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APPENDIX A1

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 24-1842

AARON JACOB MINDIOLA,
PLAINTIFF-APPELLANT

v.

STATE OF ARIZONA, KRIS MAYES, ARIZONA STATE ATTORNEY GENERAL; ET AL, DEFENDANTS-APPELLEES

Submitted: July 17, 2025
Filed: August 8, 2025

No. 24-1842 Mandate from the United States District Court for the District of Oregon, D.C. No. 3:23-cv-01008-SB

MANDATE

The judgment of this Court, entered July 17, 2025, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

For the Court: Molly C. Dwyer, Clerk of Court

APPENDIX A2

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 24-1842

AARON JACOB MINDIOLA,
PLAINTIFF-APPELLANT

v.

STATE OF ARIZONA, KRIS MAYES, ARIZONA STATE ATTORNEY GENERAL; COUNTY OF MARICOPA, JENNIFER POKORSKI (C/O COUNTY ATTORNEY RACHEL MITCHELL), COUNTY MANAGER FOR MARICOPA COUNTY; BERGIN, RETIRED HONORABLE JUDGE, (C/O JEFF FINE AZ CLERK); ARIZONA DEPARTMENT OF CHILD SAFETY, ANGIE RODGERS (C/O JEFF FINE AZ CLERK), DIRECTOR OF ARIZONA DEPARTMENT OF ECONOMIC SECURITY, DEFENDANTS-APPELLEES

Submitted: July 15, 2025
Filed: July 17, 2025

No. 24-1842 on Appeal from the United States District Court for the District of Oregon D.C. No. 3:23-cv-01008-SB - Karin J. Immergut, District Judge

MEMORANDUM

*This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3. **The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: SILVERMAN, TALLMAN, and BUMATAY, Circuit Judges.

Aaron Jacob Mindiola appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action arising from alleged errors in Mindiola's state-court divorce proceedings. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under Fed. R. Civ. P. 12(b). Garity v. APWU Nat'l Lab. Org., 828 F.3d 848, 854 (9th Cir. 2016). We affirm.

The district court properly dismissed with prejudice Mindiola's damages claims against the State of Arizona, the Arizona Department of Economic Security – Division of Child Support Services, and Mayes and Rodgers in their official capacities as barred by Eleventh Amendment immunity. See Jensen v. Brown, 131 F.4th 677, 696 (9th Cir. 2025) ("The Eleventh Amendment bars suits against the State or its agencies for all types of relief, absent unequivocal consent by the state." (citation omitted)); Jackson v. Hayakawa, 682 F.2d 1344, 1350 (9th Cir. 1982) (explaining that "Eleventh Amendment immunity extends to actions against state officers sued in their official capacities," unless the plaintiff seeks "only a declaratory judgment or injunctive relief").

The district court properly dismissed with prejudice Mindiola's claims against Judge Bergin arising from her decisions regarding discovery, custody, spousal support, and child support as barred by judicial immunity. See Lund v. Cowan, 5 F.4th 964, 971 (9th Cir. 2021) (explaining that judges are immune from suit for damages for their judicial acts and

setting forth factors to determine whether an act is judicial).

The district court properly dismissed without prejudice Mindiola's claims against Maricopa County and Pokorski and any remaining claims against Mayes and Rodgers because Mindiola failed to allege facts sufficient to show personal jurisdiction over these defendants. *See Picot v. Weston*, 780 F.3d 1206, 1211 (9th Cir. 2015) (describing the "three-part test to assess whether a defendant has sufficient contacts with the forum state to be subject to specific personal jurisdiction").

The district court properly declined to address Mindiola's purported claims under the Americans with Disabilities Act ("ADA") because his complaint does not contain any allegations regarding the ADA. See Schneider v. Cal. Dep't of Corr., 151 F.3d 1194, 1197 n.1 (9th Cir. 1998) ("In determining the propriety of a Rule 12(b)(6) dismissal, a court may not look beyond the complaint to a plaintiff's moving papers, such as a memorandum in opposition to a defendant's motion to dismiss.").

