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MEMORANDUM* OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT (MARCH 18, 2021)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PHILIPPE ZOGBE ZATTA,

Plaintiff-Appellant,

v.

STEVEN CHARLES ELDRED,
in His Person and Official Capacities; ET AL.,

Defendants-Appellees.

No. 19-56483

D.C. No. 8:18-cv-02280-ODW-JEM

Appeal from the United States District Court
for the Central District of California
Otis D. Wright II, District Judge, Presiding

Submitted March 16, 2021**

Before: GRABER, R. NELSON, and HUNSAKER, Circuit Judges.

* 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).

Philippe Zogbe Zatta appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging constitutional violations arising from a California state court case brought by his former wife for child support. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under Fed. R. Civ. P. 12(b)(6). *Puri v. Khalsa*, 844 F.3d 1152, 1157 (9th Cir. 2017). We affirm.

The district court properly dismissed for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine Zatta's claims against the state actor defendants (i.e., all defendants except Lisiane Dohi Lepe, Israel Louis Cross, Jr., Goli Marius Beugre, Florence Loba, and Venus Valine Harry) because these claims constitute "de facto appeal[s]" of a California state court decision. *Noel v. Hall*, 341 F.3d 1148, 1163-65 (9th Cir. 2003) (explaining when a federal action is a "de facto appeal" of a state court decision).

The district court properly dismissed Zatta's claims against the remaining defendants because they are not state actors. See *West v. Atkins*, 487 U.S. 42, 48 (1988) ("To state a claim under § 1983, a plaintiff must . . . show that the alleged deprivation was committed by a person acting under color of state law.").

The district court did not abuse its discretion by dismissing Zatta's complaint without leave to amend because amendment would have been futile. *See Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011) (setting forth standard of review and explaining that dismissal without leave to amend is proper when amendment would be futile).

We reject as unpersuasive Zatta's contention that the district court erred by ignoring his Amended Objection to the Report and Recommendation.

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).

Zatta's motion to transmit exhibit (Docket Entry No. 5) is granted. Zatta's motion to take judicial notice (Docket Entry No. 53) is denied.

AFFIRMED.

JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA (DECEMBER 4, 2019)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PHILIPPE ZOGBE ZATTA,

Plaintiff,

v.

STEVEN CHARLES ELDRED, ET AL.,

Defendants.

Case No. SACV 18-2280-ODW (JEM)

Before: Otis D. WRIGHT, II,
United States District Judge.

In accordance with the Order Accepting Findings and Recommendations of United States Magistrate Judge filed concurrently herewith,

IT IS HEREBY ADJUDGED that the action is dismissed with prejudice.

/s/ Otis D. Wright, II
United States District Judge

DATED: December 4, 2019

ORDER OF THE UNITED STATES DISTRICT COURT ACCEPTING FINDINGS AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE (DECEMBER 4, 2019)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PHILIPPE ZOGBE ZATTA,

Plaintiff,

v.

STEVEN CHARLES ELDRED, ET AL.,

Defendants.

Case No. SACV 18-02280-ODW (JEM)

Before: Otis D. WRIGHT, II,
United States District Judge.

Pursuant to 28 U.S.C. Section 636, the Court has reviewed the pleadings, the records on file, the Report and Recommendation of the United States Magistrate Judge, Plaintiffs Objections, and Defendant Corsi's Reply to the Objections. The Court has engaged in a *de novo* review of those portions of the Report and Recommendation to which Plaintiff has objected.

Plaintiff also filed a Notice of Voluntary Dismissal, in which he dismissed without prejudice his claims

against Defendant Robert McCulloch. Plaintiff's Notice of Voluntary Dismissal was effective upon its filing and without a court order pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i). *See United States v. Real Property Located at 475 Martin Lane, Beverly Hills, CA*, 545 F.3d 1134, 1145 (9th Cir. 2008) (a voluntary dismissal pursuant to Rule 41(a)(1)(A)(i) is self-executing and requires no further action by the court).

The Court overrules Plaintiff's Objections, accepts the findings and recommendations of the Magistrate Judge as to all claims against the remaining Defendants, and finds that dismissal of this action with prejudice is warranted.

Accordingly, IT IS ORDERED that: (1) Defendants' Motions to Dismiss are GRANTED; (2) Plaintiff's claims against the remaining Defendants are dismissed with prejudice; (3) Plaintiff's Motions for Default Judgment against the Private Party Defendants and Defendant Corsi are denied; and (4) Judgment shall be entered accordingly.

/s/ Otis D. Wright, II
United States District Judge

DATED: December 4, 2019

REPORTS AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE (SEPTEMBER 30, 2019)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PHILIPPE ZOGBE ZATTA,

Plaintiff,

v.

STEVEN CHARLES ELDRED, ET AL.,

Defendants.

Case No. SACV 18-02280-ODW (JEM)

Before: John E. MCDERMOTT,
United States Magistrate Judge.

The Court submits this Report and Recommendation to the Honorable Otis D. Wright, II, United States District Judge, pursuant to 28 U.S.C. § 636 and General Order 05-07 of the United States District Court for the Central District of California.

