannot be reasonably construed to extend so broadly:

> We have not located any decision applying the [automatic] stay to a non-debtor solely because of an apprehended later use against the debtor of offensive collateral estoppel or the precedential effect of an adverse decision. If such apprehension could support application of the stay, there would be vast and unwarranted interference with creditors' enforcement of their rights against non-debtor co-defendants.

Queenie, Ltd. v. Nygard Int'l, 321 F.3d 282, 288 (2d Cir. 2003).

Plaintiffs also argue that the automatic stay protected True Harmony, because it was an alter ego of the Delaware LLC. Dkt. 69 at 12. No allegations are made to support this legal conclusion, and the SAC elsewhere alleges that True Harmony and the Delaware LLC were separate corporate entities. SAC ¶¶ 1, 3. Furthermore, the Ninth Circuit has "consistently held that the automatic stay does not apply to suits against non-debtors." *In re Excel Innovations, Inc.*, 502 F.3d 1086, 1095 (9th Cir. 2007) (citing *In re Chugach Forest Prods., Inc.*, 23 F.3d 241, 246 (9th Cir. 1994)). Instead, non-debtors must seek protection through the Bankruptcy Court's general equity powers. *See* 11 U.S.C. § 105. "[S]uch extensions, although referred to as extensions of the automatic stay, are in fact injunctions issued by the bankruptcy court after hearing and the establishment of unusual need to take this action to protect the administration of the bankruptcy estate." *Boucher v. Shaw*, 572 F.3d 1087, 1093 n.3 (9th Cir. 2009) (internal citations and quotation marks omitted). Thus, for True Harmony to have obtained the benefit of the automatic stay, it had to seek relief in the Bankruptcy Court during those proceedings. Having failed to do so, it cannot litigate the issue in an "entirely retrospective" proceeding in a new forum. *In re Chugach Forest Prods.*, 23 F.3d at 247 n.3 (extension of the automatic stay was "particularly inappropriate" when litigant sought a retroactive extension, rather than prospective relief to protect the debtor's estate). *See also Boucher*, 572 F.3d at 1093 n.3 (request for dismissal of a claim in the district court "is not analogous to a prospective request for an injunction from the bankruptcy court").

[10] Plaintiffs also make a vague argument that the "judgment dated July 8, 2008" could have been challenged as a preferential transfer pursuant to 11 U.S.C. § 547, and that the settlement agreement obtained in the Quiet Title Action could have been rejected as an executory contract pursuant to 11 U.S.C. § 365. These issues were not litigated in the Bankruptcy Proceedings, which concluded more than ten years ago. *See* B.R. Dkt. 47 (Order Dismissing Case) (Sep. 15, 2010). Speculating as to what the Bankruptcy Court might have done if these hypothetical motions had been brought is not sufficient to show that the Delaware LLC had an interest in the Property and, consequently, that the Property was protected by the automatic stay.

The conclusion that the June 2009 Judgment did not violate the automatic stay is also consistent with a review of the actions by the Bankruptcy Court. A copy of the June 2009 Judgment was attached to the initial motion for relief from the bankruptcy stay. B.R. Dkt. 32 at 36. The Delaware LLC argued at the time that this action had been taken in error and was in violation of the automatic stay. B.R. Dkt. 35 at 3. The Bankruptcy Court did not accept that argument and instead lifted the stay as to the Arbitration Action. B.R. Dkt. 37. Although this is not conclusive, it is significant that the Bankruptcy Court, which had the jurisdiction to issue a further injunction if necessary, 11 U.S.C. § 105, did not do so.

Second, the Superior Court granted summary judgment on the fifth cause of action against True Harmony and its officers. Dkt. 112-2 at 189. Plaintiffs allege that this decision violated the automatic stay because it affected the Delaware LLC's purported interest in the Property. Because, as noted above, the arbitration award had already deprived the Delaware LLC of any such interest, this argument also fails.

Third, after the automatic stay was lifted on February 24, 2010, B.R. Dkt. 37, the Superior Court commenced a trial on March 15, 2010, despite Plaintiffs' request for a continuance. Dkt. 112-2 at 146. Plaintiffs argue that this violated the automatic stay because the request for a continuance was reasonable. In the Oppositions, Plaintiffs also argue that this violated 11 U.S.C. § 108(c)(2), which they interpret as imposing a 30-day grace period after a stay is lifted. Neither argument is persuasive. The reasonableness of the request for a continuance has no relevance to whether the automatic stay was violated. Whether to allow a continuance is within the discretion of a trial court. Further, 11 U.S.C. § 108(c)(2) provides rules for the calculation of statutes of limitations after an automatic stay ends or is lifted. It does not require that a litigant be given a certain amount of time after a stay is lifted to proceed.

