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JEFFREY G. THOMAS,

v.

LAURIE ZELON, DENNIS PERLUSS, HUGH JOHN GIBSON, HOPE PARK LOFTS 2001-02910056 LLC, ROSARIO PERRY and NORMAN SOLOMON

No. 19 - _____

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UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Filed Sept. 19, 2018

JEFFREY GRAY THOMAS, Plaintiff-Appellant, v. LAURIE ZELON; et al., Defendants-Appellees.	No. 17-55404 D.C. No. 2:16-cv-06544-JAK-AJW MEMORANDUM*

Before: LEAVY, M. SMITH, and CHRISTEN, 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.

Thomas's petition for rehearing en banc (Docket entry no. 63) and Motion to Supplement the Record (Docket Entry No. 64) are denied. No further filings will be entertained in this closed case.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED MAR 22, 2018
MOLLY C. DWYER, CLERK

JEFFREY GRAY THOMAS, Plaintiff-Appellant, v. LAURIE ZELON; et al., Defendants-Appellees.	No. 17-55404 D.C. No. 2:16-cv-06544-JAK-AJW MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
John A. Kronstadt, District Judge, Presiding
Submitted March 13, 2018**

Before:LEAVY, M. SMITH, and CHRISTEN, Circuit Judges.

California attorney Jeffrey Gray Thomas appeals pro se from the district dismissing his action alleging federal claims related to sanctions entered against Thomas in a state court action. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under the Rooker-Feldman doctrine. Noel v. Hall, 341 F.3d 1148, 1154 (9th Cir. 2003).

We affirm.

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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). Thomas's request for oral argument, set forth in his opening brief, is denied.

The district court properly dismissed this action as barred by the Rooker-Feldman doctrine because Thomas's claims stemming from the prior state court action constitute a "de facto appeal" of prior state court judgments inextricably intertwined with those judgments. See id. at 1155-57 (the Rooker- Feldman doctrine bars de facto appeals of a state court decision); see also Cooper v. Ramos, 704 F.3d 772, 781-83 (9th Cir. 2012) (Rooker-Feldman doctrine bars claims where "federal relief can only be predicated upon a conviction that the court was wrong" (citation and internal quotation marks omitted).

All pending motions are denied. AFFIRMED.

JEFFREY GRAY THOMAS, Plaintiff-Appellant, v. LAURIE ZELON; et al., Defendants-Appellees.	U.S. DISTRICT COURT Central District of California, Los Angeles D.C. No. 2:16-cv-06544-JAK-AJW AMENDED ORDER ACCEPTING REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE (No. 107)

Pursuant to 28 U.S.C. § 636(b)(1)(C), the Court has reviewed the entire record in this action, the attached Report and Recommendation of Magistrate Judge ("Report"), and the objections thereto. Good cause appearing, the Court concurs with and adopts the findings of fact, conclusions of law, and recommendations contained in the Report after having made a de novo determination of the portions to which objections were directed.

IT IS SO ORDERED.

DATED: February 23, 2017

JOHN A. KRONSTADT
United States District Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

JEFFREY G. THOMAS,	)
	)
Plaintiff,	)No. CV 16-6544 JAK (AJW)
	)
v.	) REPORT AND
	)RECOMMENDATION
	) OF MAGISTRATE JUDGE
LAURIE ZELON, et al.,	)
	)
Defendants.	)
	)

Proceedings

Plaintiff, an attorney proceeding in pro per, filed this civil rights action pursuant to 42 U.S.C. § 1983. The complaint centers around an interpleader action initiated in the Los Angeles County Superior Court, the Superior Court's orders denying plaintiff's motions, and an appeal which resulted in an order imposing sanctions against plaintiff. Plaintiff sues Justice Laurie Zelon and Justice Dennis Perluss, two of the California Court of Appeal judges assigned to his appeal; Hope Park Lofts 2001-02910056 LLC ("HPL one of the defendants in the interpleader action; Hugh John Gibson, the attorney who represented HPL both in the Superior Court and on appeal; Norman Solomon, the principal officer of HPL; and Rosario Per another one of the defendants in the interpleader action. [Docket ("Dkt.") 1 ("Complaint")].

On September 22, 2016, Zelon and Perluss filed a motion to dismiss the complaint. [Dkt. 13]. On the dame date, Perry filed a motion to dismiss the complaint. [Dkt. 18]. Gibson filed a motion to dismiss the complaint on October 14, 2016. [Dkt. 39]. Among other things, each of the motions argues that the

Court lacks subject matter jurisdiction under the Rooker-Feldman doctrine. Plaintiff filed an opposition to each of the motions. [Dkts. 33, 70, 71, 86].1

Summary of plaintiff's allegations

Plaintiff's fifty-page complaint includes detailed allegations about the events leading to purportedly unconstitutional sanctions order issued by the California Court of Appeal, many of which a confusing, convoluted, and not relevant to resolution of this federal case. Briefly summarized, the complaint alleges the following.