PROCEEDINGS

On January 14, 2019, Philippe Zogbe Zatta ("Plaintiff"), proceeding *pro se*, filed a First Amended Complaint pursuant to 42 U.S.C. § 1983 based on alleged federal constitutional and statutory violations ("FAC"). He names the following Defendants: (1) the

Honorable Richard M. Aronson, Associate Justice of the California Court of Appeal, Fourth Appellate District, Division Three; the Honorable Eileen C. Moore, Associate Justice of the California Court of Appeal, Fourth Appellate District, Division Three; the Honorable David A. Thompson, Associate Justice of the California Court of Appeal, Fourth Appellate District, Division Three; the Honorable Lon F. Hurwitz, Judge of the Superior Court of California, County of Orange; the Honorable Paul T. Minerich, Commissioner of the Superior Court of California, County of Orange (the "Judicial Officer Defendants"); (2) Kevin J. Lane, Executive Officer and Clerk of the California Court of Appeal, Fourth Appellate District; David M. Yamasaki, Executive Officer and Clerk of the Superior Court of California, County of Orange (the "Court Administrative Defendants"); (3) Steven Eldred; Matthew Reichman; Russell Villasenor; and Keith McHorney (the "County Defendants"), each an employee of the Orange County Department of Children and Social Services ("County DCSS"); (4) David Kilgore, the Director of the California Department of Children and Social Services ("California DCSS"); (5) Steve Corsi, Director of the Missouri Department of Social Services ("Missouri DSS"); (6) Robert McCulloch, Esq., a St. Louis County, Missouri, Child Support Prosecuting Attorney; (7) Lisiane Lepe, a resident of Missouri and the former wife of Plaintiff; and Israel Louis Cross, Jr., Venus Valine Harry, Goli Marius Beugre, and Florence Loba, each an alleged acquaintance and/or associate of Lepe (the "Private Party Defendants").

On February 6, 2019, the County Defendants filed a Motion to Dismiss. On March 1, 2019, Plaintiff

filed an Opposition. On March 21, 2019, the County Defendants filed a Reply.

On February 8, 2019, the Judicial Officer Defendants and Court Administrative Defendants (collectively, the "Judicial Branch Defendants") filed a Motion to Dismiss. On March 22, 2019, Plaintiff filed an Opposition. On April 3, 2019, the Judicial Branch Defendants filed a Reply.

On March 22, 2019, Defendant Kilgore filed a Motion to Dismiss. On April 12, 2019, Plaintiff filed an Opposition. On April 22, 2019, Defendant Kilgore filed a Reply.

On May 6, 2019, Defendant Corsi filed a Motion to Dismiss. On May 30, 2019, Plaintiff filed an Opposition. On June 20, 2019, Defendant Corsi filed a Reply.

The Motions to Dismiss are now ready for decision. For the reasons set forth more fully below, the Court recommends that the Motions to Dismiss be granted and this action be dismissed with prejudice.

SUMMARY OF PLAINTIFF'S CLAIMS

Although the FAC is vague, conclusory, and replete with irrelevant allegations, it sets forth eighteen claims pursuant to Section 1983 that essentially attack the validity of various orders issued in the matter of *Lepe v. Zatta*, which is pending in the Orange County Superior Court ("OCSC"), regarding child parentage and support issues (the "State Court Action"). (*See* FAC at 8-16.) Plaintiff alleges that Defendants wrongfully issued, enforced, and/or pursued various orders against him in the State Court Action and/or failed to stop others from doing so. (*See generally* FAC.) The

California state courts have upheld the orders issued in the State Court Action and denied Plaintiff's attempts to have them invalidated.[1] (FAC at 15, 37-42.) Plaintiff seeks compensatory and punitive damages as well as retrospective injunctive and declaratory relief. (*See* FAC at 44, 68, 100-01.)

LEGAL STANDARDS ON A MOTION TO DISMISS

Under Fed. R. Civ. P. 12(b)(6), a defendant may move to dismiss a complaint for "failure to state a claim upon which relief can be granted." Dismissal under Rule 12(b)(6) is appropriate when the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory. *Mendiondo v. Centinela Hosp. Medical Center*, 521 F.3d 1097, 1104 (9th Cir. 2008) (citing *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990)). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, 'to state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id.* Conclusory allegations are insufficient. *Id.* at 678-79. Although a complaint challenged by a Rule 12(b)(6) motion does not need detailed factual allegations, "a formulaic recitation of the elements of a cause of action will not do," and the

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[1] More detailed summaries of the factual allegations pertaining to particular Defendants are set forth in their corresponding motions to dismiss.

factual allegations of the complaint "must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555.

All allegations of material fact are accepted as true, "as well as all reasonable inferences to be drawn from them." *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001); *see also Twombly*, 550 U.S. at 555. For an allegation to be entitled to the assumption of truth, however, it must be well-pleaded; that is, it must set forth a non-conclusory factual allegation rather than a legal conclusion. *See Iqbal*, 556 U.S. at 678-79. The Court need not accept as true unreasonable inferences, unwarranted deductions of fact, or conclusory legal allegations cast in the form of factual allegations. *See id.*; *see also Adams v. Johnson*, 355 F.3d 1179, 1183 (9th Cir. 2004) ("conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss"); *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001) (court not "required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences"). "In sum, for a complaint to survive a motion to dismiss, the non-conclusory 'factual content,' and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief." *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009).