Fourth, the Superior Court entered judgment on the fifth cause of action against the Delaware LLC on March 15, 2010. Dkt. 112-2 at 189. Plaintiffs argue that this violated the automatic stay because the grant of summary judgment had itself violated the automatic stay. Because, as discussed above, there was no underlying violation, this argument fails.

Finally, the Superior Court entered judgment after trial on April 22, 2010. Dkt. 112-2 at 195. Plaintiffs appear to argue that because Defendants filed a second request to lift the automatic stay in the Bankruptcy Court, this means that the stay still applied to the Arbitration Action. SAC at 12. This misstates the relief sought in the Bankruptcy Proceedings. The Order lifting the stay provided that a judgment could be obtained against the Delaware LLC, but that the stay would still apply to any effort to enforce that judgment. B.R. Dkt. 37 at 1. Defendants filed the second request to lift the stay to permit such enforcement. B.R. Dkt. 40. This request was made unnecessary by the dismissal of the Bankruptcy Proceedings. B.R. Dkts. 44, 47. Because the initial order lifting the stay permitted Defendants to obtain a judgment against the Delaware LLC, the April 2010 Judgment did not violate the automatic stay.

* * *

For the foregoing reasons, Plaintiffs have not shown that any orders entered, or other actions in the Arbitration Action violated the automatic stay.

(b) State Court Policy

Plaintiffs next argue that the allegedly unlawful acts constituted a policy of the state courts, that these acts violated the Supremacy Clause and the Bankruptcy Clause, and that these policies can be reviewed. This argument relies on *Dubinka v. Judges of Superior Court of Cal. for Cnty of L.A.*, 23 F.3d 218 (9th Cir. 1994). In that case, defendants in pending criminal prosecutions filed a federal action challenging the constitutionality of California's Proposition 115, which amended pretrial discovery rules. 23 F.3d at 220-21. Because the district court could "easily analyze" their general constitutional challenges to Proposition 115 "without resorting to the state trial courts' discovery orders in... [their] pending cases," the *Rooker-Feldman* doctrine did not apply. *Id*. at 222.

Dubinka is distinguishable. Plaintiffs have not identified any extrinsic policy of the state courts. Indeed, Plaintiffs allege that a "single act" of a judge is enough to prove a "policy or custom." SAC ¶ 26. In effect, Plaintiffs argue that the underlying state court judgments are the policies they seek to review. Thus, there is no way to analyze the purportedly unconstitutional policies without reviewing "a final state court judgment in a particular case." *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 486 (1983). Accordingly, Plaintiffs' challenge is "inextricably intertwined" with the underlying state court decisions, and thus barred by *Rooker-Feldman*.

(c) Conspiracy

Finally, Plaintiffs argue that state court judges, clerks, and other officials aided and abetted a "conspiracy" among the Defendants. This conclusory argument is not supported by any allegations in the SAC. Under these circumstances, "[t]he alleged conspiracy is a fig leaf for taking aim at the state court's own alleged errors." *Cooper*, 704 F.3d at 782. Thus, this argument fails to show that *Rooker-Feldman* is inapplicable.

(d) Other Deficiencies

As noted, the First Cause of Action is not barred by *Rooker-Feldman* to the extent it alleged that the sale was illegal because it violated the Cease and Desist Order. However, as a general rule, "a violation of state law does not lead to liability under § 1983." *Campbell v. Burt*, 141 F.3d 927, 930 (9th Cir. 1998) (citing *Davis v. Scherer*, 468 U.S. 183, 194 (1984)); *see also Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 155 (1978) (Section 1983 plaintiffs are "bound to show that they have been deprived of a right 'secured by the Constitution and the laws' of the United States"). Plaintiffs allege a violation of a Cease and Desist Order, which only references provisions of state law. SAC at 77-78 (citing Cal. Corp. Code § 5913). Plaintiffs do not explain how any violation of these provisions would cause or lead to a violation of a federally secured right, only alleging that the Internal Revenue Code and "federal common law" are at issue. SAC at 42. Even if federal and state law on taxation have some common elements, it does not follow that the violation of a California statute necessarily violates that law. Accordingly, although this portion of the First Cause of Action is not barred by *Rooker-Feldman*, it fails on the merits.

