

No. \_\_\_\_\_

IN THE SUPREME COURT OF  
THE UNITED STATES

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WYLMINA HETTINGA—Petitioner

vs.

UNITED STATES OF AMERICA, et al—

Respondents

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

APPENDIX TO  
PETITION FOR WRIT OF CERTIORARI

Wylmina Hettinga  
1587 17th Street  
Los Osos, CA 93402  
(805) 235-1699



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**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT      FILED  
NOV 3 2020

WYLMINA ELIZABETH  
HETTINGA, Plaintiff-  
Appellant,

v.

UNITED STATES OF  
AMERICA; et al.,  
Defendants-Appellees, and  
DOES, 1 to 10; WALTER P.  
HAMMON,  
Defendants.

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

No. 19-55672

D.C. No. 2:18-cv-  
00150-R-AFM

MEMORANDUM\*

Appeal from the United States District  
Court for the Central District of California  
Manuel L. Real, District Judge, Presiding

Submitted October 26, 2020\*\*

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

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

Before: McKEOWN, RAWLINSON, and  
FRIEDLAND, Circuit Judges.

Wylmina Elizabeth Hettinga appeals pro se from the district court's judgment in her 42 U.S.C. § 1983 action alleging claims arising from her divorce proceedings, as well as a tax refund claim resulting from the IRS's audit of her 2011-2013 tax returns. We have jurisdiction under 28 U.S.C. § 1291. We review *de novo*. *Hebbe v. Pliler*, 627 F.3d 338, 341 (9th Cir. 2010) (dismissal under Fed. R. Civ. P. 12(b)(6)); *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1139 (9th Cir. 2004) (dismissal under the *Rooker-Feldman* doctrine); *C.A.R. Transp. Brokerage Co., Inc. v. Darden Rests., Inc.*, 213 F.3d 474, 478 (9th Cir. 2000) (summary judgment). We affirm.

The district court properly granted summary judgment on Hettinga's tax refund claim because Hettinga failed to raise a genuine dispute of

material fact as to whether the IRS's tax assessment was incorrect. *See Ray v. United States*, 762 F.2d 1361, 1362 (9th Cir. 1985) (discussing requirements for a tax refund claim); *see also Block v. City of Los Angeles*, 253 F.3d 410, 418-19 (9th Cir. 2001) ("To survive summary judgment, a party does not necessarily have to produce evidence in a form that would be admissible at trial, as long as the party satisfies the requirements of Federal Rules of Civil Procedure 56.").

The district court properly dismissed Hettinga's § 1983 claims for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine because these claims amounted to a de facto appeal of prior state court orders. *See Noel v. Hall*, 341 F.3d 1148, 1163-65 (9th Cir. 2003) (discussing *Rooker-Feldman* doctrine).

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DktEntry: 83-1, Page 3 of 4

The district court properly dismissed Hettinga's fraud claim because Hettinga failed to allege facts sufficient to satisfy the heightened pleading standard set forth in Federal Rule of Civil Procedure 9(b). *See Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1124-25 (9th Cir. 2009) (discussing heightened pleading standard under Rule 9(b)).

The district court did not abuse its discretion by dismissing defendant Pamela Kennedy under Federal Rule of Civil Procedure 41(b) because Hettinga failed to respond timely to the district court's order to show cause despite being warned failure to comply would result in Kennedy's dismissal. *See Pagtalunan v. Galaza*, 291 F.3d 639, 642-43 (9th Cir. 2002) (discussing standard of review and factors to consider in determining whether to dismiss under Rule 41(b) for failure to comply with a court order).

The district court did not abuse its discretion in denying Hettinga's motion to reconsider Kennedy's dismissal because Hettinga failed to set forth any basis for relief. *See Sch. Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262-63 (9th Cir. 1993) (setting forth standard of review and grounds for reconsideration under Fed. R. Civ. P. 59 and 60).

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

Hettinga's motions (Docket Entry Nos. 45 and 60) to file her opening brief selected excerpts of record from Appeal No. 18-56650, and to file her supplemental briefs at Docket Entry Nos. 57 and 76, are granted. Defendant United States of



America's motion to file a response to Hettinga's supplemental brief (Docket Entry No. 72) is granted. The Clerk will file the supplemental briefs submitted at Docket Entry Nos. 53, 57, 69 and 76.

All other pending motions (Docket Entry Nos. 71, 74, 77, and 80) are denied.

**AFFIRMED.**

**NOT FOR PUBLICATION**

UNITED STATES COURT OF      **FILED**  
APPEALS FOR THE NINTH  
CIRCUIT      FEB 23 2021

WYLMINA ELIZABETH  
HETTINGA, Plaintiff-  
Appellant,

v.

UNITED STATES OF  
AMERICA; et al.,  
Defendants-Appellees, and  
DOES, 1 to 10; WALTER P.  
HAMMON,  
Defendants.