In a *pro se* civil rights case, "the court must construe the pleadings liberally and must afford the plaintiff the benefit of any doubt." *Karim-Panahi v. Los Angeles Police Dept.*, 839 F.2d 621, 623 (9th Cir. 1988) (citation omitted). However, courts must not "supply essential elements of claims that were not initially pled." *Ivey v. Bd. of Regents of the Univ. of*

Alaska, 673 F.2d 266, 268 (9th Cir. 1982). Before dismissing a *pro se* civil rights complaint for failure to state a claim, the plaintiff ordinarily should be given a statement of the complaint's deficiencies and an opportunity to cure. *Id.* However, if it is absolutely clear that the deficiencies cannot be cured by amendment the complaint may be dismissed without leave to amend. *Id.*; *see also Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

DISCUSSION

I. The FAC Is Barred by the *Rooker-Feldman* Doctrine

Although rambling and confusing, the FAC essentially challenges the validity of the orders and judgment issued in the State Court Action. The *Rooker-Feldman* doctrine is an absolute bar to the FAC, as Plaintiff is seeking to relitigate claims already adjudicated in the state courts.

Under the *Rooker-Feldman* doctrine, a district court has no jurisdiction to review errors allegedly committed by state courts. *Rooker y. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923) ("The jurisdiction possessed by the District Courts is strictly original."); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482 (1983) ("[A] United States District Court has no authority to review final judgments of a state court in judicial proceedings."). "The *Rooker-Feldman* doctrine forbids a losing party in state court from filing suit in federal district court complaining of an injury caused by a state court judgment, and seeking federal court review and rejection of that judgment." *Bell v. City of Boise*, 709 F.3d 890, 897 (9th Cir. 2013) (citing

Skinner v. Switzer, 562 U.S. 521, 531-32 (2011)). "The purpose of the Doctrine is to protect state court 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).

To determine whether the *Rooker-Feldman* doctrine applies, a district court first must determine whether the action contains a forbidden *de facto* appeal of a state court decision. *Noel v. Hall*, 341 F.3d 1148, 1158 (9th Cir. 2003). 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.* at 1164. If "a federal 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.* at 1158. "Simply put, 'the United States District Court, as a court of original jurisdiction, has no authority to review the final determinations of a state court in judicial proceedings.'" *Bianchi v. Rylaarsdam*, 334 F.3d 895, 898 (9th Cir. 2003) (quoting *Worldwide Church of God v. McNair*, 805 F.2d 888, 890 (9th Cir. 1986).

The *Rooker-Feldman* doctrine applies even when a state court judgment is not made by the highest state court, *Dubinka v. Judges of the Superior Court*, 23 F.3d 218, 221 (9th Cir. 1994), or when a state court order is not final, *Worldwide Church of God*, 805 F.2d at 893 n.3. It also applies when a plaintiff's

challenge to the state court's actions involves federal constitutional issues. *Feldman*, 460 U.S. at 483-84.

Plaintiff's claims are based entirely on his disagreement with the orders and judgment issued in the State Court Action. Plaintiff claims fraud and violation of his constitutional rights in connection with those proceedings and now seeks review of the orders and judgment issued against him. The FAC seeks, *inter alia*, "an order enjoining enforcement of void child support order," a declaration that the child support order is void, a declaration that Defendants' actions as identified in the FAC were unconstitutional, and damages suffered as a result of the child support order and enforcement proceedings. (*See* FAC at 44, 68, 100-01.) For this Court to award the relief sought, it would be required to review the state court rulings and determine if they were made in error. All of Plaintiff's claims are inextricably intertwined with the rulings issued in connection with the State Court Action, "such that the adjudication of the federal claims would undercut the state court ruling[s] or require the district court to interpret the application of state laws or procedural rules." *Bianchi*, 334 F.3d at 898. This is strictly forbidden by the *Rooker-Feldman* doctrine. *Id.* Accordingly, the FAC should be dismissed with prejudice.

II. The FAC Should Be Dismissed Pursuant to the *Younger* Abstention Doctrine to the Extent the State Court Action Is Ongoing

To the extent that the State Court Action is ongoing, the action should be dismissed pursuant to *Younger v. Harris*, 401 U.S. 37 (1971). *Younger* held that a federal court should abstain from hearing a case

that would interfere with ongoing state proceedings. *Id.* at 43-55. *Younger* abstention is required "if four requirements are met: (1) a state-initiated proceeding is ongoing; (2) the proceeding implicates important state interests; (3) the federal plaintiff is not barred from litigating federal constitutional issues in the state proceeding; and (4) the federal court action would enjoin the proceeding or have the practical effect of doing so, *i.e.*, would interfere with the state proceeding in a way that *Younger* disapproves." *San Jose Silicon Valley Chamber of Commerce Political Action Committee v. City of San Jose*, 546 F.3d 1087, 1092 (9th Cir. 2008) (citations omitted). Although *Younger* involved an underlying state criminal proceeding, "the Supreme Court has extended the doctrine to federal cases that would interfere with state civil cases and state administrative proceedings." *Id.* (citations omitted). "When the case is one in which the Younger doctrine applies, the case must be dismissed." *H.C. ex rel. Gordon v. Koppel*, 203 F.3d 610, 613 (9th Cir. 2000).