Second, although the SAC is not a model of clarity, it appears to present allegations of fraud in the Interpleader Action. "A plaintiff alleging extrinsic fraud on a state court is not alleging a legal error by the state court; rather, he or she is alleging a wrongful act by the adverse party." *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1140-41 (9th Cir. 2004). However, such a cause of action would fail on the merits,

because these precise arguments were made in *Thomas v. Zelon*, another federal action brought by Thomas. The Magistrate Judge in that action thoroughly considered the allegations of fraud in connection with the Interpleader Action and determined that they did not state a claim for extrinsic fraud. The Report and Recommendation was accepted, and that decision was affirmed by the Ninth Circuit. *Thomas v. Zelon*, No. CV 16-6544 JAK (AJW), 2017 WL 6017345 (C.D. Cal. Feb. 23, 2017), *aff'd*, 715 F. App'x 780 (9th Cir. 2018). Although the dismissal of the complaint in that case was without prejudice, and did not operate as a ruling on the merits, the analysis of the Magistrate Judge that was adopted is instructive:

> To the extent that the "extrinsic fraud" alleged by plaintiff consists of the discrepancy in the name under which the interpleader action was filed, it fails. Plaintiff seems to complain that the plaintiff in the interpleader action was named as "1130 Hope Street LLC" but at the time it filed the action (July, 28, 2011), 1130 Hope Street LLC had changed its name to 1130 South Hope Street LLC. It is not evident that any such discrepancy would invalidate the interpleader action or deprive the state court of jurisdiction. Furthermore, on September 16, 2013—prior to the Superior Court's December 4, 2013 order in the interpleader action and prior to plaintiff' filing the frivolous appeal (January 31, 2014)—1130 South Hope Street LLC changed its name back to 1130 Hope Street LLC. [Dkt. 55-3]. This action would have retroactive effect under California law.
>
> To the extent that plaintiff's claim of "extrinsic fraud" is based upon the 2008 cancellation of the 1130 South Hope Street LLC, it fares no better. As plaintiff concedes, the Superior Court found that the 2008 cancellation was fraudulent, and on August 28, 2013 judgment was entered reinstating both 1130 South Hope Street LLC and Hope Park Lofts LLC. [Complaint, Ex. 4 (Los Angeles Superior Court Case No. BS140530)]. Moreover, in a separate action, the Los Angeles Superior Court entered judgment finding that 1130 South Hope Street LLC remained a valid existing LLC, and that its LLC had not been cancelled. [Dkt. 55-2 at 5 (Los Angeles Superior Court Case No. BC385560)]. Further, the court found that True Harmony and its associates or representatives, including plaintiff's client Ray Haiem, had caused the fraudulent cancellation of 1130 South Hope Street LLC. In fact, the judgment permanently enjoined True Harmony, "and all individuals and entities acting on it [sic] behalf" from "taking any actions or filing any documents which ... represent that [1130 South Hope Street LLC] is not a valid and existing entity" or "doing anything to suggest or to create any record that [1130 South Hope Street LLC] is cancelled or dissolved or anything other than in good standing." [Dkt. 55-2 at 9]. On April 22, 2010, the Superior Court in the same case entered a further judgment reaffirming that 1130 South Hope Street, LLC "remained an existing California LLC," that any document purporting to cancel the LLC is "deemed void." [Dkt. 55-3 at 2-6]. Thus, plaintiff's allegations of fraud are contradicted by the record[.]…
>
> Even if there was some error in the name under which the interpleader action was brought, it did not constitute extrinsic fraud because it was not conduct which prevents a party from presenting his claim in court.

Thomas v. Zelon, No. CV 16-6544 JAK (AJW), Dkt. No. 103 (Jan. 17, 2017) (Magistrate Judge's Report and Recommendation). This reasoning persuasively explains why Plaintiffs' allegations do not show any extrinsic fraud.

* * *

For the foregoing reasons, the First Cause of Action is barred by *Rooker-Feldman*, or fails to state a claim. Although this cause of action also seeks compensatory damages and attorney's fees in connection with certain forms of injunctive relief, these can only succeed to the extent that the underlying state court orders are overturned. *Cf. Homola v. McNamara*, 59 F.3d 647, 651 (7th Cir. 1995) ("[I]f a suit seeking damages for the execution of a judicial order is just a way to contest the order itself, then the *Rooker-Feldman* doctrine is in play.").

(2) Whether The Second Cause of Action is Barred by *Rooker-Feldman*

The Second Cause of Action generally seeks the same substantive relief as the first cause of action, but on the grounds that various transactions violated Plaintiffs' constitutional right of access to the courts. It is also brought pursuant to Section 1983. Based on the allegations in the SAC, it appears to allege that the judgments were obtained by extrinsic fraud. Accordingly, *Rooker-Feldman* does not bar subject matter jurisdiction to the extent this cause of action seeks to set aside the judgments on this ground.