The district court did not abuse its discretion in denying leave to amend because amendment would be futile. See Walker v. Beard, 789 F.3d 1125, 1139 (9th Cir. 2015) (denial of leave to amend is not an abuse of discretion where no amendment would cure the complaint's deficiencies); see also Boquist v. Courtney, 32 F.4th 764, 774 (9th Cir. 2022) ("[W]here, as here, a plaintiff proceeds pro se, [the court] must construe the pleadings liberally and afford the [plaintiff] the benefit of any doubt. A liberal construction of a pro se

complaint, however, does not mean that the court will supply essential elements of a claim that are absent from the complaint." (citations and internal quotation marks omitted)).

We do not consider matters raised for the first time on appeal. See Scafidi v. Las Vegas Metro. Police Dep't, 966 F.3d 960, 964 (9th Cir. 2020).

AFFIRMED.

APPENDIX B1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

No. 3:23-CV-01008-SB

AARON JACOB MINDIOLA,
PLAINTIFF

v.

STATE OF ARIZONA KRIS MAYES, ARIZONA STATE ATTORNEY GENERAL, ARIZONA MARICOPA COUNTY JENNIFER POKORSKI, COUNTY MANAGER FOR MARICOPA COUNTY, HON. JUDGE BERGIN, ARIZONA DES DCSS ANGIE RODGERS DIRECTOR OF ARIZONA DEPARTMENT OF ECONOMIC SECURITY, DEFENDANTS

Filed: February 29, 2024

JUDGEMENT

Based on the Court's Order, ECF 47, **ADOPTING** Judge Beckerman's F&R, ECF 36, **IT IS ADJUDGED** that Plaintiff's claims against the State of Arizona, Judge Dawn Bergin, and Arizona DES DCSS are **DISMISSED** with prejudice and Plaintiff's claims against Kris Mayes and Angie Rogers are **DISMISSED** without prejudice.

DATED this 29th day of February, 2024.
/s/ Karin J. Immergut
Karin J. Immergut
United States District Judge

APPENDIX B2

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

No. 3:23-CV-01008-SB

AARON JACOB MINDIOLA,
PLAINTIFF

v.

STATE OF ARIZONA KRIS MAYES, ARIZONA STATE ATTORNEY GENERAL, ARIZONA MARICOPA COUNTY JENNIFER POKORSKI, COUNTY MANAGER FOR MARICOPA COUNTY, HON. JUDGE BERGIN, ARIZONA DES DCSS ANGIE RODGERS DIRECTOR OF ARIZONA DEPARTMENT OF ECONOMIC SECURITY, DEFENDANTS

Filed: February 29, 2024

ORDER ADOPTING F&R

Aaron Jacob Mindiola, Columbia City, OR. Pro se.

Dan L. Murphy & Bruce C. Smith, Lewis Brisbois Bisgaard & Smith LLP, 888 SW Fifth Avenue Suite 900, Portland, OR 97204. Attorneys for Defendants State of Arizona, Kris Mayes, Judge Dawn Bergin, Arizona Department of Economic Security, Division of Child Support Services, and Angie Rogers.

IMMERGUT, District Judge.

On January 29, 2024, Magistrate Judge Stacie Beckerman issued her Findings and Recommendation

("F&R"), ECF 36, recommending that the State of Arizona, Kris Mayes, Judge Dawn Bergin, Angie Rogers, and Arizona Department of Economic Security, Division of Child Support Services' ("DCSS") (collectively "State Defendants") Motion to Dismiss, ECF 20, be GRANTED. This Court ADOPTS Magistrate Judge Beckerman's F&R.

STANDARDS

Under the Federal Magistrates Act ("Act"), as amended, the court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. §636(b)(1)(C). If a party objects to a magistrate judge's F&R, "the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.* But the court is not required to review, de novo or under any other standard, the factual or legal conclusions of the F&R that are not objected to. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc). Nevertheless, the Act "does not preclude further review by the district judge, *sua sponte*" whether de novo or under another standard. *Thomas*, 474 U.S. at 154.