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

No. 19-55672

D.C. No. 2:18-cv-  
00150-R-AFM  
Central District of  
California, Los  
Angeles

ORDER

Before: McKEOWN, RAWLINSON, and  
FRIEDLAND, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

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

Hettinga's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 88), and motion to stay the mandate (Docket Entry No. 86), are denied.

No further filings will be entertained in this closed case.

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Filed 08/17/18 Page ID #914

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

WYLMINA HETTINGA,	) CASE NO. CV
	) CV 18-150-R
Plaintiff,	)
v.	)
UNITED STATES OF	) ORDER GRANTING
AMERICA; et al.,	) DEFENDANTS'
Defendants.	) MOTIONS TO
_____	) DISMISS

Before the Court are the following motions: (1) Defendants Travis Krepelka and Walter Hammon's Motion to Dismiss for Failure to State a Claim upon which Relief can be Granted, filed on May 8, 2018 (Dkt. 26); (2) Defendants Chicago Title Company ("CTC") and Jeanie O'Connor's Motion to Dismiss the First Amended Complaint ("FAC") Under FRCP 12(b)(1) and 12(b)(6), filed on May 9, 2018 (Dkt. 29); (3) Defendant Timothy

Loumena's Motion to Dismiss for Lack of Personal Jurisdiction or Res Judicata, filed on May 9, 2018 (Dkt. 30); (4) Defendant Scott Raley's Motions to Dismiss for Lack of Personal Jurisdiction, Improper Venue, and Failure to State a Claim, filed on May 21, 2018 (Dkt. 43); and (5) Defendant United States' Partial Motion to Dismiss Plaintiff's FAC, filed on June 8, 2018 (Dkt. 50). The United States' motion was not opposed.<sup>1</sup> Having been thoroughly briefed by all parties, this Court took the matters under submission. (Dkts. 52, 54, 55).

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<sup>1</sup> Under Local Rule 7-12, a party that does not file an opposition to a motion may be deemed to consent to the granting of the motion. C.D. Cal. R. 7-12; *see Ghazali v. Moran*, 46 F.3d 52, 52 (9th Cir. 1995) (upholding district court's dismissal of plaintiff's complaint based on failure to oppose motion as required by local rules).

In 2007, the Superior Court of the County of Santa Clara dissolved the marriage between Plaintiff Wylmina Hettinga and Loumena.<sup>2</sup> The Superior Court determined that the family home (“the Property”) was community property and ordered it sold, with the funds to be placed in a trust account and eventually distributed to Hettinga and Loumena. Hettinga refused to 6 cooperate with the sale. Because Hettinga 7 refused to cooperate with the sale, the Superior 8 Court authorized the court clerk, Defendant 9 Pamela Kennedy, to execute the grant deed.

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<sup>2</sup>A court may take judicial notice of matters of public record. *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001). Here, Hettinga, Krepelka, Hammon, CTC, O'Connor, Loumena, and Raley request that the court take judicial notice of various documents in the public record. (Dkts. 23, 27, 29, 32, 44). The Court takes judicial notice of these documents. It relies on them to supplement the factual allegations in the Complaint, which are lacking.

In the instant lawsuit, Hettinga claims that this conduct amounted to a violation of her civil rights because the property was taken with no consideration.

Hettinga has filed multiple lawsuits arising from her divorce with Loumena. *See Hettinga v. Loumena*, 2016 Cal. App. Unpub. LEXIS 8384, at \*2 (May 12, 2017) (“[Hettinga]...filed about 50 unsuccessful requests for family court orders, filed 18 appeals, and was found guilty after repeatedly violating restraining orders. Hettinga also filed five state lawsuits and two federal lawsuits against Loumena.”). As a result of Hettinga’s repeated filings, the District Court for the Northern District of California, California Superior Court, and California Court of Appeal have each declared her a vexatious litigant.

The Complaint in this matter names as Defendants Loumena, Hettinga’s ex-husband; Kennedy, the state court clerk; Scott Raley, the

court-appointed real estate listing agent for the Property; CTC, the escrow company involved in the sale of the Property; Jeanie O'Connor, the escrow agent who worked for CTC on matters regarding the Property; Walter Hammon, the attorney appointed by the state court to represent Hettinga's children; Travis Krepelka, Loumena's attorney in the initial divorce proceedings; the United States of America, specifically the IRS; and Shashank Paliwal, an IRS agent who Hettinga alleges assessed her taxes.