The Second Cause of Action also seeks review of sanctions that were imposed against Thomas. Thomas argues that the sanctions imposed in both the Interpleader Action and the Recovery Action were illegal. In support of this position he claims that, because the sanctions were punitive, a decision to impose them required heightened due process safeguards. He also argues that the trial court did not have jurisdiction to modify the sanctions amount following the appeal. Thomas also contends that Defendants abused the discovery process, and there was insufficient evidence of frivolity at the trial and appellate levels. This claim is barred by *Rooker-Feldman*, because Thomas is seeking review of state court judgments and alleges legal error in connection with their entry.

Plaintiffs also allege that Defendants are liable for "caus[ing] the courts to impose" the wrongful sanctions. SAC ¶ 87. This constitutes an argument that the sanctions were wrongfully imposed. Because this claim "succeeds only to the extent that the state court wrongly decided the issues before it," it is barred by *Rooker-Feldman*. *Cooper*, 704 F.3d at 779 (quoting *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 25 (1987)).

Thomas responds as to why the claims are not barred. He contends that he is entitled to review because the judgments in the 2014 action and appeal were based on prior rulings that violated the automatic stay. Dkt. 115 at 11. As noted above, Plaintiffs have not identified any violation of the automatic stay. Thus, the *Rooker-Feldman* doctrine bars this claim. Thomas admits that he "seeks review" of these state court judgments, and alleges a legal error by that court -- the failure to "assume the truth of the allegation[]" that the past judgments violated the automatic stay. *Id.*

Thomas also argues that he is challenging "the [state court's] policy of ignoring the federal requirements of procedural due process for punitive sanctions." Dkt. 115 at 12. He argues that this claim is not "inextricably intertwined" with the state court judgments because the state courts ignored the argument when it was presented there. *Id.* This argument fails. As Thomas concedes, he raised these arguments in state court, and he seeks review of the decisions denying the relief he sought. "The

silence of the California courts does not indicate that they failed to consider the constitutional claims presented to them." *Bianchi v. Rylaarsdam*, 334 F.3d 895, 900 (9th Cir. 2003). "To conclude otherwise would require [the court] to assume that the 'state judges [were] not ... faithful to their constitutional responsibilities.'" *Id*. (quoting *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 611 (1975)).

* * *

For the foregoing reasons, the Second Cause of Action is barred by the *Rooker-Feldman* doctrine to the extent it seeks to review sanctions imposed against Thomas. Because these sanctions have allegedly caused state bar authorities to seek a suspension of Thomas's bar licenses, these orders are also alleged to violate the constitutional rights of the remaining Plaintiffs.[11] *See* SAC ¶¶ 87, 90. These claims are also barred by *Rooker-Feldman*, because reaching the question of whether the remaining Plaintiffs' constitutional rights were violated would require the same inquiry detailed above, *i.e.*, whether or not the state court erred in assessing sanctions against Thomas.

3. Whether the Third Cause of Action Is Barred by *Rooker-Feldman*

The Third Cause of Action seeks the same substantive relief as the First Cause of Action, but on the grounds that the sale of the Property breached the public trust in charity. SAC at 68. This cause of action is for "damages, injunction, and declaratory judgment and other equitable relief against fraud under Cal. Govt. Code § 12596(b)." SAC at 56. As noted, the sale of the Property was not a state court judgment, but an "allegedly illegal act[] committed by a party against whom [Plaintiffs] ha[ve] previously litigated." *Noel*, 341 F.3d at 1166. Accordingly, *Rooker-Feldman* does not bar this cause of action.

C. Motion to Dismiss Under Fed. R. Civ. P. 12(b)(6)

Fed. R. Civ. P. 8(a) provides that a "pleading that states a claim for relief must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief." The pleading that states a claim must state facts sufficient to show that a claim for relief is plausible on its face. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The complaint need not include detailed factual allegations but must provide more than a "formulaic recitation of the elements of a cause of action." *Id.* at 555. "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks and citations omitted).

Pursuant to Fed. R. Civ. P. 12(b)(6), a party may bring a motion to dismiss a cause of action that fails to state a claim. It is appropriate to grant such a motion only where the complaint lacks a cognizable legal theory or sufficient facts to support one. *See Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). In considering a motion to dismiss, the allegations in the challenged complaint are deemed true and must be construed in the light most favorable to the non-moving party. *See Cahill v.*

[11] On August 19, 2020, Thomas was involuntarily suspended from the active practice of law pursuant to Cal. Bus. & Prof. Code § 6007(c)(2). See Smart Search, The State Bar of California, https://apps.statebarcourt.ca.gov/dockets.aspx (search "Thomas, Jeffrey Gray") (last visited April 12, 2021). On April 1, 2021, Thomas was disbarred from the Bar of the Central District of California. *In re Jeffrey Gray Thomas*, No. AD20-00779, Dkt. 10 (April 1, 2021).