CONCLUSION

This Court has reviewed de novo the portions of Judge Beckerman's F&R to which Plaintiff objected. This Court adopts Judge Beckerman's F&R, ECF 36, in full. Accordingly, this Court GRANTS the State Defendants' Motion to Dismiss, ECF 20. This Court DISMISSES Plaintiff's claims against the State of Arizona, Judge Dawn Bergin, DCSS with prejudice. This

Court Dismisses Plaintiff's claims against Kris Mayes and Angie Rogers without prejudice.

IT IS SO ORDERED.
DATED this 29th day of February, 2024.

/s/ Karin J. Immergut
Karin J. Immergut
United States District Judge

APPENDIX B3

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

No. 3:23-CV-01008-SB

AARON JACOB MINDIOLA,
PLAINTIFF

v.

STATE OF ARIZONA KRIS MAYES, ARIZONA STATE ATTORNEY GENERAL, ARIZONA MARICOPA COUNTY JENNIFER POKORSKI, COUNTY MANAGER FOR MARICOPA COUNTY, HON. JUDGE BERGIN, ARIZONA DES DCSS ANGIE RODGERS DIRECTOR OF ARIZONA DEPARTMENT OF ECONOMIC SECURITY, DEFENDANTS

Filed: February 23, 2024

JUDGEMENT

Based on the Court's Order, ECF 45, ADOPTING Judge Beckerman's F&R, ECF 33, IT IS ADJUDGED that Plaintiff's claims against Maricopa County and Jennifer Pokorski are DISMISSED without prejudice.

DATED this 23rd day of February, 2024.

/s/ Karin J. Immergut
Karin J. Immergut
United States District Judge

APPENDIX B4

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

No. 3:23-CV-01008-SB

AARON JACOB MINDIOLA,
PLAINTIFF

v.

STATE OF ARIZONA KRIS MAYES, ARIZONA STATE ATTORNEY GENERAL, ARIZONA MARICOPA COUNTY JENNIFER POKORSKI, COUNTY MANAGER FOR MARICOPA COUNTY, HON. JUDGE BERGIN, ARIZONA DES DCSS ANGIE RODGERS DIRECTOR OF ARIZONA DEPARTMENT OF ECONOMIC SECURITY, DEFENDANTS

Filed: February 23, 2024

ORDER ADOPTING F&R

Aaron Jacob Mindiola, Columbia City, OR. Pro se.
Daniel P. Struck, Struck Love Bojanowski & Acedo, PLC, 3100 West Ray Road, Chandler, AZ 85226. Attorney for Defendants Maricopa County and Jennifer Pokorski.

STANDARDS

Under the Federal Magistrates Act ("Act"), as amended, the court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. §636(b)(1)(C). If a party objects to a magistrate judge's

F&R, "the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." Id. But the court is not required to review, de novo or under any other standard, the factual or legal conclusions of the F&R that are not objected to. See Thomas v. Arn, 474 U.S. 140, 149–50 (1985); United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc). Nevertheless, the Act "does not preclude further review by the district judge, sua sponte" whether de novo or under another standard. Thomas, 474 U.S. at 154.

CONCLUSION

This Court has reviewed de novo the portions of Judge Beckerman's F&R to which Plaintiff and the County Defendants objected. County Defendants only challenge Judge Beckerman's application of the *Rooker-Feldman* doctrine in her subject matter jurisdiction analysis and no other aspect of the F&R. Based on this record, this Court adopts Judge Beckerman's F&R, ECF 33, in full. Accordingly, this Court GRANTS the County Defendants' Motion to Dismiss, ECF 18, and DISMISSES Plaintiff's claims against the County Defendants without prejudice.

IT IS SO ORDERED.
DATED this 23rd day of February, 2024.