The Complaint alleges the following. Defendants conspired together to wrongfully seize the Property and give it to Loumena. On February 27, 2013, Kennedy, acting as part of the conspiracy, deeded the Property to Loumena for \$0, pretending to be a court clerk, which she was not. Kennedy falsely claimed



that Loumena paid Hettinga valuable consideration for the property. Hettinga, Loumena, Hammon, Krepelka, O'Connor, CTC, and Raley made false statements to the District Court for the Northern District of California regarding the proceedings in state court, Kennedy's execution of the grant deed, and the sale of the Property. As a result of these statements, the court dismissed Hettinga's claims. Loumena testified falsely that, after the grant deeds were executed, he owned the Property on his own for only a few hours. Loumena owned the Property for several months. Defendants colluded to grant the Property to Loumena for \$0 and commit fraud on the court.

The IRS and Paliwal audited Hettinga's tax returns for 2010 – 2013. The 2010 audit was settled. As to the 2011 – 2013 tax returns, the IRS wrongfully assessed income to Hettinga. In 2016,

Hettinga paid the IRS the full amount of taxes owed, \$65,003.00. Hettinga made administrative claims for a refund, which were denied. Hettinga also informed the IRS and Paliwal of the conspiracy against her and conspiracy to defraud the District Court for the Northern District of California. On December 21, 2017, Hettinga filed another administrative claim requesting a tax refund, penalties, and interest.

Hettinga, appearing pro se, alleges claims for the violation of her constitutional rights under 42 U.S.C. § 1983 claim, relief from judgment under Federal Rule of Civil Procedure 60, and a tax refund under 26 U.S.C. § 7433.<sup>3</sup>

#### **Section 1983 Claim**

The *Rooker-Feldman* doctrine prohibits federal courts from exercising appellate review over final state court judgments. *Reusser v. Wachovia Bank*,

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<sup>3</sup> Courts must liberally construe pro se pleadings. *Litmon v. Harris*, 768 F.3d 1237, 1241 (9th Cir. 2014).

N.A., 525 F.3d 855, 858-59 (9th Cir. 2008). “The clearest case for dismissal based on the *Rooker-Feldman* doctrine occurs 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.” *Henrichs v. Valley View Dev.*, 474 F.3d 609, 613 (9th Cir. 2007). *Rooker-Feldman* also “prohibits a federal district court from exercising subject matter jurisdiction over a suit that is a *de facto* appeal from a state court judgment. A federal action constitutes a *de facto* appeal where claims raised in the federal court action are ‘inextricably intertwined’ with the state court’s decision such that the adjudication of the federal claims would undercut the state ruling or require the district court to interpret the application of state laws or procedural rules. In such circumstances, the district court is in essence being called upon to

review the state court decision.” *Reusser*, 525 F.3d at 859.

Here, Hettinga alleges that the state court order ordering the sale of the Property and distribution of the proceeds occurred illegally and in violation of her constitutional rights.<sup>4</sup> Because this claim constitutes a *de facto* appeal under the *Rooker-Feldman* doctrine, this Court lacks subject matter jurisdiction. In order to analyze Hettinga’s alleged civil rights injuries, this Court

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<sup>4</sup> This is not the first time that Hettinga has brought a § 1983 claim arising from the sale of the Property. Other district courts have held that Hettinga’s claims arising from the state court-ordered sale of the Property are barred by the *Rooker-Feldman* doctrine. See e.g., *Hettinga v. Loumena*, 671 Fed. App’x 421 (9th Cir. 2016) (affirming the district court’s dismissal of claim under the *Rooker-Feldman* doctrine); *Loumena v. Nichols*, 671 Fed. App’x 454 (9th Cir. 2016) (same); *Pac. Almaden Invs., LLC v. Hettinga*, 2014 U.S. Dist. LEXIS 140537, at \*9 (dismissing § 1983 claim for lack of subject matter jurisdiction under *Rooker-Feldman*).

would have to determine whether state court's decision was correct. Consequently, any claims arising from harms allegedly suffered as a result of the state court order are barred by the *Rooker-Feldman* doctrine. *See id.* The Court does not have subject matter jurisdiction over Hettinga's § 1983 claims.

#### **Rule 60(d)(3) Claim**

Dismissal under Rule 12(b)(6) is proper when a complaint exhibits either "the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988). A plaintiff must allege "enough facts to state a claim to relief that is plausible on its face," so that the defendant receives "fair notice of what the...claim is and the grounds upon which it rests." *Bell Atlantic Corp. v. Twombly*, 550 U.S.

544, 555 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 698-99 (2009). “All allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party.” *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

Under Rule 60(d)(3), a court may set aside a prior judgment for fraud on the court. *United States v. Sierra Pac. Indus.*, 862 F.3d 1157, 1167 (9th Cir. 2017). “[N]ot all fraud is fraud on the court.... Fraud on the court must be an intentional, material representation...designed to improperly influence the court in its decision.” *Id.* at 1167-68. “[T]he proper forum in which to assert that a party has perpetrated a ‘fraud on the court’ is the court which allegedly was a victim of fraud.” *Weisman v. Charles E. Smith Mgmt., Inc.*, 829 F.2d 511, 513 (4th Cir. 1987). Under Rule 9(b), a claim of

fraud is subject to a heightened pleading standard and must be pleaded with particularity. *Fuchs v. State Farm Gen. Ins. Co.*, 2017 U.S. Dist. LEXIS 220234, at \*24 (C.D. Cal. Mar. 6, 2017).