Liberty Mut. Ins. Co., 80 F.3d 336, 337-38 (9th Cir. 1996). However, a court need not "accept as true allegations that contradict matters properly subject to judicial notice or by exhibit. Nor is the court required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *In re Gilead Sciences Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008) (citing *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001)).

D. Analysis

1. Whether the Second Cause of Action is Barred by Res Judicata

a) Legal Standards

Res judicata presents two issues: claim preclusion and issue preclusion. *DKN Holdings LLC v. Faerber*, 61 Cal. 4th 813, 823 (2015). Claim preclusion, "acts to bar claims that were, or should have been, advanced in a previous suit involving the same parties." *Id*. at 824. Issue preclusion, or collateral estoppel, bars "relitigating issues that were argued and decided in the first suit." *Id.* Issue preclusion applies even when a subsequent lawsuit raises a new cause of action. It can also be asserted by a litigant who is not a party or in privity with one in the first suit. *Id.* at 824-25. However, in accordance with due process, it can only be advanced against a party to the first suit, or an entity in privity with such a party. *Id.* at 824.

The threshold requirements for issue preclusion are: "(1) the issue is identical to that decided in the former proceeding, (2) the issue was actually litigated in the former proceeding, (3) the issue was necessarily decided in the former proceeding, (4) the decision in the former proceeding is final and on the merits, and (5) preclusion is sought against a person who was a party or in privity with a party to the former proceeding." *Hensel Phelps Constr. Co. v. Dep't of Corrs. & Rehab.*, 45 Cal. App. 5th 679, 695 (2020).

b) Application

As noted, the Second Cause of Action seeks to set aside state court judgments on the ground of extrinsic fraud. The acts alleged to constitute fraud are Perry's alleged breaches of professional ethics in the Quiet Title Action, his alleged breach of the "federal common law of adverse conflicts of interest" by setting up the joint venture, his waiver of attorney-client privilege, and his alleged misrepresentations as to the approval by the California Attorney General. SAC ¶¶ 79-81.

These allegations were also made in the Recovery Action. True Harmony expressly raised Perry's alleged violations of Rule of Professional Conduct 3-300 in that action as a reason to set aside the various judgments in the Quiet Title Action. *See* Dkt 112-1 at 55, Second Amended Complaint, ¶¶ 64, 100. True Harmony also raised the alleged conflict of interest created by Perry's role in the joint venture, as well as the alleged issues regarding the approval by the California Attorney General. *Id.* ¶ 43; *id.* ¶ 48; *Id.* ¶ 64; *id.* ¶ 100 (allegations that Perry violated Rule of Professional Conduct 3-310, regarding adverse interests). The Superior Court granted a demurrer as to the complaint in the Recovery Action, holding that these allegations did not state a claim for extrinsic fraud and, therefore, provided no basis for setting aside the judgment. *See* Dkt. 112-1 at 154.

Based on the foregoing, the threshold requirements for the application of issue preclusion are met. Although the SAC is not a model of clarity, it is premised on the same facts at issue in the Recovery Action. The various Oppositions do not identify any new facts. Further, the issue was actually litigated in the Recovery Action. The same allegations made here were raised as examples of extrinsic fraud. The Superior Court considered and rejected them. It has also been shown that the issue was necessarily decided in the Recovery Action. The Superior Court expressly held that these allegations were not sufficient to state a claim of extrinsic fraud. The Superior Court decision was final. Under California law, a demurrer which is sustained without leave to amend for failure of the facts alleged to establish a cause of action is a judgment on the merits that is entitled to preclusive effect. *Kanarek v. Bugliosi*, 108 Cal. App. 3d 327, 334 (1980).

Finally, preclusion applies to True Harmony, which was a party to the Recovery Action, and the Delaware LLC, which is in privity with True Harmony. "'Privity' as used in the context of res judicata or collateral estoppel, does not embrace relationships between persons or entities, but rather it deals with a person's relationship to the subject matter of the litigation." *Cal Sierra Development, Inc. v. George Reed, Inc.*, 14 Cal. App. 5th 663, 674 (2017) (internal citation omitted). The Delaware LLC is alleged to have been created by True Harmony and to act as its agent. SAC ¶ 3. It is also alleged that the Delaware LLC was formed to hold the Property. *Id*. The issue in that litigation was the ownership of the Property, and whether it had been unlawfully taken from True Harmony. The Delaware LLC had no independent interest in the Property; its only claim to the Property arises from True Harmony's alleged transfer. Under these circumstances, the Delaware LLC was in privity with True Harmony. If it were permitted to relitigate these issues, it would not be asserting any independent rights, but only those of True Harmony.