/s/ Karin J. Immergut
Karin J. Immergut
United States District Judge

APPENDIX C1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

No. 3:23-CV-01008-SB

AARON JACOB MINDIOLA,
PLAINTIFF

v.

STATE OF ARIZONA ET AL, DEFENDANTS

Filed: January 19, 2024

FINDINGS AND RECOMMENDATION

BECKERMAN, U.S. Magistrate Judge.

Plaintiff Aaron Jacob Mindiola ("Mindiola"), a self-represented litigant, filed this action against various defendants alleging claims of negligence and violations of the United States Constitution. Now before the Court is a motion to dismiss filed by the State of Arizona, Judge Dawn Bergin ("Judge Bergin"), Kris Mayes ("Mayes"), Angie Rogers ("Rogers"), and the Arizona Department of Economic Security, Division of Child Support Services ("DCSS") (together "the State Defendants").[1] (ECF No. 20.)

[1]Mindiola failed to name Mayes and Rogers in the caption of his complaint, in violation of Rule 10(a) of the Federal Rules of Civil Procedure. To the extent that Mindiola intended to name them as separate defendants, the Court considers them as parties to the instant motion.

The parties have not consented to the jurisdiction of a magistrate judge under 28 U.S.C. § 636. For the reasons that follow, the Court recommends that the district judge grant the State Defendants' motion to dismiss.

BACKGROUND

The alleged events in Mindiola's complaint relate to a family law case litigated in the State of Arizona from approximately 2018 to 2022. (Compl. at 7, ECF No. 1.) According to Mindiola, beginning around 2017, Mindiola, his wife at the time, and his two children lived in Oregon. (*Id.*) Mindiola worked temporarily in Arizona and, while there, his then-wife served him with a petition for dissolution of marriage. (*Id.*) Mindiola attended a court hearing, and an Arizona state court assumed jurisdiction over the case. (*Id.*) The court required Mindiola's daughter to move to Arizona, where she lived with Mindiola. (*Id.*) After a change in employment, Mindiola and his daughter moved back to Oregon "despite Arizona Court Orders." (*Id.*)

The Arizona court entered a decree of dissolution and an income withholding order on March 31, 2021. (*Id.*) The court also entered an order of assistance, requiring Mindiola's daughter's return to Arizona. (*Id.*) The court faulted Mindiola for moving his daughter to Oregon against court order and for not providing the court with his military mental health records. (*Id.*) On August 10, 2022, the Arizona Court of Appeals affirmed the trial court's order. (*Id.*) The Arizona Supreme Court declined review. (*Id.*) Mindiola asserts that, subsequently, over $100,000 "show[ed] up on his credit report in back child support." (*Id.*)

On July 10, 2023, Mindiola filed this case, alleging violations of the Due Process Clause, Equal Protection

Clause, and Privileges and Immunities Clause, as well as violations of 18 U.S.C. § 241 and Arizona Revised Statute 25-403(5), against the State Defendants. (*Id.* at 4-5.) Specifically, Mindiola alleges that the State of Arizona violated the Fourteenth Amendment by permitting Judge Bergin to discriminate against him. (*Id.* at 5.) He alleges that Judge Bergin violated the Fourteenth Amendment by improperly taking jurisdiction over the marriage dissolution case, forcing Mindiola to disclose his mental health records without ordering disclosure of his ex-wife's mental health records, awarding attorney's fees to Mindiola's ex-wife, calculating spousal maintenance and child support without consulting a forensic financial advisor, removing his daughter from Oregon, interfering with his parental rights, and causing him financial ruin. (*Id.*) Mindiola alleges that DCSS failed to provide "any form of financial statements illustrating where and how the distribution of funds are being allocated" from his income withholdings, and that DCSS "demand[ed Mindiola's] financial records before considering providing relief from suspending [his] Drivers Licenses or Passport." (*Id.*)

Mindiola asserts that he suffered mental anguish and humiliation and, as a result, needed to attend counseling and sought medical treatment for irregular heart rhythms. (*Id.* at 8.) He seeks $500,000 in damages and "any other available remedy for tort damages incurred." (*Id.*)