In 2011, 1130 Hope Street Investment Associates, LLC ("1130 Hope Street LLC") filed an interpleader complaint in Los Angeles County Superior Court Case No. BC466413 against HPL, Norm Solomon, Ray Haiem, and Rosario Perry, among others. Plaintiff represented Haiem. [Complaint at 7,
In 2005 – prior to the interpleader action – 1130 Hope Street LLC changed its name to 1130 Sou Hope Street Investment Associates, LLC ("South Hope Street LLC"). [Complaint at 8 & Exhibit ("Ex 1]. The website of the Secretary of State indicated that the "articles for organization" for 1130 South Ho Street LLC had been cancelled in 2008. [Complaint at 7 & Exhibit ("Ex.") 2]. According to plaintiff, the "co-conspirator defendants" – that is, Gibson, Perry, Solomon, and HPL – misled plaintiff and his client " believe that the fictionally nonexistent plaintiff 1130 Hope Street Investment Associates LLC w misspelled and the identity was intended to be 1130 South Hope Street Investment Associations LLC b it was simply misspelled in the fake interpleader complaint." [Complaint at 7-8]. Because 1130 Hope Street LLC "did not exist," it lacked standing to bring the action in the Superior Court. [Complaint at 9-1 Further, the co-conspirator defendants knew that 1130 Hope Street LLC was "fictionally nonexistent" and that the Superior Court lacked jurisdiction

over the "fake interpleader" action, and therefore committed "massive overwhelming fraud on the state courts and on Mr. Haiem and Plaintiff." [Complaint at 9-10, 1 13]. The co-conspirator defendants "aggravated the confusion of identity of the fictionally nonexistent 11 Hope Street Investment Associates LLC with 1130 South Hope Street Investment Associates LLC concurrently petitioning the superior court to reinstate the articles of organization of 1130 South Hope Street Investment Associates LLC ... in a special proceeding #BC140530." [Complaint at 8]. On May 22, 2013, the Superior Court "approved the fictionally nonexistent Plaintiff's requests for voluntary dismissals of defendants named in the fake interpleader complaint from the fake interpleader action." [Complaint at 1].

Plaintiff filed a notice of appeal in the California Court of Appeal, appealing several of the Superior Court's orders, including its order denying Haiem's motion to vacate dismissal of Haiem's cross-complaint [Complaint at 11, 15; see Ex. 5 at 8, 16]. HPL filed a motion for sanctions for filing a frivolous appeal. According to the complaint, Gibson, Perry, Solomon, and HPL "maliciously and with evil intent conspired and agreed to support Gibson's motion2 to the court of appeals to sanction [p]laintiff...." [Complaint at __]

The California Court of Appeal affirmed the Superior Court. In addition, after finding that Haiem's appeal was objectively frivolous and that plaintiff's conduct was "outrageous" and "intended to harass opposing party," it awarded $58,650 in sanctions to be paid to HPL. [Complaint, Ex. 5 at 8, 13-2 Specifically, the appellate court found, Thomas's conduct, including his refusal to limit the scope of the appeal, his resistance to Gibson's effort to prepare an adequate record on appeal, his threat to communicate to Gibson's clients regarding alleged malpractice in a prior case, and his repeated gratuitous and unprofessional comments highlight the

improper motive in prosecuting this appeal. Indeed, Thomas's comments that he will only respond to a "settlement offer" and that work on the case "will increase exponentially" over time reveal Thomas's intent to harass Hope Park Lofts and to drive up its litigation costs in the hope of a settlement.

In addition, this appeal "indisputably has no merit." Thomas fails to cite even a single authority that supports his position that his motion to vacate was timely or that the trial court had jurisdiction to act upon the motion. Neither did Thomas provide any support for his argument that [California Civil Code] section 1013 extended the time to file his motion. Indeed, Thomas consistently cites to cases that do not stand for the propositions he argues. Likewise, the notice of appeal was clearly untimely as to the trial court's February 1, 2013 order and improper as to the May 22, 2013 order. Finally, Thomas filed two reply briefs that failed to comply with the California Rules of court, ignoring our order finding the first reply brief in violation of court rules and setting forth the requirements for the brief.

We conclude this appeal is frivolous both because it is objectively devoid of merit and because it is subjectively prosecuted for an improper motive – to harass Hope Park Lofts and increase its litigation costs.
[Complaint, Ex. 5 at 19 (citation omitted)].

The complaint alleges that the "court of appeals lacked jurisdiction to decide the appeal from void orders of the superior court in an action ... in which the court had no jurisdiction, and the co-conspirator Defendants concealed and suppressed the lack of jurisdiction in the second court of appeals to fraudulently create the illusion of jurisdiction in the court of appeals." [Complaint at 6]. The "court of appeals also lack jurisdiction to grant the motion for appellate sanctions that the co-conspirator defendants brought again Plaintiff and his client ... because jurisdiction of appellate sanctions of

frivolous appeals is limited to appeals 'as brought,' and Plaintiff and his client did not know that the superior court lacked jurisdiction of action #BC466413 and that the co-conspirator Defendants created or substantially caused an illusion jurisdiction...." [Complaint at 8-9]. According to plaintiff, although the opinion indicates that it was written by Superior Court Judge Feuer, "it is a virtual certainty that Defendants Zelon and Perluss [who concurrently wrote the unpublished opinion in Exhibit 5 for signature by Ruderman-Feuer, J., who performed judge pro tempore services gratis for Defendants Zelon and/or Perluss as a subordinate official, and had no experience in the writing of appellate decisions." [Complaint at 14; see Complaint, Ex. 5 at 22].

On May 14, 2014, plaintiff filed a petition for rehearing. Defendants Zelon and Perluss denied the petition. [Complaint at 13]. On June 12, 2015, plaintiff mailed a petition for review to the California Supreme Court, but it was rejected as untimely. [Complaint at 13]. Plaintiff then "dispatched a time petition for writ of certiorari in the U.S. Supreme Court through the U.S. mails," but it was returned f failure to include an order of the state supreme court denying review on the merits. [Complaint at 1 Plaintiff sought Gibson's assistance in filing a motion in the California Court of Appeal to recall the remittitur, but Gibson failed to respond. Gibson then filed a writ of execution of the sanctions order, which was granted over plaintiff's objection. [Complaint at 14]. The Superior Court denied plaintiff's motion quash the writ of execution, despite the fact that plaintiff provided the court with the exhibits attached his complaint filed in this Court "conclusively demonstrat[ing] the nonexistence of the Plaintiff 1130 Hope Street Investment Associates LLC in action #BC466413, and the lack of jurisdiction of the superior court over the action." [Complaint at 14].