For these reasons, issue preclusion applies. Thus, "the propriety of preclusion depends upon whether application will further the public policies of 'preservation of the integrity of the judicial system, promotion of judicial economy, and protection of litigants from harassment by vexatious litigation." *Hensel Phelps*, 45 Cal. App. 5th at 695. Given the long history of this dispute and the many, cumulative actions that True Harmony has filed, preclusion is appropriate. Accordingly, the Second Cause of Action is barred by issue preclusion.

2. Whether the Second Cause of Action Alleges a Civil Rights Claim

a) Legal Standards

Section 1983 provides a cause of action for a person who is deprived of constitutional rights. It can only be violated by "conduct that may be fairly characterized as 'state action.'" *Lugar*, 457 U.S. at 924. *See also Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999) (Section 1983 does not reach "merely private conduct, no matter how discriminatory or wrongful") (internal citation omitted).

To assess when "governmental involvement in private action" rises to this level, *Lugar* set out a two-prong framework. *Ohno v. Yasuma*, 723 F.3d 984, 994 (9th Cir. 2013). "The first prong asks whether the claimed constitutional deprivation resulted from "the exercise of some right or privilege created by the State or by a rule of conduct imposed by the state or by a person for whom the State is responsible. The second prong determines whether the party charged with the deprivation could be described in all fairness as a state actor." *Id.* (citing *Lugar*, 457 U.S. at 937). A state actor is an actor "for whom a

domestic governmental entity is in some sense responsible." *Id.* at 995.

b) Application

As to the first *Lugar* prong, the SAC alleges that Plaintiffs' constitutional rights were deprived through misconduct by Defendants. It is alleged that that: Defendants made "misrepresentations to the courts," SAC ¶ 84; filed "sham petitions for sanctions," *id.* ¶ 85; brought "groundless and frivolous actions," *id.* ¶ 88; and "abused the state law [A]nti-[S]lapp statute." *Id.* ¶ 89. It does not allege that the state procedures were constitutionally defective. Because "private misuse of a state statute does not describe conduct that can be attributed to the state," these allegations do not provide a basis for the claim alleged. *Lugar*, 457 U.S. at 941; *See also Collins v. Womancare*, 878 F.2d 1145, 1152-53 (9th Cir. 1989) (collecting cases).

Similarly, Plaintiffs have not alleged any facts relevant to the second prong of *Lugar*, *i.e.*, whether the party charged with the deprivation can be described as a state actor. Plaintiffs rely on the "joint action" test and the "nexus" test. Dkt. 114 at 19. Under the joint action test, "courts examine whether state officials and private parties have acted in concert in effecting a particular deprivation of constitutional rights." *Franklin v. Fox*, 312 F.3d 423, 445 (9th Cir. 2002) (citing *Gallagher v. Neil Young Freedom Concert*, 49 F.3d 1442, 1453 (10th Cir. 1995)). The SAC does not include any such allegations. To the contrary, it alleges that state court judges were misled by Defendants. *See, e.g.*, SAC ¶¶ 84, 87.

Allegations that Defendants defrauded a court are not sufficient to show joint action. Instead, the allegations must be ones that, if established, would show that both the private defendant and the public entity shared the goal of "violating a plaintiff's constitutional rights." *Franklin*, 312 F.3d at 445. Plaintiffs argue that the SAC alleges a conspiracy involving Defendants and state officials. However, none is actually alleged in the SAC. Because the Ninth Circuit has been "careful to require a substantial degree of cooperation before imposing civil liability for actions by private individuals that impinge on civil rights," conclusory charges of conspiracy in a brief cannot suffice to establish liability. *Id.* The allegations in the SAC also fail to state that there is a sufficiently "close nexus between the state and the challenged action." *Villegas v. Gilroy Garlic Festival Ass'n*, 541 F.3d 950, 955 (9th Cir. 2008) (quoting *Brentwood Academy v. Tenn. Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 295 (2001)).

For the foregoing reasons, the Second Cause of Action does not state a claim under Section 1983.

3. Whether the Third Cause of Action States a Claim

a) Legal Standards

Plaintiffs argue that this cause of action alleges fraud and common law fraudulent transfer. Dkt. 112 at 18. Under California law, a plaintiff alleging fraud must show "(a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or 'scienter'); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage." *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1126 (9th Cir. 2009) (quoting *Engalla v. Permanente Med. Group, Inc.*, 15 Cal. 4th 951, 974 (1997)).