Rule 9(b) states that an allegation of “fraud or mistake must state with particularity the circumstances constituting fraud. Fed. R. Civ. P. 9(b). The “circumstances” required by Rule 9(b) are the “who, what, when, where, and how” of the fraudulent activity.” *Vess v. Ciba-Geigy Corp. USA*, 317 f.3d 1097, 1106 (9th Cir. 2003). In addition, the allegation “must set forth what is false or misleading about a statement, and why it is false.” *Id.*

In this case, Hettinga alleges that Defendants misrepresented the facts to the District Court for the Northern District of California when they sought to have Hettinga’s prior actions dismissed. First, this Court, located in the Central District of

California, is the wrong place to bring a claim alleging fraud on a court located in another district. Hettinga's claim fails on this ground. Second, Hettinga's claim fails because she fails to allege sufficient facts to overcome the heightened pleading requirements of Rule 9(b). Hettinga alleges that each Defendant made specific false statements, but she does not allege what is false or misleading about the statements or why they are false. She simply states, as a matter of fact, that each Defendant committed fraud on the court. This is insufficient under Rule 9(b).

#### **26 U.S.C. § 7433 Claim**

The United States cannot be sued without an "unequivocally expressed waiver of sovereign immunity by Congress." *McGuire v. United States*, 550 F.3d 903, 910 (9th Cir. 2008). "A waiver of the Federal Government's sovereign immunity must be unequivocally expressed



in statutory text.” *Lane v. Pena*, 518 U.S. 187, 192 (1996). If the United States has not waived immunity, then the court lacks jurisdiction. Section 7433 provides a waiver of sovereign immunity only for actions arising from the *collection* of taxes. Claims seeking damages under § 7433 for improper determination of assessment of tax are not actionable under § 7433 and must be dismissed for lack of subject matter jurisdiction. *Miller v. United States*, 66 F.3d 220, 222-23 3 (9th Cir. 1995).

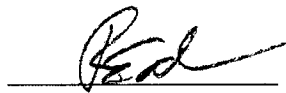
Here, Hettinga alleges misconduct related only to Paliwal’s determinations and assessment of tax. Hettinga does not make any allegations about the improper *collection* of tax—such as through a lien, a levy, or seizure. Therefore, because Hettinga’s allegations describe improper assessment and determination of tax, rather than improper collection activities, Hettinga’s

claims do not fall within the United States' § 7433 waiver of immunity. This Court lacks subject matter jurisdiction to hear the claim.

**IT IS HEREBY ORDERED** that Defendants Krepelka, Hammon, CTC, O'Connor, Loumena, Raley, and United States' Motions to Dismiss are **GRANTED**. (Dkts. 26, 29, 30, 43, 50).

Dated:

August 7, 2018.

A handwritten signature in black ink, appearing to read "Real", is written over a horizontal line.

MANUEL L. REAL  
UNITED STATES  
DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

WYLMINA E.  
HETTINGA,  
Plaintiff,

v.

TIMOTHY P.  
LOUMENA, et al.,  
Defendants.

Case No. C-13-2217-RMW

**ORDER GRANTING  
MOTIONS TO DISMISS,  
DECLARING PLAINTIFF  
TO BE A VEXATIOUS  
LITIGANT, AND  
DENYING MOTION FOR  
STAY**

**[Re: Docket Nos. 29, 38,  
41, 44, 51, 62, 87, 100]**

All defendants move to dismiss plaintiff  
Wylmina Hettinga's first amended complaint.  
Dkt. Nos. 29, 38, 41, 44, 51, 62; *see* Dkt. No. 7  
(first amended complaint, "FAC"). Defendants  
Jeanie O'Connor and Chicago Title Company  
also request that the court declare plaintiff to  
be a vexatious litigant. Dkt. No. 53, at 14-16.

Plaintiff brings a “motion for stay,” which the court interprets as a motion for a preliminary injunction. Dkt. Nos. 87, 100. For the reasons explained below, the court GRANTS defendants’ motions to dismiss without prejudice, GRANTS defendants Chicago Title Company and Jeanie O’Connor’s motion to declare plaintiff to be a vexatious litigant, GRANTS an injunction for pre-filing review of plaintiff’s future filings, and DENIES plaintiff’s motion for stay.