Based upon the foregoing facts, the complaint alleges five claims for relief against all named defendants: (1) defendants

denied plaintiff substantive due process; (2) defendants denied plaintiff access to the courts; (3) defendants denied plaintiff his right to free speech; (4) defendants denied plaintiff equal protection of the law; and (5) defendants took plaintiff's property without just compensation in violation of the Fifth Amendment. [Complaint at 25-42]. In addition, the complaint alleges that defendants Gibson Perry, Solomon, and HPL engaged in unfair and fraudulent business practices in violation of California Business and Professions Code § 17200, and that plaintiff is entitled to "an independent equitable action declare that state law requires an order of the state court of appeals to be set aside" as void. [Complaint 42-46].

The complaint seeks declaratory relief "against all defendants" that the California Court of Appeals order imposing sanctions violated his constitutional rights; a permanent injunction prohibiting the co-conspirator defendants from enforcing the order imposing sanctions; and monetary relief. [Complaint at 4 50].3

Discussion

I. Local Rule 7-3

Plaintiff argues that the motion filed by defendants Zelon and Perluss and the motion filed motion should be denied because they failed to comply with Local Rule 7-3. [Dkt. 70 at 13-14; Dkt. 71 13-14;]. Local Rule 7–3 provides, in relevant part:
In all cases ..., counsel contemplating the filing of any motion shall first contact opposing counsel to discuss thoroughly, preferably in person, the substance of the contemplated motion and any potential resolution. The conference shall take place at least seven (7) days prior to the filing of the motion. If the parties are unable to reach a resolution which eliminates the necessity for a hearing, counsel for the moving party shall

include in the notice of motion a statement to the following effect: "This motion is made following the conference of counsel pursuant to L.R. 7–3 which took place on (date)." L.R. 7–3.

Contrary to plaintiff's argument, Perry's motion to dismiss complies with Local Rule 7-3. [See D 18 at 2]. Counsel for Zelon and Perluss, however, concedes that he failed to comply with the rule, but explains that he did not receive notice of the action until three days before the motion to dismiss was due [Dkt. 83 (Declaration of Kevin McCormick)].

When a party fails to comply with Local Rule 7–3, the court can, in its discretion, refuse to consider the motion. See, e.g., Singer v. Live Nation Worldwide, Inc., 2012 WL 123146, *2 (C.D. Cal. Jan. 1 2012). Failure to comply with the Local Rules, however, does not automatically require the denial of a party's motion, particularly where the non-moving party has suffered no apparent prejudice as a result the failure to comply. CarMax Auto Superstores California LLC v. Hernandez, 94 F. Supp. 3d 1078, 10 (C.D. Cal. 2015). Plaintiff has not demonstrated that he was prejudiced by the lack of conference. Moreover the issue of jurisdiction was raised in the motions to dismiss filed by Perry and Gibson, so even if the Court declined to consider the motion filed by Zelon and Perluss, it would not affect the ruling. Accordingly, the Court considers all motions to dismiss.

II. Standard governing dismissal for lack of subject matter jurisdiction

An attack on subject matter jurisdiction may be facial or factual. See Safe Air for Everyone v. Meyer, 373 F.3d 1035, 1039 (9th Cir. 2004); Warren v. Fox Family Worldwide, Inc., 328 F.3d 1136, 11 (9th Cir. 2003). "In a facial attack, the challenger asserts that the allegations contained in a complaint

are insufficient on their face to invoke federal jurisdiction. By contrast, in a factual attack, the challenger disputes the truth of the allegations that, by themselves, would otherwise invoke federal jurisdiction." Safe Air for Everyone, 373 F.3d at 1039. In a factual challenge, the court may consider extrinsic evidence relevant to the jurisdictional issue and "need not presume the truthfulness of the plaintiff's allegations." Safe Air for Everyone, 373 F.3d at 1039; Kingman Reef Atoll Invs. LLC v. United States, 541 F.3d 1189, 11 (9th Cir. 2008). However, it is inappropriate for the district court to resolve factual disputes when the jurisdictional issue and substantive issues are so intertwined that the question of jurisdiction is dependent on the resolution of factual issues going to the merits of an action.

The question of jurisdiction and the merits of an action are intertwined where a statute provides the basis for both the subject matter jurisdiction of the federal court and the plaintiff's substantive claim for relief. Safe Air for Everyone, 373 F.3d at 1039-1040 (internal quotation marks, citations, and footnote omitted). Thus, a district court should not resolve disputed facts relevant to establish subject matter jurisdiction unless "the facts necessary to sustain jurisdiction do not implicate the merits of the plaintiff's cause of action." Safe Air for Everyone, 373 F.3d at 1039 n.3 (quoting Morrison v. Amway Corp., 323 F.3d 920, 925 (1 1th C 2003)). In that situation, the proper course "is to find that jurisdiction exists and deal with the objection a direct attack on the merits of the plaintiff's case." Safe Air for Everyone, 373 F.3d at 1039 n.3 (quoting Williams v. Tucker, 645 F.2d 404, 415 (5th Cir. 1981)).