The elements for a common law fraudulent transfer claim are the same as those in Cal. Civ. Code §

3439. *Kelleher v. Kelleher*, No. 13–cv–05450–MEJ, 2014 WL 94197, at *6 (N.D. Cal. Jan. 9, 2014) (citing *Arluk Med. Ctr. Indus. Group, Inc. v. Dobler*, 116 Cal. App. 4th 1324, 1340 (2004)). A transfer is fraudulent if it is made with actual intent to hinder, delay, or defraud a creditor, or if it is made without receiving a reasonably equivalent value and certain other conditions are met. Cal. Civ. Code § 3439.04(a).

b) Application

(1) Fraud

Plaintiffs identified 25 examples of conduct by the Defendants that allegedly constituted fraud. SAC ¶ 24. These allegations do not distinguish among conduct by the different Defendants. Accordingly, the SAC does not comply with Fed. R. Civ. P. 9(b), which requires allegations of fraud to be pleaded with particularity.

Even if these allegations were more clearly pleaded, they would not support a viable cause of action for fraud. Many of these alleged acts of fraud are protected by the California litigation privilege. *See* Cal. Civ. Code § 47(b). "The breadth of the litigation privilege cannot be understated. It immunizes defendants from virtually any tort liability (including claims for fraud), with the sole exception of causes of action for malicious prosecution." *Olsen v. Harbison*, 191 Cal. App. 4th 325, 333 (2010) (quoting *Silberg v. Anderson*, 50 Cal. 3d 205, 215-16 (1990)). The privilege applies to "any communication (1) made in judicial and quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action." *Rusheen v. Cohen*, 37 Cal. 4th 1048, 1057 (2006).

At least 20 of the alleged fraudulent actions refer specifically to communicative acts taken during litigation. These include specific arguments to a judge, or acts taken to effect the judgments obtained through those actions.[12] *See Rusheen*, 37 Cal. 4th at 1061-62 (noncommunicative act such as collecting on a judgment is privileged if based on privileged conduct).

Plaintiffs argue that the litigation privilege does not apply because the fraud claim is a "hybrid arising under federal law." Dkt. 114 at 23. However, Plaintiffs do not identify what federal law is at issue, or would support these claims.[13]

[12] *See* SAC ¶ 24(b) (Perry's testimony in the Quiet Title Action after being relieved as counsel for True Harmony); ¶ 24(c) (same); *id.* ¶ 24(f) (confirmation of "sham arbitration hearings"); *id.* ¶ 24(g) ("frivolous and sham civil actions"); *id.* ¶ 24(h) ("sham argument to the state court of appeals"); *id.* ¶ 24(i) ("sham argument to the state court of appeals in 2007"); *id.* ¶ 24(k) (obtaining order to arbitrate in superior court); *id.* ¶ 24(l) (alleged violations of the automatic stay); *id.* ¶ 24(m) (allegation that sale of the Property related to judgments that violated the automatic stay); *id.* ¶¶ 24(p)-(s) (actions taken to carry out the Interpleader Action); *id.* ¶ 24(t) ("moving the state courts for and obtaining the monetary sanctions against Plaintiff THOMAS"); *id.* ¶ 24(u) ("bringing moot and sham anti-slapp motions and a sham motion for protective order"); *id.* ¶ 24(v) ("the continued sham violation of the automatic stay in bankruptcy"); *id.* ¶ 24(w) ("sham application of collateral estoppel"); *id.* ¶ 24(x) ("causing the entry of sham judgments"); *id.* ¶ 24(y) (obtaining clerk's deeds to the Property after judgment); *id.* ¶ 24(z) (continuing to claim title to the Property).

[13] Thomas separately argues that the litigation privilege is never applied to causes of action under Section 1983, Dkt. 115 at 18, but the Third Cause of Action is not brought under that statute.

The remaining allegations of fraudulent conduct include that Perry made certain misrepresentations to True Harmony when he acted as counsel in the Quiet Title Action. These alleged acts took place between October 2003 and April 2005. *Hope Park Lofts*, 2007 WL 841770, at *2-8. The allegedly fraudulent nature of these acts was evident to Plaintiffs by the time of the appeal in the Quiet Title Action, in which they raised them. *Id.* at *21-22. Because an action for fraud against an attorney is subject to a three-year statute of limitations, Cal. Code Civ. Proc. § 338(d), these claims are time-barred. *See Foxen v. Carpenter*, 6 Cal. App. 5th 284, 295 (2016).