To the extent that the State Court Action is ongoing, the court should abstain from adjudicating this matter pursuant to the *Younger* doctrine. The State Court Action clearly implicates important state interests, since "[gamily relations are a traditional area of state concern." *Moore v. Sims*, 442 U.S. 415, 435 (1979); *see also Sosna v. Iowa*, 419 U.S. 393, 404 (1975) (describing "domestic relations [as] an area that has long been regarded as a virtually exclusive province of the States"). The state courts have a special expertise and experience in domestic relations and custody situations that federal courts lack. *Gordon*, 203 F.3d at 613; *see also Peterson v. Babbitt*, 708 F.2d

465, 466 (9th Cir. 1983) ("The strong state interest in domestic relations matters, the superior competence of state courts in settling family disputes because regulations and supervision of domestic relations within their border is entrusted to the states, and the possibility of incompatible federal and state court decrees in cases of continuing judicial supervision by the state makes federal abstention in these cases appropriate."). "In addition, a state has a vital interest in protecting the authority of the judicial system, so that its orders and judgments are not rendered nugatory.'" *Gordon*, 203 F.3d at 613 (quoting *Juidice v. Vail*, 430 U.S. 327, 336 n.12 (1977)).

In addition, the State Court Action has provided Plaintiff with an adequate opportunity to litigate his federal claims. A federal court "should assume that state procedures will afford an adequate remedy, in the absence of unambiguous authority to the contrary." *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 15 (1987). It is clear that there has been no barrier to Plaintiff raising in the State Court Action the same issues outlined in his FAC, as Plaintiff has vigorously litigated that case. Merely because Plaintiff has not prevailed on his claims in the State Court Action does not mean he has been denied the opportunity to litigate them.

Finally, an order of declaratory or injunctive relief in favor of Plaintiff in this case would have the practical effect of interfering with the State Court Action by contradicting the child support rulings already issued and undermining the state courts' ability to handle the case. The FAC seeks, *inter alia*, "an order enjoining enforcement of void child support order," a declaration that the child support order is void,

and a declaration that Defendants' actions as identified in the FAC were unconstitutional. (*See* FAC at 44, 68, 100-01.) If the requested relief were granted, such an order would directly interfere any ongoing enforcement or other matters still being adjudicated in the State Court Action.

Accordingly, to the extent that the State Court Action is ongoing within the meaning of *Younger*, the Court should abstain from hearing this matter and the FAC should be dismissed with prejudice.

III. The Claims Against the Judicial Branch Defendants, County Defendants, Kilgore, and Corsi in Their Official Capacities Are Barred by the Eleventh Amendment

Plaintiff has sued the Judicial Branch Defendants, County Defendants, Kilgore, and Corsi in their official capacities.

An "official-capacity suit is, in all respects other than name, to be treated as a suit against the entity." *Kentucky v. Graham*, 473 U.S. 159, 166 (1985). Such a suit "is not a suit against the official personally, for the real party in interest is the entity." *Id.* at 166 (emphasis in original). Moreover, states and state agencies are not persons subject to civil rights suits under 42 U.S.C. § 1983, and a suit against a state official in his or her official capacity is "no different from a suit against the State itself." *Will v. Mich. Dep't. of State Police*, 491 U.S. 58, 64-66, 71 (1989).

The Judicial Branch Defendants are officers of the State of California. *See Franceschi v. Schwartz*, 57 F.3d 828, 830-31 (9th Cir. 1995). The County Defendants, who are employees of the County DCSS,

and Kilgore, Director of the California DCSS, are also officers of the State of California. *See* Cal. Fam. Code § 17303, 17400. Corsi, Director of the Missouri DSS, is an officer of the State of Missouri. Accordingly, Plaintiff's official capacity claims against these Defendants are tantamount to claims against the States of California and Missouri.

The Eleventh Amendment bars federal jurisdiction over suits by individuals against a State and its instrumentalities, unless either the State consents to waive its sovereign immunity or Congress abrogates it. *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 99-100 (1984). The States of California and Missouri have not waived their Eleventh Amendment immunity for claims brought under Section 1983 in federal court. *Dittman v. California*, 191 F.3d 1020, 1025-26 (9th Cir. 1999) (California has not waived Eleventh Amendment immunity with respect to Section 1983 claims); *Barnes v. State of Missouri*, 960 F.2d 63, 65 (8th Cir. 1992) (per curiam) (State of Missouri has not waived Eleventh Amendment immunity with respect to Section 1983 claims). Moreover, "the Supreme Court has held that '§ 1983 was not intended to abrogate a State's Eleventh Amendment immunity.'" *Dittman*, 191 F.3d at 1026 (quoting *Graham*, 473 U.S. at 169 n.17).

Thus, Plaintiff's official capacity claims against the Judicial Branch Defendants, the County Defendants, Kilgore, and Corsi are barred by the Eleventh Amendment and should be dismissed with prejudice.