Defendants have not submitted extrinsic evidence. Rather, their motion is based on the allegations of the complaint and its attached documents, as well as on documents of which the Court may take judicial notice. Thus, defendants' Rule

12(b)(1) motion is a facial challenge and is evaluated under the standards applicable to facial Rule 12(b)(1) motions. See Menna v. Radmanesh, 2014 WL 6892724, at *7 (C.D. C Oct. 7, 2014) (finding that the defendants' motion to dismiss for lack of jurisdiction – which was based the allegations of the complaint, its attached documents, and documents of which the court may take judicial notice – amounted to a facial attack), report and recommendation adopted, 2014 WL 6606504 (C.D. C Nov. 5, 2014); Collazo v. Federal Nat'l Mort. Ass'n Corp., 2013 WL 2317798, at *3 (C.D. Cal. May 2 2013) ("Even when deciding a facial attack ... a court can look beyond the complaint to consider documents that are proper subjects of judicial notice."); Pacific Coast Fed'n. of Fishermen's Ass'n. v. United States, 9 F. Supp.2d 1039, 1045 (E.D. Cal. 2013) (analyzing motion to dismiss as a facial attack, "although the parties do reference documents subject to judicial notice and/or attached to the Complaint, Defendant does not of any additional evidence in support of its jurisdictional arguments").

III. Judicial notice

Plaintiff has filed numerous requests for judicial notice. All but one of plaintiff's requests se judicial notice of documents filed by plaintiff or by the defendants in this case. [See Dkt. 28 (requesting judicial notice of the complaint), Dkts. 30 & 62 (requesting judicial notice of Perry's motion to strike); Dk 34 & 72 (requesting judicial notice of plaintiff's declaration filed in support of his ex parte request to order motion off calendar); Dkt. 75 (requesting judicial notice of plaintiff's opposition to motion to dismiss)]. The Court already has these documents before it, so there is no need to take judicial notice of them. It appropriate, however, to take judicial notice of the first amended complaint filed in True Harmony v. Perry submitted by plaintiff. [Dkt. 85, Ex. 2]. See Fed. R. Evid. 201;

Lee v. City of Los Angeles, 250 F.3d 66 689-690 (9th Cir. 2001).

Gibson filed a request for judicial notice in which he seeks judicial notice of (a) an ex parte application filed by plaintiff in Los Angeles Superior Court Case No. BS 140530; (b) the judgment entered on June 3, 2009 in 1130 South Hope Street Investment Associates, LLC, a California Limited Liability Company v. 1130 South Hope Street Investment Associates LLC, a Delaware Limited Liability Company, Los Angeles Superior Court Case No. BC385560; and (c) the decision by the Court of Appeal in 1130 Hope Street Investment Associates, LLC v. Haiem, filed on April 27, 2015 in Case No. B254143. [Dkt. 4 Gibson's motion is granted. See Lee, 250 F.3d at 689-690; see also In re Am. Continental Corp./Lincoln Sav. & Loan Sec. Litig., 102 F.3d 1524, 1537 (9th Cir. 1996) ("[A]mple authority exists which recognize that matters of public record, including court records in related or underlying cases which have a dire relation to the matters at issue, may be looked to when ruling on a 12(b)(6) motion to dismiss.") (citations omitted), rev'd. on other grounds, Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach, 523 U.S. (1998).

In support of his opposition to plaintiff's motion for a preliminary injunction, Gibson filed declaration and exhibits. [Dkts. 55, 57]. The Court takes judicial notice of the following exhibits: (a) Exhibit 5: a judgment entered on April 22, 2010 in 1130 South Hope Street Investment Associates, LLC, California Limited Liability Company v. 1130 South Hope Street Investment Associates LLC, a Delaware Limited Liability Company, Los Angeles Superior Court Case No. BC385560 [Dkt. 55-3 at 2-13]; (Exhibit 6: a judgment entered on August 28, 2013 in In re the Petition of 1130 Hope Street Investment Associates, LLC, a California Limited Liability Company and Hope Park Lofts LLC, a California Limit

4 An identical copy of this judgment was included as Exhibit 4 of Gibson's exhibits in support of his opposition to plaintiff's motion for a preliminary injunction. [Dkt. 55]. The Court discusses several other exhibits included in that document, and for ease of reference, it cites to the judgment as attached to Gibson's exhibits. [Dkt. 55-2 at 4-11].

Liability Company, in Los Angeles Superior Court Case No. BS140530 [Dkt. 55-3 at 8-13]; (c) Exhibit a "Limited Liability Company Certificate of Amendment" from the California Secretary of State, dated September 16, 2013 changing the name of 1130 South Hope Street Investment Associates, LLC back 1130 Hope Street Investment Associates, LLC [Dkt. 55-3]; and (d) Exhibit 8: a Certificate of Status from the California Secretary of State dated May 16, 2016, indicating that 1130 Hope Street Investment Associates, LLC was active and in good standing [Dkt. 55-4]. See Lee, 250 F.3d at 689-690.

Finally, Solomon and HPL filed a request for judicial notice. [Dkt. 58]. Most of the documents attached to their request are the same documents discussed above. To the extent that defendants request judicial notice of additional documents, the Court finds they are not necessary to a determination of the motions before it.

IV. The Rooker-Feldman doctrine5

Defendants Zelon .Perluss, Perry, and Gibson all contend that plaintiff's claims are barred under the Rooker-Feldman doctrine. [Dkt. 13 at 7-9; Dkt. 18 at 5-6; Dkt. 39 at 6-7]. Plaintiff argues that the Rooker-Feldman doctrine does not apply to his claims for reasons that are discussed below. [Dkt. 70 at 2 28; Dkt. 71 at 14-16].