### **I. BACKGROUND**

This case arises out of plaintiff and defendant Timothy Loumena’s state divorce case, which has been ongoing since 2005. Plaintiff, who is *pro se*, alleges in the FAC that “[o]n February 27, 2013, [defendant] Kennedy, purporting to be acting under the laws of the State of California, fraudulently claimed that Wylmina E. Hettinga, trustee of The Loumena 2000 Revocable Trust Agreement, established the 6th of December,

2000, Wylmina E [sic] Hettinga as an individual, and Pacific Almaden Investments, LLC a California Limited Liability Company had, for a valuable consideration, receipt of which was acknowledged, granted the Property to Defendants.” FAC ¶ 21. The FAC further states that plaintiff “did not receive any such valuable consideration, did not acknowledge receipt of any such valuable consideration, and did not grant [Hettinga and Loumena’s former family residence (the “property”)] to Defendants.” *Id.* ¶ 22. According to the FAC,<sup>11</sup> the property was sold. *Id.* ¶ 23. It appears from<sup>12</sup> Exhibit B to the FAC that the proceeds were<sup>13</sup> divided among various creditors. *Id.* Ex. B.

Documents from the state court divorce case reveal that the state court repeatedly ordered that the property be sold, with the

proceeds being placed in a trust account.<sup>1</sup> See  
Dkt. No. 31. In an order filed January 23, 2013,  
the state court wrote:

This Court previously ordered this  
property sold on 1 September 2011  
(order filed 28 March 2012). Under that  
Order, Respondent Timothy Loumena  
was to select the realtor, both parties  
were to sign any and all necessary  
paperwork, and the net proceeds were to  
be placed into an interest-bearing trust  
account. The Court reiterates and  
modifies that Order as follows:

(a) The property shall be listed and sold  
forthwith. The listing agent shall be the  
individual named on the record by Mr.

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<sup>1</sup> Multiple defendants request that the court take judicial  
notice of documents from the state court divorce case. Dkt.  
Nos. 31, 45, 52, 64. These motions are GRANTED.

Loumena – Scott Raley of Customer Service Realty. Mr. Loumena shall be the sole lister of the property.

- (b) Mr. Loumena shall work with the realtor to prepare the property for sale and make decisions concerning the appropriate list price, what to do with offers received, and any other necessary elements of the sales process. . . . As to any documents requiring any signatures from Ms. Hettinga, . . . Mr. Loumena shall provide them, and those parties shall promptly sign and return the documents to Mr. Loumena. If three (3) days after presenting the documents, Mr. Loumena has not received the necessary signatures, he may bring the documents to Department 83 for the

Court Clerk to sign as elisor on behalf of  
Ms. Hettinga, . . .

*Id.* Ex. C. It appears that, pursuant to the January 23, 2013 state court order, Mr. Loumena was required to have the court clerk, defendant Kennedy, sign as elisor on behalf of plaintiff.

Plaintiff brings a single claim in the FAC, for violation of her civil rights under 42 U.S.C. § 1983. Plaintiff's allegations arise directly out of the sale of the property in her divorce case. Specifically, plaintiff asserts that the forced sale of the property violated her Fourth Amendment rights, and her rights under the Takings Clause of the Fifth and Fourteenth Amendments. The FAC names as defendants Timothy Loumena, plaintiff's ex-husband; Pamela Kennedy, the state court clerk; the State of California; Walter Hammon, the attorney appointed by the state court to represent plaintiff's children; Travis Krepelka, Loumena's attorney; Scott Raley, the



court-appointed real estate listing agent; Chicago Title Company, which was involved in the sale of the property; and Jeanie O'Connor, who apparently has some relationship with Chicago Title Company.

## II. ANALYSIS

### A. Legal Standard

A motion to dismiss for failure to state a claim under Rule 12(b)(6) tests the legal sufficiency of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). In considering whether the complaint is sufficient to state a claim, the Court must accept as true all of the factual allegations contained in the complaint. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). However, the Court need not accept as true “allegations that contradict matters properly subject to judicial notice or by exhibit” or “allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable

inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008). While a complaint need not allege detailed factual allegations, it “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 678 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible when it “allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* at 678. “Determining whether a complaint states a plausible claim for relief . . . [is] a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* at 679

#### **B. Motions to Dismiss**

Defendants base their motions to dismiss on several grounds, including Eleventh Amendment

immunity, quasi-judicial immunity, the *Rooker-Feldman* doctrine, and failure to state a claim. The court finds that it lacks subject matter jurisdiction under the *Rooker-Feldman* doctrine, and thus does not address any of defendants' other arguments.

Under the *Rooker-Feldman* doctrine, a federal district court has no authority to review the final determinations of a state court in judicial proceedings. *Dist. of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923). "The purpose of the doctrine is protect state judgments from collateral federal attack. Because district courts lack power to hear direct appeals from state court decisions, they must decline jurisdiction whenever they are 'in essence called upon to review the state court decision.'" *Doe & Associates Law Offices*

*v. Napolitano*, 252 F.3d 1026, 1030 (9th Cir.