IV. The Judicial Officer Defendants Are Entitled to Judicial Immunity

It is well established that judges are absolutely immune from civil suits for acts performed in their judicial capacities. *See Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 435 & n.10 (1993); *Mireles v. Waco*, 502 U.S. 9, 11-12 (1991); *Stump v. Sparkman*, 435 U.S. 349, 357-60 (1978); *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986) (en banc). "[I]t is a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself." *Bradley v. Fisher*, 80 U.S. 335, 347 (1871). Absolute judicial immunity applies "however erroneous the act may have been, and however injurious in its consequences it may have proved to the plaintiff." *Moore v. Brewster*, 96 F.3d 1240, 1244 (9th Cir. 1996). Absolute judicial immunity applies not only to suits for damages, but also "to actions for declaratory, injunctive and other equitable relief." *Mullis v. Bankruptcy Court for Dist. of Nevada*, 828 F.2d 1385, 1394 (9th Cir. 1987).

It is clear that Plaintiff's claims against the Judicial Officer Defendants are based solely on acts performed in their judicial capacities in connection with the State Court Action. The Judicial Officer Defendants were the assigned Superior Court and Court of Appeal judicial officers in that action, who issued rulings, orders, and judgment with which Plaintiff disagrees. These acts were not taken in the complete absence of all jurisdiction, but were done in the normal course of their duties to adjudicate matters

brought before them in connection with the State Court Action.

Accordingly, the Judicial Officer Defendants are entitled to absolute judicial immunity, and Plaintiffs claims against them should be dismissed with prejudice.

V. The Court Administrative Defendants Are Entitled to Quasi-Judicial Immunity

Court administrators have absolute quasi-judicial immunity from damages for civil rights violations when they perform tasks that are an integral part of the judicial process. *In re Castillo*, 297 F.3d 940, 952 (9th Cir. 2002) (court clerks and other non-judicial officers enjoy absolute quasi-judicial immunity "for purely administrative acts—acts which taken out of context would appear ministerial, but when viewed in context are actually a part of the judicial function."); *Mullis*, 828 F.2d at 1390; *Morrison v. Jones*, 607 F.2d 1269, 1273 (9th Cir. 1979).

Plaintiff's claims against the Court Administrative Defendants appear to be based on their alleged actions or inactions with respect to administration of the State Court Action. (*See* FAC at 11, 20-22, 273041, 43, 55-56, 58-59.) Their actions in administering the State Court Action were an integral part of the judicial process. Accordingly, Plaintiff's claims against the State Court Administrators are barred by quasi-judicial immunity and should be dismissed with prejudice.

VI. McCulloch, Corsi, Kilgore, and the County Defendants Are Entitled to Prosecutorial Immunity

Defendant McCulloch is identified as a St. Louis County Child Support Prosecuting Attorney. (FAC at 3.) Plaintiff alleges that McCulloch "unlawfully seized" Plaintiff's tax return refund and other assets in connection with the enforcement of the child support order issued in the State Court Action. (*See* FAC at 12, 74-78.)

Defendant Corsi is the Director of the Missouri DSS, Defendant Kilgore is the Director of the California DCSS, and the County Defendants are employees of the County DCSS. (FAC at 1-3.) Plaintiff's claims against these Defendants is based on their efforts in prosecuting and enforcing the child support orders and litigating other issues raised in the State Court Action. (*See* FAC at 8-9, 11-13.)

Defendants McCulloch, Corsi, Kilgore, and the County Defendants are entitled to absolute prosecutorial immunity for their alleged attempts to litigate the issues raised and enforce the orders and judgments issued in the State Court Action. *See Imbler v. Pachtman*, 424 U.S. 409, 430 (1976) (A prosecutor is entitled to absolute immunity from a Section 1983 action for damages when he or she performs a function that is "intimately associated with the judicial phase of the criminal process."); *see also Butz v. Economou*, 438 U.S. 478, 513 (1978) (extending prosecutorial immunity to administrative agency proceedings); *Demery v. Kupperman*, 735 F.2d 1139, 1143 (9th Cir. 1984) (prosecutorial immunity shields state officials who perform the "functions of a prosecutor" in administrative proceedings) (citation omitted); *Walker v.*

Bowler, 2018 WL 2392152, at *7 (C.D. Cal. May 24, 2018) (granting prosecutorial immunity to DCSS attorneys for alleged attempts to collect child support payments from plaintiff); *Nemcik v. Mills*, 2016 WL 4364917, at *8 (N.D. Cal. Aug. 16, 2016) (finding DCSS attorney absolutely immune from suit for taking actions "relate[d] directly to her work as a DCSS attorney" while "prosecuting and enforcing child support [action]").

Accordingly, Plaintiff's damage claims against McCulloch, Corsi, Kilgore, and the County Defendants are barred by absolute prosecutorial immunity and should be dismissed with prejudice.

VII. Plaintiff Fails to State a Claim Under the Title IV-D of the Social Security Act

Plaintiff purports to bring civil rights claims based on failure to comply with statutorily prescribed procedures under Title IV-D of the Social Security Act, specifically 42 U.S.C. §§ 663, 664, 666. (FAC at 83-91.) However, these statutes do not confer a federal right that is enforceable through a private cause of action under Section 1983. *Blessing v. Freestone*, 520 U.S. 329, 342-43 (1997). These claims are not cognizable and should be dismissed with prejudice.