ORDER TO SHOW CAUSE

The Court extended the deadline for all defendants to file an answer or motion to dismiss the complaint to October 17, 2023. (ECF No. 8.) The State Defendants filed

a motion to dismiss on November 3, 2023. (ECF No. 20.) The Court issued an order to show cause why the Court should not deny the motion to dismiss as untimely. (ECF No. 28.) The State Defendants filed a response, acknowledging that the motion was late but arguing that the late filing constituted excusable neglect. (Defs.' Resp. Order Show Cause ("Defs.' Resp. OSC") at 5, ECF No. 29.) Mindiola filed a reply. (Pl.'s Reply Order Show Cause ("Pl.'s Reply"), ECF No. 30.)

Pursuant to Federal Rule of Civil Procedure 6(b)(1)(B), the Court may, for good cause, extend the deadline to file a motion "on motion made after the time has expired if the party failed to act because of excusable neglect." The Court has discretion to grant a party an extension of time. *See Comm. for Idaho's High Desert, Inc. v. Yost*, 92 F.3d 814, 824 (9th Cir. 1996).

When evaluating excusable neglect, the Court considers: "(1) the danger of prejudice to the non-moving party, (2) the length of delay and its potential impact on judicial proceedings, (3) the reason for the delay, including whether it was within the reasonable control of the movant, and (4) whether the moving party's conduct was in good faith." *Beltran Prado v. Nielsen*, 379 F. Supp. 3d 1161, 1166 (W.D. Wash. 2019) (citing *Pincay v. Andrews*, 389 F.3d 853, 855 (9th Cir. 2004)); see also *Comm. for Idaho's High Desert, Inc.*, 92 F.3d at 825 n.4 (explaining that those four factors apply when considering "excusable neglect" pursuant to Rule 6(b)). A court may, "where appropriate, . . . accept late filings caused by inadvertence, mistake, or carelessness, as well as by intervening circumstances beyond the party's control." *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 388 (1993).

The Court concludes that the State Defendants have demonstrated excusable neglect for their untimely motion to dismiss. As a preliminary matter, the Court construes the State Defendants' response to the Court's order as a Rule 6(b) motion for an extension of time. *See Westhoff Vertriebsges mbH v. Berg*, No. 22-cv-0938-BAS-SBC, 2023 WL 5811843, at *5 n.6 (S.D. Cal. Sept. 6, 2023) ("[T]he Court construes the portion of Defendants' opposition that seeks to explain the delinquency as a motion to extend under Rule 6(b)."); *Jimenez v. Ford Motor Co.*, No. 21-cv-04967-VC, 2022 WL 3151973, at *1 (N.D. Cal. Aug. 8, 2022) (construing an untimely filed opposition to a motion that included an explanation for the delay as a Rule 6(b) motion "because the plaintiffs were put on notice of the request and had a meaningful opportunity to respond").

Considering the first factor, the Court finds that the danger of prejudice to Mindiola is minimal.

The State Defendants and Mindiola conferred regarding the issues raised in the State Defendants' motion, and Mindiola filed a forty-six page response to the motion.[2] (*See* Pl.'s Resp. Defs.' Mot. Dismiss ("Pl.'s Resp.") at 1-2, ECF No. 25.) The issues raised in the motion to dismiss are not a surprise to Mindiola, discovery has been stayed (ECF No. 24), and no further proceedings occurred during the brief delay. The Court concludes that the first factor weighs in favor of accepting the filing.

Second, the length of the delay was minimal—two and a half weeks—and has not unduly disrupted this Court's proceedings. For instance, at the time of filing, the Court had not yet issued its opinion on the other defendants'—Maricopa County's and Jennifer Pokorski's—motion to dismiss. *See Ray v. Dzogchen Shri Singha Found. USA, Inc.*, No. 3:23-cv-233-SI, 2023 WL 3451987, at *6 (D. Or. May 15, 2023) (concluding that a two-week delay was reasonable under the circumstances). The second factor also weighs in favor of accepting the filing.