2001) (quoting *Feldman*, 460 U.S. at 482 n.16).

The *Rooker-Feldman* doctrine precludes not only review of decisions of the state's highest court, but also those of its lower courts. See *Dubinka v. Judges of Superior Court*, 23 F.3d 218, 221 (9th Cir. 1994). A challenge under the *Rooker-Feldman* doctrine is a challenge for lack of subject matter jurisdiction. *Olson Farms, Inc. v. Barbosa*, 134 F.3d 933, 937 (9th Cir. 1998).

The *Rooker-Feldman* doctrine applies when a plaintiff in federal court alleges a "de facto appeal" by (1) asserting errors by the state court as an injury and (2) seeking relief from the state court judgment as a remedy. *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1139-40 (9th Cir. 2004). "A federal action constitutes such a *de facto* appeal where 'claims raised in the federal court action are 'inextricably intertwined' with

the state court's decision such that the adjudication of the federal claims would undercut the state ruling or require the district court to interpret the application of state laws or procedural rules.” *Reusser v. Wachovia Bank, N.A.*, 525 F.3d 855, 859 (9th Cir. 2008) (quoting *Bianchi v. Rylaarsdam*, 334 F.3d 895, 898 (9th Cir. 2003)).

In this case, plaintiff brings a § 1983 claim based on the state court's alleged violation of plaintiff's Fourth, Fifth, and Fourteenth Amendment rights in ordering and executing the sale of plaintiff's property. Plaintiff argues that the state court was wrong to order the sale of the family residence and compel the proceeds to be placed in a trust account. Plaintiff now seeks relief in the form of monetary damages. Tellingly, plaintiff's “motion for stay” requests that this court stay the state court case. Dkt. No. 87, at 8.

Similarly to the complaint, the motion for stay focuses on the clerk of the court's actions in signing for Hettinga as elisor when Hettinga did not sign and return the documents necessary for the property's sale as ordered by the state court. Clearly, this is the sort of collateral attack on a state court order contemplated by Rooker and Feldman. "The Rooker-Feldman doctrine, generally speaking, bars a plaintiff from bringing a § 1983 suit to remedy an injury inflicted by the state court's decision." *Jensen v Foley*, 295 F.3d 745, 747 (7th Cir. 2002). Here, plaintiff's § 1983 claim is barred by Rooker-Feldman, and the court thus dismisses without prejudice plaintiff's complaint for lack of subject matter jurisdiction. *Durbin v. Dubuque*, 348 F. App'x 294, 295 (9th Cir. 2009) (ordering the district court to dismiss without prejudice).

#### **C. Motion to Stay**

As determined above, the court lacks jurisdiction over this suit. Plaintiff's motion to stay, which is better characterized as a motion for a preliminary injunction, is related to the merits of plaintiff's case. Dkt. No. 87; *see also* Dkt. No. 100 (indicating that the funds from sale of the property have already been disbursed, which most likely moots the motion to stay). Accordingly, the court lack jurisdiction to grant plaintiff's requested stay, and plaintiff's motion to stay is DENIED.

**D. Motion to Declare Plaintiff a Vexatious Litigant**

Defendants Chicago Title Company and Jeanie O'Connor also move for plaintiff to be declared a vexatious litigant. In the motion, these defendants request that the court require plaintiff to seek leave of the court before filing any more papers in this case or other cases in

this district.

“The All Writs Act, 28 U.S.C. §1651(a), provides district courts with the inherent power to enter pre-filing orders against vexatious litigants. However, such pre-filing orders are an extreme remedy that should rarely be used. Courts should not enter pre-filing orders with undue haste because such sanctions can tread on a litigant's due process right of access to the courts.” *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1057 (9th Cir. 2007). At the same time, “[f]lagrant abuse of the judicial process cannot be tolerated because it enables one person to preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants.” *De Long v. Hennessey*, 912 F.2d 1144, 1148 (9th Cir. 1990).

The Ninth Circuit has adopted a four-factor test to determine whether a pre-filing review order is



warranted. Specifically, “[a] pre-filing review order is appropriate if (1) the plaintiff is given adequate notice and an opportunity to oppose the order; (2) the Court compiles an adequate record for review; (3) the Court makes substantive findings as to the frivolous or harassing nature of the litigant’s actions; and (4) the order is narrowly tailored ‘to closely fit the specific vice encountered.’” *Missud v. Nevada*, 861 F. Supp. 2d 1044, 1055 (N.D. Cal. 2012) *aff’d*, 520 F. App’x 534 (9th Cir. 2013) (quoting *Molski*, 500 F.3d at 1057). The court now considers these four factors.