VIII. Plaintiff Fails to State a Claim Under 18 U.S.C. § 241

Plaintiff purports to bring a civil rights claim based on the alleged violation of 18 U.S.C. § 241. (FAC at 95-98.) This is a criminal statute that does not authorize a private cause of action. *Allen v. Gold Country Casino*, 464 F.3d 1044, 1048 (9th Cir. 2006); *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir.

1980). Plaintiffs Section 241 claim is not cognizable and should be dismissed with prejudice.

IX. The FAC Fails to State a Claim Under Section 1983 Against the Private Party Defendants

The FAC also fails to state a civil rights claim against the Private Party Defendants.[2] Plaintiff has completely failed to allege any facts establishing that the Private Party Defendants are subject to suit under Section 1983.

In order to state a claim under Section 1983, a plaintiff must plead facts establishing that the defendants (1) deprived the plaintiff of a right secured by the Constitution or laws of the United States; and (2) acted under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988). "[T]he under-color-of-state-law element of § 1983 excludes from its reach merely private conduct, no matter how discriminatory or wrongful." *American Manufacturers Mutual Insurance Co. v. Sullivan*, 526 U.S. 40, 50 (1999) (internal quotations and citations omitted). Here, Plaintiff alleges a deprivation of his Fourth Amendment right to be free of unlawful search and seizure. The Fourteenth Amendment, which incorporates the Fourth Amendment against the states, applies only to "state action." *Rendell-Baker v. Kohn*, 457 U.S. 830, 837 (1982). "If

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[2] Plaintiff has filed a Motion for Default Judgment against the Private Party Defendants and Defendant Corsi. (Docket Nos. 84, 98.) The Motion for Default Judgment is denied. As set forth herein, Plaintiff has failed to state a viable claim against the Private Party Defendants or Corsi. Moreover, the Court granted Corsi's *ex parte* application to allow him to file a responsive pleading out of time. (Docket No. 110.) Corsi has filed a responsive pleading (Docket No. 114) and is not subject to default judgment.

a defendant's conduct satisfies the state-action requirement of the Fourteenth Amendment, the conduct also constitutes action 'under color of state law' for § 1983 purposes." *Brentwood Academy v. Tennessee Secondary School Athletic Association*, 531 U.S. 288, 295 n.2 (2001) (citing *Lugar v. Edmondson Oil Co., Inc.*, 457 U.S. 922, 935 (1982)).

Courts "start with the presumption that private conduct does not constitute governmental action." *Sutton v. Providence St. Joseph Medical Center*, 192 F.3d 826, 835 (9th Cir. 1999). "Whether a private party engaged in state action is a highly factual question." *Brunette v. Humane Society of Ventura County*, 294 F.3d 1205, 1209 (9th Cir. 2002). Conclusory allegations are insufficient to establish the element of state action. *See Dietrich v. John Ascuaga's Nugget*, 548 F.3d 892, 900 (9th Cir. 2008) ("[A] bare allegation of joint action will not overcome a motion to dismiss. Plaintiff must allege facts tending to show that Defendants acted under color of state law or authority.") (internal quotations, ellipses, and citation omitted).

The Ninth Circuit has recognized the following four tests used to identify private action that qualifies as state action: "(1) public function; (2) joint action; (3) governmental compulsion or coercion; and (4) governmental nexus." *Kirtley v. Rainey*, 326 F.3d 1088, 1092 (9th Cir. 2003) (quotation omitted). Regardless of which test applies, the fundamental consideration is whether the private conduct is fairly attributable to the state. *Id.* at 1096; *see also Lugar*, 457 U.S. at 937. Ultimately, a plaintiff bears the burden of establishing that a particular defendant is a state actor under any applicable test. *Florer v. Congregation*

Pidyon Shevuyim, N.A., 639 F.3d 916, 922 (9th Cir. 2011).

Here, Plaintiff does not allege any facts demonstrating that the Private Party Defendants are agents of the state. (*See* FAC at 7-8, 14, 16-19, 45-46.) Rather, the facts alleged demonstrate that Lepe is Plaintiff's ex-wife who is the party opposing Plaintiff in the State Court Action and who has sought to litigate child support, parentage, and other family law issues. (*See id.*) Cross, Harry, Beugre, and Loba are allegedly acquaintances and/or associates of Lepe who have assisted her in removing the minor child to Missouri and litigating child custody issues against Plaintiff. (FAC at 7-8, 45-46.) These facts fail to establish a nexus between state officials and the challenged actions. Plaintiff's factual allegations are wholly insufficient to bring purely private conduct by the Private Party Defendants within the purview of Section 1983. Plaintiff's federal civil rights claims against the Private Party Defendants should be dismissed with prejudice.

RECOMMENDATION

THE COURT, THEREFORE, RECOMMENDS that the District Court issue an Order: (1) accepting this Report and Recommendation; (2) granting Defendants' Motions to Dismiss; (3) dismissing the FAC in its entirety with prejudice; and (4) directing that judgment be entered accordingly.[3]

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[3] In their Motions to Dismiss, Defendants set forth numerous additional grounds for dismissal, including failure to comply with Fed. R. Civ. P. 8, failure to state sufficient supporting facts as to particular Defendants, and qualified immunity. The Court finds that these arguments are meritorious. However, in light of

/s/ John E. McDermott
United States Magistrate Judge

DATED: September 30, 2019

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the Court's findings that this action should be dismissed in its entirety with prejudice on multiple other grounds, it is not necessary to further address these additional arguments.