The Rooker-Feldman doctrine precludes federal adjudication of a claim that "amounts to nothing more than an impermissible collateral attack on prior state court decisions." Ignacio v. Judges of the U Ct. of Appeals, 453 F.3d 1160, 1165 (9th Cir. 2006). "The doctrine bars a district court from exercising jurisdiction not only over an action explicitly styled as a direct appeal" and also "the 'de facto equivalent of such an appeal." Cooper v. Ramos, 704 F.3d 772, 777 (9th Cir. 2012) (quoting Noel v. Hall, 341 F. 1148, 1155 (9th Cir. 2003)). To determine whether an action functions as a de facto appeal, the court must "pay close attention to the relief sought by the federal-court plaintiff." Cooper, 704 F.3d at 777 (quoting Bianchi v. Rylaarsdam, 334 F.3d 895, 900 (9th Cir. 2003). Further, once a plaintiff "brings a forbidden de facto appeal" such that the Rooker–Feldman doctrine applies, the federal court is also prohibited from exercising jurisdiction over any issue that is "inextricably intertwined" with the state court's judgment. Cooper, 704 F.3d at 778–779. A claim is "inextricably intertwined" with a state court judgment "if the federal claim succeeds only to the extent that the state co wrongly decided the issues before it." Cooper, 704 F.3d at 779 (quoting Pennzoil Co. v. Texaco, Inc., 4 U.S. 1, 25 (1987) (Marshall, J. concurring)); see also Pennzoil, 481 U.S. at 25 ("Where federal relief can only be predicated upon a conviction that the state court was wrong, it is difficult to conceive the federal proceeding as, in substance, anything other than a prohibited appeal of the state-court judgment."); Bianchi, 334 F.3d at 898 (explaining that claims are " 'inextricably intertwined' with the state court's decision" "the adjudication of ... [such] claims would undercut the state ruling").

With these principals in mind, the Court considers whether the Rooker-Feldman doctrine bars plaintiff's federal claims – that is, claims one through five of the complaint. Each of plaintiff's

federal claims is based upon his allegations that the California Court of Appeal lacked jurisdiction over plaintiff's appeal,6 misapplied California Code of Civil Procedure, and improper sanctioned plaintiff for filing a frivolous appeal. [Complaint at 25-50]. Critically, plaintiff seeks relief the form of a judgment declaring that the California Court of Appeal's sanctions order violated plaintiff's constitutional rights and a permanent injunction prohibiting enforcement of the California Court of Appeals sanctions order. [See Complaint at 25-50]. In an effort to circumvent the Rooker-Feldman doctrine, plaintiff argues that he does not seek a judgment "reversing the sanctions order," but "merely a declaratory judgment of this court that the sanctions order violated his constitutional rights." [See Dkt. 31 at 4]. However plaintiff's allegations confirm that he is challenging the decision and rulings of the state court. Notwithstanding plaintiff's characterization of his complaint, his challenge to the Court of Appeal's sanctions order and his request for an injunction prohibiting enforcement of the order amount to a de facto appeal. See Homola v. McNamara, 59 F.3d 647, 651 (7th Cir.1995) (explaining that "if 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"); Busch v. Torres, 905 F. Supp. 766, 772 (C.D. Cal. 1995) (because the plaintiff's claims necessarily required review of the execution of a state court order, they were barred under the Rooker–Feldman doctrine). Thus, although the Rooker-Feldman doctrine has a narrow scope, plaintiff's complaint falls squarely within its parameters. See Cooper, 704 F.3d at 781–783 (a federal plaintiff's claims that the defendants conspired to deny him a fair state court proceeding and manipulated evidence were inextricably intertwined with a state court decision because they succeeded only to the extent that the state court decision was wrong); Rhodes v. Gordon, 616 Fed. App'x 358, 359 (9th Cir. 2015) (affirming the district

court's dismissal under the Rooker-Feldman doctrine, noting that "Rhodes, frustrated by his lack of success in state court, sought review of those proceedings in federal district court. Framing the complaint in terms of 'conspiracy' does not alter the fact that Rhodes seeks review of an unfavorable state court ruling."), cert. denied, 137 S. Ct. 202 (2016); Reusser v. Wachovia Bank, 525 F.3d 855, 859 (9th Cir. 2008) (stating that 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"); Ignacio, 453 F.3d at 1165 (holding that the district court lacked subject matter jurisdiction to hear plaintiff's collateral attack on the state court's determination in his domestic relations case); Preven v. County of Los Angeles, 2011 WL 2882399, at * 11 (C.D. Cal. June 17, 2011) (holding that the Rooker-Feldman doctrine barred the plaintiffs' federal civil rights claims arising from an allegedly erroneous state court decision finding the plaintiffs' dogs "potentially dangerous," and that "[t]o the extent that plaintiffs challenge the procedural rulings of the Superior Court judge," they "essentially are requesting that this Court review the merits of an adverse state-court determination").