As to the first factor—notice—plaintiff was given adequate notice because Chicago Title Company and Jeanie O’Connor filed the motion to declare plaintiff a vexatious litigant and plaintiff has had an opportunity to oppose the motion. *See* Dkt. No. 53, at 14-16. Nevertheless, plaintiff’s responses do not address the motion to

declare plaintiff a vexatious litigant. *See* Dkt. Nos. 71, 72.

Under the second and third factors, the court must compile an adequate record for review and make substantive findings as to the frivolous or harassing nature of plaintiff's actions. Plaintiff has been declared a vexatious litigant in state court as a result of her filings in her divorce case. Dkt. No. 52-17, at 4. In this district, plaintiff has filed at least five cases, including the instant case and another similar case also before the undersigned. *Hettinga v. Orlando, et al.*, No. 09-cv-00253; *Hettinga v. Hammon, et al.*, No. 09-cv-06040; *Hettinga, et al. v. Loumena, et al.*, No. 10-cv-02975; *Hettinga v. Loumena, et al.*, No. 13-cv-02217; *Pacific Almaden Investments, LLC v. Hettinga, et al.*, No. 14-cv-01631 (cross-complaint, though the complaint, while not filed by Hettinga,

mirrors her other cases). This court also has a pending motion to declare plaintiff a vexatious litigant in that fifth case. Case No. 14-cv-01631, Dkt. No. 34. All three of plaintiff's prior cases in this district were dismissed for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine. Dkt. Nos. 52-4 Ex. D (*Orlando* case), 52-8 Ex. H (*Hammon* case), 52-11 Ex. K (first *Loumena* case). Plaintiff appealed one of those dismissals to the Ninth Circuit, and the Ninth Circuit found plaintiff's appeal to be frivolous. *See* Dkt. Nos. 52-5 Ex. E (“[W]e find that the appeal is frivolous.”), 52-6 Ex. F (“[T]he questions raised in this appeal are so insubstantial as not to require further argument.....”). Moreover, all of plaintiff's cases arise out of plaintiff's underlying divorce action and seek to obtain relief from the state court's decisions in plaintiff's long-running divorce case. While no court in this district has reached

the substantive merits of plaintiff's cases because the district court has lacked subject matter jurisdiction over all of plaintiff's cases thus far, none of plaintiff's cases appear to have any substantive merit. Rather, plaintiff's suits in this district typically name all attorneys and various other individuals involved in her divorce case as defendants. This practice of suing those involved in plaintiff's state court case has likely harassed those individuals and impeded the progress of that case. As noted above, the state court has declared plaintiff a vexatious litigant, and plaintiff's divorce action has been pending for nine years. Therefore, plaintiff Wylmina Hettinga is a vexatious litigant, and the court will impose a pre-filing review injunction on plaintiff.

Finally, the court must narrowly tailor the pre-filing review order to the specific vice encountered. Here, the vice is plaintiff's tendency

to file frivolous lawsuits relating to her ongoing divorce action. The court therefore enjoins plaintiff from filing any documents in this case, her other currently pending case, No. 14-cv-01631 or from filing any new action in the Northern District of California arising out of facts related to plaintiff's divorce case, without passing a pre-filing review. This narrowly tailored order captures plaintiff's pattern of abusive conduct without unnecessarily impeding her access to the judicial system. By requiring a pre-filing review of plaintiff's future actions related to plaintiff's divorce case, the court seeks to preclude plaintiff from further harassing the individuals involved in the divorce case. To this court's knowledge, plaintiff has not engaged in any abusive litigation conduct in this district beyond repeatedly seeking to challenge the state court's actions in plaintiff's divorce case, so plaintiff remains free to pursue any other claims she may have.

### III. ORDER

For the foregoing reasons, the court GRANTS defendants' motions to dismiss with prejudice as to further filings in federal court, GRANTS Chicago Title Company and Jeanie O'Connor's motion to declare plaintiff to be a vexatious litigant, and DENIES plaintiff's motion for stay. The court imposes the following pre-filing review on future filings by plaintiff Wylmina Hettinga: The Clerk of this court may not file or accept any further complaints filed by or on behalf of Wylmina Hettinga as a named plaintiff that arise out of facts related to plaintiff's divorce case. If Ms. Hettinga wishes to file a complaint arising out of facts related to her divorce case, she shall provide a copy of any such complaint, a letter requesting that the complaint be filed, and a copy of this order to the Clerk of this court. The Clerk shall then forward the complaint, letter, and a

copy of this order to the Duty Judge for a determination whether the complaint should be accepted for filing. Any violation of this order will expose plaintiff to a contempt hearing and appropriate sanctions, and any action filed in violation of this order will be subject to dismissal.