MINUTES AND ORDER OR JUDGMENT OF THE SUPERIOR COURT OF CALIFORNIA (AUGUST 10, 2017)

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE

LISIANE DOHI LEPE

Petitioner/Plaintiff,

v.

PHILIPPE ZOGBE ZATTA

Respondent/Defendant.

Case No. 17FL 100650

This form may be used for preparation of court minutes and/or as an alternative to form FL-615, FL-625, FL-630, FL-665, or FL-687.

If this form is prepared as both court minutes and an alternative to one of these forms, then the parties do not need to prepare any additional form of order.

1. This matter proceeded as follows: Contested

a. Date: 08/1012017
Time: 8:00AM
Department L54

b. Judicial officer (name): PAUL T. MINERICH

Commissioner

Court reporter (name): NONE

Court clerk (name): SANDY HERRON

Bailiff (name): JOSEPH DEVELA

d. Petitioner/plaintiff present

e. Respondent/defendant present

g. Attorney for local child support agency (name): M. REICHMAN

h. The parent ordered to pay support for purposes of this order is the

- respondent/defendant

i. Other (specify): PARTIES WERE SWORN AND TESTIFIED.

3.c. This matter is continued at the request of

- the local child support agency to

Date: 10/25/2017
Time: 9:30 AM
Department: L54
(specify issues): MOTION-JUDGMENT/ REVIEW HEARING

Respondent/defendant

[. . .]

14.f.

- For a total of: $892.00

payable on the: FIRST day of each month
beginning (date): JULY 1, 2017

h. My support ordered will continue until further order of court, unless terminated by operation of law.

i. When a person who has been ordered to pay child support is in jail or prison or is involuntarily institutionalized for any period of more than 90 days in a row, the child support order is temporarily stopped. However, the child support order will not be stopped if the person who owes support has the financial ability to pay that support while in jail, prison, or an institution. It will also not be stopped if the reason the person is in jail, prison, or an institution is because the person didn't pay court ordered child support or committed domestic violence against the supported person or child. The child support order starts again on the first day of the month after the person is released from jail, prison, or an institution.

15.

- The parent ordered to pay support
- The parent receiving support

must (1) provide and maintain health insurance coverage for *the* children if available at no or reasonable cost and keep the local child support agency informed of the availability of the coverage (the cost is presumed to be reasonable if it does not exceed 5 percent of gross income to add a child); (2) if health insurance is not available, provide coverage when it becomes available; (3) within 20 days of the local child support agency's request, complete and return a health insurance form; (4) provide to the local child support agency all information and forms necessary to obtain health-care services for the children; (5) present any claim to secure payment or reimbursement to the other parent or caretaker who incurs costs for

health-care services for the children; and (6) assign any rights to reimbursement to the other parent or caretaker who incurs costs for health-care services for the children. The parent ordered to provide health insurance must seek continuation of coverage for the child after the child attains the age when the child is no longer considered eligible for coverage as a dependent under the insurance contract, if the child is incapable of self-sustaining employment because of a physically or mentally disabling injury, illness, or condition and is chiefly dependent upon the parent providing health insurance for support and maintenance.

20. No provision of this judgment can operate to limit any right to collect all sums owing in this matter as otherwise provided by law.

21. All payments, unless specified in items 14b, c, and d above, must be made to the State Disbursement Unit at the address listed below (specify address):

CALIFORNIA STATE DISBURSEMENT UNIT
PO BOX 989067
WEST SACRAMENTO CA 95798-9087

22. An earnings assignment order Is Issued.

23. In the event that there is a contract between a party receiving support and a private child support collector, the party ordered to pay support must pay the fee charged by the private child support collector. This fee must not exceed 33 1/3 percent of the total amount of past due support nor may it exceed 50 percent of any fee charged by the private child support collector. The money judgment created by this provision is in favor of the private child support collector and the party receiving support, jointly,

24. If "The parent ordered to pay support" box is checked in item 15, a health insurance coverage assignment must issue.

31. The parents must notify the local child support agency in writing within 10 days of any change in residence or employment.

32. The *Notice of Rights and Responsibilities (Health-Care Costs and Reimbursement Procedures)* and *Information Sheet on Changing a Child Support* Order (form FL-192) are attached and incorporated.

34. The court further orders (specify):

The parties were advised by the Court prior to the hearing that the matter is being heard by a Commissioner who shall act as temporary judge unless any party objects. No objection was stated.

This support order is temporary with full retroactivity reserved to 7/1/2017.

/s/ Paul T. Minerich
Judicial Officer

Date: 8-10-17

Number of pages attached: 1

Child support from 3/1/2017 through 6/30/2017 is set at $190.00 per month.

Court orders Father to be given credit for the following payments made: MARCH 2017 = $600.00

Court orders payment on undetermined arrears at $100.00 per month commencing 8/1/2017.

Father is ordered to continue to maintain Health Insurance for the minor child(ren).

Mother is relieved of the obligation to provide Health Insurance for the minor child(ren) at this time.

Both parties are ordered to file updated Income and Expense Declarations with the Court and provide copies to the Department of Child Support Services and the other party by 10/13/2017.