Where, as here, the Rooker-Feldman doctrine applies, federal courts are required to decline exercise jurisdiction over any claim that is inextricably intertwined with the state court's judgment, even if those claims allege misconduct by an adversary. See Cooper, 704 F.3d at 782 (finding that, where the plaintiff alleged legal errors by the state court, plaintiff's claims that defendants conspired to deny him fair hearing and to prevent him from obtaining DNA testing were inextricably intertwined with the state court's judgment denying the plaintiff DNA testing). Thus, the Rooker–Feldman doctrine also bars consideration of plaintiff's claims that Gibson, Perry,

Solomon, and HPL "conspired" with each other and with the Justices Zelon and Perluss or were part of a conspiracy to deprive plaintiff of his federal rights obtaining a sanctions award against him because these claims are "inextricably intertwined" with the validity of the California Court of Appeal's order. These claims can only succeed only if this Court concludes that the California Court of Appeal wrongly decided the issues before it. Accordingly, they are barred by the Rooker–Feldman doctrine. See Cooper, 704 F.3d at 782 ("Because the second claim 'succeeds only to the extent that the state court wrongly decided the issues before it' and 'federal relief can only be predicated upon a conviction that the state court was wrong,' Cooper cannot escape the reality that his second claim is inextricably intertwined with the state court decision, no matter what label he puts it.") (quoting Pennzoil Co., 481 U.S. at 25 (Marshall, J., concurring); Fontana Empire Ctr., LLC v. City Fontana, 307 F.3d 987, 992 (9th Cir. 2002) (explaining that claims are inextricably intertwined where "the relief requested in the federal action would effectively reverse the state court decision or void its ruling (internal quotation marks and citation omitted); Cutlip v. Deutche Bank Nat'l Trust Co., 2015 WL 54381 8 at *5 (N.D. Cal. Aug. 28, 2015) (holding that plaintiff's constitutional claims against a private party that "merely invoked the law" were "inextricably intertwined with his forbidden de facto appeal of the state court's judgment applying the challenged laws" and were barred by the Rooker-Feldman doctrine; Finnegan v. Munoz, 2015 WL 3937590, at *5 (C.D. Cal. June 26, 2015) (finding that the plaintiff's federal claims that the defendants conspired to prevent him from receiving a fair trial were precluded by the Rooker-Feldman doctrine because the plaintiff could prevail only if the federal court concluded that the state court wrongly decided the issues before it); Menna, 2014 WL 6892724, at *8-9 (finding claims that t defendants engaged in wrongdoing,

including fabricating allegations that resulted in the plaintiff losing civil action and a related appeal and allegations that the state court lacked jurisdiction amounted to impermissible de facto appeal and were barred by the Rooker-Feldman doctrine).

Plaintiff argues that the Rooker-Feldman doctrine does not apply to his case for several reasons, each of which is discussed below, and none of which are persuasive.

a. The sanctions order

First, plaintiff argues that the Rooker-Feldman doctrine is inapplicable because the sanctions order he challenges was not a ruling on the merits, but a collateral order. [Dkt. 70 at 26-27;Dkt. 71 at 14-15; D 86 at 12]. Contrary to plaintiff's argument, the Rooker-Feldman doctrine applies to final state court orders and judgments, as well as a state court's interlocutory orders and non-final judgments. See Doe & Associates Law Offices v. Napolitano, 252 F.3d 1026, 1030 (9th Cir. 2001) (holding that the Rooker-Feldman doctrine bars review of interlocutory state court decisions, including a claim involving the state court's denial of motion to quash); Worldwide Church of God v. McNair, 805 F.2d 888, 893 n.3 (9th Cir. 1986)(stating that The Rooker-Feldman doctrine "should apply to state judgments even though state court appeals are not final.").

b. The state court's lack of jurisdiction

Next, plaintiff argues that the state court lacked jurisdiction, so its "the action and all orders a judgments therein, and the appeal, are void ab initio." [Dkt. 70 at 27; Dkt. 71 at 15; Dkt. 86 at 12]. However allegations that the state court lacked jurisdiction do not preclude application of the Rooker-Feldman doctrine. See Doe, 415 F.3d at 1041-1043 (holding

that a complaint for declaratory and injunctive relief alleging that the state court lacked jurisdiction to terminate the plaintiff's parental rights and approve his child's adoption was "within the traditional boundaries of the Rooker-Feldman doctrine" and was a de facto appeal of a state court judgment); Fletcher v. Gilbert, 262 Fed. Appx. 791, 791 (9th Cir. 2007) (rejecting the argument that the Rooker-Feldman doctrine did not apply because the state court lacked subject mat jurisdiction and rendered a void judgment); Safouane v. Fleck, 226 Fed. Appx. 753, 758 (9th Cir. 200 (rejecting argument that the Rooker-Feldman doctrine should not apply because the state court proceeding were "a legal nullity and void" and holding that Rooker-Feldman precluded an action in federal court seeking a declaratory judgment that all state court orders and judgments against the plaintiffs were void); MacKay v. Pfeil, 827 F.2d 540, 543-545 (9th Cir. 1987) (finding an action amounted to an impermissible facto appeal where the plaintiff sought a declaration that the state court judgment was void for lack personal jurisdiction).

c. Extrinsic fraud

Plaintiff argues that the Rooker-Feldman doctrine does not apply because state court jurisdiction was procured by extrinsic fraud. [Dkt. 31 at 4; Dkt. 70 at 27; Dkt. 71 at 15; Dkt. 86 at 12-13]. In support of this argument, he relies on two cases – Kougasian v. TMSL, Inc., 359 F.3d 1136 (9th Cir. 2004) and In re S Valley Foods Co., 802 F.2d 186 (6th Cir. 1986) – and alleges that defendants "procured the jurisdiction the second court of appeals by fraud." [Dkt. 31 at 4; Dkt. 70 at 27; Dkt. 71 at 15; Dkt. 86 at 12-13].