Dated:  
September 30, 2014

*Ronald M. Whyte*

RONALD M. WHYTE  
United States  
District Judge

## RECORDING REQUESTED BY:

Chicago Title Company  
 Escrow No.: 11-98315341-30  
 Locate No.: CAC01743-7743-2583-009315341  
 Title No.: 11-98315341-02

When Recorded Mail Document  
 and Tax Statement To:  
 Timothy P. Loumena  
 21251 Almaden Rd  
 San Jose, CA

DOCUMENT: 22170091

Pages: 3



Fees... 51.00  
 Taxes... 1914.00  
 Copies... 18.00  
 AMT PAID 1983.00

REGINA ALCOMENDRAS RDE # 885  
 SANTA CLARA COUNTY RECORDER 4/11/2013  
 Recorded at the request of 2:48 PM  
 Grantee

APN: 583-15-002

SPACE ABOVE THIS LINE FOR RECORDER'S USE

## GRANT DEED

The undersigned grantor(s) declare(s) Based on SD's  
 Documentary transfer tax is \$478.50

[ X ] computed on full value of property conveyed, or  
 computed on full value less value of liens or encumbrances remaining at time of sale,  
 Unincorporated Area City of San Jose, \$1,435,507.22

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Wymina E. Hettinga, formerly known as Wymina E. Loumena, individually and as Trustee of The Loumena 2000 Revocable Trust Agreement established the 6th of December, 2000; and Pacific Almaden Investments, LLC, a California Limited Liability Company

hereby GRANT(S) to Timothy P. Loumena, an unmarried man

the following described real property in the City of San Jose, County of Santa Clara, State of California:  
 SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

DATED: February 4, 2013

State of California  
 County of Santa Clara

On 2-27-13

Henry Shepherd before me, Notary Public  
 (here insert name and title of the officer), personally appeared  
Pamela Kennedy, Clerk of the Court

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Henry Shepherd (Seal)

The Loumena 2000 Revocable Trust Agreement  
 Established the 6th of December, 2000

Pamela Kennedy  
 Wymina E. Hettinga, Trustee, and Individually

Pacific Almaden Investments, LLC, a California  
 Limited Liability Company

By Pamela Kennedy  
 Wymina E. Hettinga

DAVID H. WALSH, CHIEF CLERK, Superior Court of California, County of Santa Clara, is hereby notified that the foregoing instrument is a deed, and that the same is being recorded for the purpose of creating a public record of the same.

MAIL TAX STATEMENTS AS DIRECTED ABOVE

PD-213 (Rev 12/07)  
 (grantee) (04-05) (Rev. 07-11)

GRANT DEED



DAVID H. YAM-SANG, Chief Executive Officer/Clerk  
Superior Court of California, County of Santa Clara  
Signed pursuant to court order dated 1-23-13  
in the matter of H&M Holdings, Inc., petitioner,  
vs. L&S Holdings, Inc., respondent. Case number  
13-2-0119-03. (Amended)

Escrow No.: 11-98315341-30  
Locate No.: CACT1743-7743-2933-0098315341  
Title No.: 11-98315341-4P

**EXHIBIT "A"**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE UNINCORPORATED AREA, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PORTION OF LOT 29, IN BLOCK A, AS SHOWN ON THAT CERTAIN MAP ENTITLED MAP OF BLOCK A, ALMADEN MANOR, WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON MAY 3, 1926, IN BOOK U OF MAPS, PAGES 46 AND 47.

BEGINNING AT A POINT IN THE CENTER LINE OF ALMADEN ROAD, AT THE SOUTHEASTERLY CORNER FOR LOTS 29 AND 30, AS SAID ROAD AND LOTS ARE SHOWN UPON THE MAP ABOVE REFERRED TO; THENCE FROM SAID POINT OF BEGINNING S. 74 DEG 47' W ALONG SAID CENTER LINE OF ALMADEN ROAD FOR A DISTANCE OF 6.50 FEET TO AN ANGLE CORNER THEREIN; THENCE CONTINUING ALONG SAID CENTER LINE OF ALMADEN ROAD S. 78 DEG. 39' W. FOR A DISTANCE OF 53.50 FEET; THENCE LEAVING SAID CENTER LINE OF ALMADEN ROAD N. 29 DEG. 31' W. AND PARALLEL WITH THE DIVIDING LINE BETWEEN SAID LOTS 29 AND 30 FOR A DISTANCE OF 347.30 FEET TO A POINT ON THE NORTHWESTERLY LINE OF SAID LOT 29; THENCE N. 78 DEG. 39' E. ALONG SAID LAST NAMED LINE FOR A DISTANCE OF 60.00 FEET TO THE NORTHWESTERLY COMMON CORNER FOR SAID LOTS 29 AND 30; THENCE S. 39 DEG. 31' E. ALONG SAID DIVIDING LINE BETWEEN LOTS 29 AND 30 FOR A DISTANCE OF 347.30 FEET TO THE POINT OF BEGINNING.

APN: 583-15-002