Father is ordered to provide a Medical Information Verification Report, completed by a treating physician, to the Department of Child Support Services by 10/13/2017.

Mother is ordered to appear telephonically on the next hearing date.

JUDGMENT OF THE SUPERIOR COURT OF CALIFORNIA REGARDING PARENTAL OBLIGATION (FEBRUARY 10, 2017)

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE

LISIANE DOHI LEPE

Petitioner,

v.

PHILIPPE ZOGBE ZATTA

Respondent.

Case No. 17FL100650

1.a. NOTICE: THIS IS A PROPOSED JUDGMENT. This Judgment Regarding Parental Obligations (UIFSA) will be entered by the court and will become legally binding unless you fill out and file the Response to Uniform Support Petition (UIFSA) (form FL-520) with the court clerk within 30 days of the date you were served with the Summons (UIFSA) (form FL-510) and Uniform Support Petition (form OMB 0970-0085). If you need a Response form, you may get one from the local child support agency, the court clerk, or the family law facilitator. The family law facilitator will help you fill out the forms. To file

the Response, follow the procedures listed in the information sheet attached to that form.

2.c. The parent ordered to pay support is the

- respondent

4. Attached is a computer printout showing the parents' income and percentage of time each parent spends with the children. The printout, which shows the calculation of child support payable, will become the court's findings.

5. This order is based on the attached documents *(specify):* UIFSA petition

6. THE COURT ORDERS:

a. The parent ordered to pay support

- has previously been determined to be the parent of the children named in item 6b.

b. The parent ordered to pay support must pay current child support as follows:

Name of child [redacted]
Date of birth 06/16/2013
Monthly support amount $1361.00

6.b.

(1) Mandatory additional child support

(b) The parent ordered to pay support must pay reasonable uninsured health-care costs for the children, as follows:

- one-half or

Payments must be made to the other parent

(3) For a total of $ 1361.00 payable on the first day of each month beginning *(date):* 03/01/2017

(5) Any support ordered will continue until further order of court, unless terminated by operation of law.

(6) As provided in Family Code section 4007.5, the obligation of the person ordered to pay support will be temporarily suspended for any period after the first 90 consecutive days in which the person ordered to pay support is incarcerated or involuntarily institutionalized, unless that person has the ability to pay support during that time or has committed certain crimes. Immediately after the person ordered to pay support is released from incarceration or involuntary institutionalization, the support order will restart in the same amount as it was before it was temporarily suspended.

c. The parent ordered to pay support must (1) provide and maintain health insurance coverage for the children if available at no or reasonable cost and keep the local child support agency informed of the availability of the coverage (the cost is presumed to be reasonable if it does not exceed 5% of gross income to add a child); (2) if health insurance is not available, provide coverage when it becomes available; (3) within 20 days of the local child support agency's request, complete and return a health insurance form; (4) provide to the local child support agency all information and forms necessary to obtain health-care services for the children; (5) present any claim to secure payment or reimbursement to the other parent or

caretaker who incurs costs for health-care services for the children; and (6) assign any rights to reimbursement to the other parent or caretaker who incurs costs for health-care services for the children. The parent ordered to provide health insurance must seek continuation of coverage for the child after the child attains the age when the child is no longer considered eligible for coverage as a dependent under the insurance contract, if the child is incapable of self-sustaining employment because of a physically or mentally disabling injury, illness, or condition and is chiefly dependent upon the parent providing health insurance for support and maintenance.

6.e. No provision of this judgment operates to limit any right to collect the principal (total amount of unpaid support) or to charge and collect interest and penalties as allowed by law. All payments ordered are subject to modification.

f. All payments, unless specified in item 6b(1) above, must be made to the State Disbursement Unit at the address listed below (specify address):

CALIFORNIA STATE DISBURSEMENT UNIT
PO BOX 989067
WEST SACRAMENTO CA 95798-9067

g. An earnings assignment order is issued.

h. In the event that there is a contract between a party receiving support and a private child support collector, the party ordered to pay support must pay the fee charged by the private child support collector. This fee must not exceed 33 1/3 percent of the total amount of past due support nor may it exceed 50 percent of any fee charged by the private child support collector. The money judgment created by this

provision is in favor of the private child support collector and the party receiving support, jointly,

i. If The parent ordered to pay support" box is checked in item 6c, a health insurance coverage assignment must issue.

j. The parents must notify the local child support agency in writing within 10 days of any change in residence or employment.

k. The *Notice of Rights and Responsibilities* and *Information Sheet* on *Changing a Child Support Order* (form FL-192) is attached.

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT DENYING PETITION FOR REHEARING (JULY 1, 2021)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PHILIPPE ZOGBE ZATTA,

Plaintiff-Appellant,

v.

STEVEN CHARLES ELDRED,
in His Person and Official Capacities; ET AL.,

Defendants-Appellees.

No. 19-56483

D.C. No. 8:18-cv-02280-ODW-JEM

Central District of California, Santa Ana

Before: GRABER, R. NELSON, and FORREST,* Circuit Judges.

The full court has been advised of 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.

* Formerly known as Danielle J. Hunsaker.

Zatta's petition for rehearing en banc (Docket Entry No. 57) is denied.

No further filings will be entertained in this closed case.

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