In Sun Valley Foods Co., after noting that the Rooker-Feldman doctrine did not preclude jurisdiction in cases where a state court judgment has been procured through fraud, the Sixth Circuit affirmed the district court's dismissal of the

action because there had been no evidence of fraud which "deceived the Court in a wrong decree." Sun Valley Foods, Co., 801 F.2d at 189.

In Kougasian, the plaintiff filed state and federal actions based on her husband's death in a skiing accident. In her federal action, she sought to set aside the judgments in her two state cases, alleging that they were procured through extrinsic fraud on the court. Kougasian, 359 F.3d at 1139. The plaintiff claimed that in the first state case, the defendants committed extrinsic fraud by filing a perjured declaration at the l minute and refusing to provide the declarant's address or telephone number, thus preventing the plaint from deposing or questioning the declarant. Kougasian, 359 F.3d at 1139–1140. The Ninth Circuit held that the Rooker–Feldman doctrine did not apply to the plaintiff's claims that were based on the alleged extrinsic fraud, because the Rooker–Feldman doctrine "does not bar subject matter jurisdiction when a federal plaintiff alleges a cause of action for extrinsic fraud on a state court and seeks to set aside a state co judgment obtained by that fraud." Kougasian, 359 F.3d at 1140–1141.

Plaintiff's argument that defendants "procured the jurisdiction of the second court of appeals fraud" is difficult to follow. To begin with, it was plaintiff who filed the appeal in the California Court Appeal, so it was plaintiff, not defendants, who invoked that court's jurisdiction.

Perhaps plaintiff's argument is based upon his allegations that the jurisdiction of the Superior Court was obtained by extrinsic fraud. According to plaintiff, the "fraud" occurred when 1130 Hope Street LL initiated the interpleader action because 1130 Hope Street LLC was a "fictitious non-existent entity" at the time. [See, e.g., Complaint at 3, 10, 38]. Plaintiff's allegations of fraud relate to the validity of t

interpleader action in Superior Court. The sanctions order about which plaintiff complains, however, was the result of plaintiff's "egregious" conduct in the course of prosecuting the appeal he initiated in the California Court of Appeal. [See Complaint, Ex. 5 at 17]. Thus, his fraud allegations are, at best, tangent to the order serving as the basis for his federal claims.

In addition, plaintiff's allegation that 1130 Hope Street LLC "did not exist" is not borne out by the record. Plaintiff's allegation is based upon documents attached as exhibits 1 through 4 of the Complaint [Complaint at 12]. Those documents consist of the articles of organization showing that 1130 Hope Street Investment Associates, LLC was organized as a limited liability company in 2003 [Complaint, Ex. 1], that the name was changed to 1130 South Hope Street Investment Associates, LLC in 2005 [Complaint, Ex. and that the articles of 1130 South Hope Street LLC were cancelled in 2008 [Complaint, Exs. 2 & 3].

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, 2 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 Ho Street LLC changed its name back to 1130 Hope Street LLC. [Dkt. 55-3]. This action would have retroactive effect under California law. See Bourhis v. Lord, 56 Cal. 4th 320, 323, 325, 329 (2013) (noting that the California Supreme

Court had previously held that a corporate plaintiff may maintain a lawsuit even though it had been suspended at the time it filed its complaint, so long as the corporation had secured reinstatement prior to the date set for trial and holding that a corporation that files a notice of appeal when its corporate powers are suspended may proceed with the appeal after those powers have been revived, even if the revival occurs after the time to appeal has expired); Peacock Hill Ass'n v. Peacock Lagoon Cons Co., 8 Cal.3d 369, 373-374 (1972) (stating that "as to matters occurring prior to judgment, the revival corporate powers has the effect of validating the earlier acts and permitting the corporation to proceed w the action").

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 11 South Hope Street LLC and Hope Park Lofts LLC. [Complaint, Ex. 4 (Los Angeles Superior Court Ca 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 its behalf" from "taking any actions or filing a documents which ... represent that [1130 South Hope Street LLC] is not a valid and existing entity" "doing anything to suggest or to create any record that [1130 South Hope Street LLC] is cancelled dissolved or anything other than in good standing." [Dkt. 55-2 at 9]. On

April 22, 2010, the Superior Co in the same case entered a further judgment reaffirming that 1130 South Hope Street, LLC "remained existing California LLC," that any document purporting to cancel the LLC is "deemed void." [Dkt. 55-3 2-6]. Thus, plaintiff's allegations of fraud are contradicted by the record – which indicate that some of the defendants were the victims of fraud perpetrated by plaintiff's client. [See Dkt. 85, Ex. 1 (complaint fil in Los Angeles County Superior Court Case No. BC546574 by plaintiff as attorney for True Harmony 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 court." See Kougasian, 359 F.3d at 1140 (quoting Wood v. McEwen, 644 F.2d 797, 801 (9th Cir.198 (holding that the plaintiff's allegation of perjury did not raise an issue of extrinsic fraud); see also Menna 2014 WL 6892724, at *9–10 (dismissing an action pursuant to the Rooker-Feldman doctrine and rejecting the argument that defendants committed extrinsic fraud by making false representations to the state court because the alleged fraud went to the "very heart of the issues contested in the state court action" and t plaintiff was not prevented from pursuing his defense in the state court action); Clark v. Superior Court 2013 WL 6057498, at *2 (N.D. Cal. Nov. 14, 2013) (rejecting a claim that extrinsic fraud precluding application of Rooker–Feldman doctrine to the plaintiff's claim that the state court order should overturned because the state court deprived the plaintiff of due process).

d. Plaintiff was "not a party"

Plaintiff argues that the Rooker-Feldman doctrine does not apply because he was not a party to the appeal. [Dkt. 70 at 27; Dkt. 86 at 13].