Plaintiffs also allege that the sale of the Property to BIMHF was fraudulent both because it violated the Cease and Desist Letter and was substantially below market value. SAC ¶¶ 24(m)-(o). They do not allege that any representations or omissions in connection with these events were false or misleading. Plaintiffs argue that no administrative hearing was held on the alleged violation identified in the Cease and Desist Letter. Why this is relevant is not made clear. Plaintiffs also argue that the cease-and-desist letters are equivalent to those the Ninth Circuit examined in *Porter v. Bowen*, 496 F.3d 1009 (9th Cir. 2007). Again, it is not clear why this matters in this action. *Porter* involved a First Amendment claim arising from cease-and-desist orders sent to a website that published statements on political issues. *Id*. at 1012-13. It did not concern claims of fraud, and its discussion of cease-and-desist orders is very general. *Id.* at 1022 ("California's police power plainly authorizes state officials to send cease-and-desist letters to websites that are believed to be in violation of an otherwise valid statute, and to prosecute the websites' owners for their offenses.").

(2) Common Law Fraudulent Transfer

The SAC also lacks sufficient allegations to state a claim for fraudulent transfer. The SAC does not adequately allege that these transactions were made with fraudulent intent. Although it is alleged that the sale was unlawful because of the violation of the Cease and Desist Letter, this does not establish that the sale was effected to impair the rights of any creditor. Although the SAC alleges that the Property was sold for less than its actual value, SAC ¶ 24(o), it does not allege that the seller was left with "unreasonably small capital" or was unable to pay debts as any came due.

Plaintiff argues that the Uniform Voidable Transactions Act is inapplicable and that the fraudulent conveyance element is one part of an ongoing fraud. This is not sufficient to state a claim for fraudulent transfer.

* * *

For the foregoing reasons, the Third Cause of Action does not state a claim for fraud or common law fraudulent conveyance. Accordingly, the Motion is **GRANTED** as to the Third Cause of Action, and it is **DISMISSED WITH PREJUDICE**.

V. Whether Dismissal Should be With Prejudice

As noted, there is no subject matter jurisdiction over certain of Plaintiffs' causes of action because either Plaintiffs lack standing or the cause of action is barred by the *Rooker-Feldman* doctrine. The general rule is that a dismissal for lack of jurisdiction is without prejudice. *Missouri ex rel. Koster v.*

Harris, 847 F.3d 646, 656 (9th Cir. 2017); *see also Kelly v. Fleetwood Enters., Inc.*, 377 F.3d 1034, 1036 (9th Cir. 2004) ("[B]ecause the district court lacked subject matter jurisdiction, the claims should have been dismissed without prejudice.").

A dismissal without prejudice permits a plaintiff to "reassert his claims in a competent court." *Frigard v. United States*, 862 F.2d 201, 204 (9th Cir. 1988). The lengthy history of this litigation, which involves several cumulative actions advancing similar claims, supports a finding that Thomas has acted in response to such dismissals by seeking to re-litigate matters. After the *Thomas v. Zelon* action was dismissed, Plaintiffs brought nearly identical claims in this action. They have argued that the *Thomas v. Zelon* dismissal is "simply irrelevant" because it was for lack of jurisdiction and thus without prejudice. Dkt. 126 at 2.

A dismissal without prejudice for lack of jurisdiction does not entitle parties to bring the same claims in a federal forum. A contrary rule would impose undue costs on the adverse parties who would be required to re-litigate the same issues. Accordingly, dismissal with prejudice is proper here. *Cf. Phoceene Sous-Marine, S.A. v. U.S. Phosmarine, Inc.*, 682 F.2d 802, 806 (9th Cir. 1982) ("It is firmly established that the courts have inherent power to dismiss an action or enter a default judgment to ensure the orderly administration of justice and the integrity of their orders."); *O'Brien v. Sinatra*, 315 F.2d 637, 642 (9th Cir. 1963) ("It becomes the obligation of the Court to determine at what point plaintiff would be foreclosed from further harassing defendants with confused and confounding complaints.").

VI. Conclusion

For the foregoing reasons, the Motions are **GRANTED**. The SAC is **DISMISSED WITH PREJUDICE** in its entirety. The Ex Parte Application To Require Suspended Attorney Jeffrey G. Thomas Esq. To Provide Addresses And Phone Numbers For Each Of His Former Clients is **MOOT**.

On or before April 20, 2021, Thomas shall serve the IMO on Haiem, True Harmony, and the Delaware LLC and advise them of his inability to further represent them in this matter. The effect of this Order is stayed until May 4, 2021 to provide those Plaintiffs with time to retain new counsel. On or before May 11, 2021 after conferring with after meeting and conferring with counsel for Plaintiffs, Defendants shall lodge a proposed judgment and state whether Plaintiffs have agreed to its form. If the parties have not agreed to the form of the judgment, within seven days after the proposed judgment is lodged by Defendants, Plaintiffs shall file any objection(s) in accordance with the Local Rules.

IT IS SO ORDERED.

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Initials of Preparer TJ