Although the Rooker–Feldman doctrine generally does not apply when the person against whom the doctrine is invoked was not involved in the underlying state-court proceeding, see Lance v. Dennis, 546 U 459, 464 (2006), plaintiff was counsel in the underlying state action, he was the attorney who filed a notice of appeal, and the sanctions order he challenges was issued against him. [See Complaint, Ex. 5 at ("Thomas is ordered to pay $58,650 to Hope Park Lofts sanctions for bringing this frivolous appeal. Plaintiff's argument that he was not a "party" ignores the fact that he is the subject of the order by California Court of Appeal. The Rooker-Feldman doctrine has been applied in similar circumstances. Grundstein v. Ferguson, 2015 WL 1965349, at *1 (W.D. Wash. May 1, 2015) (applying the Rooker Feldman doctrine and holding that the court lacked jurisdiction "over plaintiff's claims challenging the monetary sanctions imposed on him during his state court probate proceedings"); Reiner v. California De of Indus. Relations, 2012 WL 7145706, at *1, 3 (C.D. Cal. Dec. 18, 2012) (applying the Rooker-Feldman doctrine to dismiss a civil rights action filed by a defense attorney who challenged sanctions imposed up him in a case before the state Workers' Compensation Appeals Board).
For the foregoing reasons, the Rooker-Feldman doctrine bars subject matter jurisdiction over plaintiff's federal claims against all defendants, and those claims should be dismissed without prejudice.

V. Plaintiff's remaining claims against Gibson, HPL, Perry, and Solomon

Jurisdiction over this action is based upon plaintiff's federal claims. See 28 U. S.C. § 1331; 42 U.S. § 1983. The complaint also includes state law claims. In light of the Court's recommendation that plaintiff's federal claims be dismissed without leave to amend, the Court recommends that

supplemental jurisdiction over plaintiff's state law claims be declined. See 28 U.S.C. § 1367(c)(3) (if the district court has dismiss all claims over which it has original jurisdiction, the court has discretion to decline supplemental jurisdiction over plaintiff's other claims); Acri v. Varian Assoc., Inc., 114 F. 3d 999, 1000-1001 (9th Cir. 1997) (banc).

VI. Plaintiff's motion for a preliminary injunction

On October 4, 2016, plaintiff filed a motion for a preliminary injunction, seeking to enjoin Zelon and Perluss from "further publication of the portion of the opinion dated April 27, 2015 related sanctions," and barring HPL and Solomon from levying his assets to satisfy the sanctions order. [Dkt. 2 "A district court may not grant a preliminary injunction if it lacks subject matter jurisdiction over the claim before it." Shell Offshore Inc. v. Greenpeace, Inc., 864 F. Supp. 2d 839, 842 (D. Alaska 201 aff'd, 709 F.3d 1281 (9th Cir. 2013). Because the Court lacks subject matter jurisdiction over plaintiff claims, his request for injunctive relief should be denied.

VII. Motions to Strike

Perry and Gibson each filed a Motion to Strike Claims Six and Seven of the Complaint pursuant California's anti-Slapp statute. [Dkts. 21, 40].

Because the Court should decline to exercise supplemental jurisdiction over plaintiff's state law claims, it need not reach the merits of these motions. Miller v. California Dep't of Corr., 2011 WL 44331 6 at *4 (E.D. Cal. Sept. 21, 2011) ("[S]ince all federal claims have been dismissed, the Court declines continue exercising supplemental jurisdiction over Plaintiffs' remaining state claims. ...Therefore, the federal court need not reach the merits of Defendants' Anti–SLAPP Motion.").

Recommendation

For the foregoing reasons, it appears that the defects in pleading could not possibly be cured by the allegation of other facts, and therefore granting leave to amend would be futile. See Watkins v. Proulx, 2 Fed. Appx. 678, 679 (9th Cir. 2007) ("Because Watkins' action is barred by Rooker-Feldman, amendment of his complaint would have been futile."). Accordingly, it is recommended that defendants' motions dismiss be granted, and judgment be entered dismissing this action without prejudice. Kelly v. Fleetwood Enters., Inc., 377 F.3d 1034, 1036 (9th Cir. 2004) (dismissal under Rooker–Feldman is a dismissal for lack of subject matter jurisdiction, and therefore is without prejudice).

/s/ Andrew J. Wistrich

U. S. Magistrate Judge

Dated: January 17, 2017

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1 Plaintiff actually filed two oppositions to Perry's motion.

2 Gibson was the attorney representing HPL. HPL's motion sought monetary sanctions in part based upon the attorney's fees it incurred. [Complaint, Ex. 5 at 20 n. 16].

3 He seeks monetary damages "against solely the Co-conspirator defendants" – namely, Gibson, Perry, Solomon, and HPL. [Complaint at 4, 47-50].

4 An identical copy of this judgment was included as Exhibit 4 of Gibson's exhibits in support of his opposition to plaintiff's

motion for a preliminary injunction. [Dkt. 55]. The Court discusses several other exhibits included in that document, and for ease of reference, it cites to the judgment as attached to Gibson's exhibits. [Dkt. 55-2 at 4-11].

5 The doctrine derives its name from two United States Supreme Court cases: District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983), and Rooker v. Fidelity Trust Company, 263 U.S. 413 (1923).

6 It is worth noting that it was plaintiff who filed the appeal in the court that he now alleges lacked jurisdiction.

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