[2]The Court notes that Mindiola's response to the State Defendants' motion to dismiss was also late, and that his response did not comply with Local Rule 7-1(c)—limiting legal memoranda to twenty pages and requiring each to have a table of contents and a table of cases and authorities with page references. The Court nevertheless accepts Mindiola's response.

Considering the third and fourth factors, the State Defendants explain that the delay was due, in part, to

questions regarding service on Judge Bergin. (Defs.' Resp. OSC at 3; *see also* Pl.'s Resp. at 2, acknowledging concerns regarding the proper service of Judge Bergin; Pl.'s Aff. of Service at 2 n.2, ECF No. 12, "The Process Server to date, has not been able to serve the documents and unable to loca[te] the Hon. Judge Bergin. The Process Server believes that this Defendant may be located overseas.") The State Defendants hoped to file a single motion to dismiss, instead of separate motions for Judge Bergin and for the other State Defendants. (Defs.' Resp. OSC at 3.) According to the State Defendants, on October 17, 2023, Mindiola circulated a draft motion seeking clarification from the Court on whether Judge Bergin had been served and why counsel for Judge Bergin was not authorized to accept service for her. (*Id.*) In response, counsel for the State Defendants indicated they would work to obtain Judge Bergin's consent to waive service. (*Id.*) On October 20, 2023, counsel obtained Judge Bergin's consent to waive service. (*Id.*) At that time, the State Defendants believed Mindiola had agreed to an extension of time for all State Defendants to file a single motion to dismiss. (*Id.*) As such, there is no indication that the State Defendants acted in bad faith but, in fact, sought Judge Bergin's consent to waive service for Mindiola's convenience and judicial economy. Accordingly, the Court concludes that the third and fourth factors weigh in favor of accepting the filing. *See Teater v. Pfizer, Inc.*, No. 3:05-cv-00604-HU, 2013 WL 2455995, at *4 (D. Or. June 6, 2013) ("[I]t can hardly be questioned that Plaintiff's counsel has acted in good faith."); *Perez-Denison v. Kaiser Found. Health Plan of the Nw.*, 868 F. Supp. 2d 1065, 1079 (D. Or. 2012) ("Even 'when an actor *knowingly* misses a deadline but acts in good faith without any intention to prejudice the opposing party, manipulate the legal process, or interfere

with judicial [decision]-making, the actor's delay is neglectful, but not intentional, and thus may be excusable.'" (quoting *Golf Sav. Bank v. Walsh*, No. 3:09-cv-00973-AC, 2010 WL 3222112, at *5 (D. Or. Aug. 13, 2010))).

Mindiola has not identified how the brief delay prejudiced him other than that the delay caused him uncertainty. (Pl.'s Reply at 2.) He asserts that the delay adversely affected his preparation but does not specify how. (*Id.*) Neither do the cases cited by Mindiola suggest that the Court should refuse to accept the State Defendants' motion. *See Pratt v. Philbrook*, 109 F.3d 18, 22 (1st Cir. 1997) (remanding to the trial court for reconsideration and noting the absence of "cognizable prejudice," that a twenty-one day delay was "not particularly extended," and that "there does not appear to have been a lack of good faith with respect to the reason for the delay"). Accordingly, "[g]iven the minimal risk of prejudice, the short delay, the reasons given for the delay, and [the Defendants'] apparent good faith, [Defendants'] late submission was the result of excusable neglect, and the Court accepts the filing." *Jimenez*, 2022 WL 3151973, at *1 (citing *Bateman v. U.S. Postal Serv.*, 231 F.3d 1220, 1223-24 (9th Cir. 2000)); see also *Ray, 2023 WL 3451987, at *6* (granting extension of time under Rule 6(b)); *Perez-Denison*, 868 F. Supp. 2d at 1079 (same).

DISCUSSION

The Court turns to the merits of the State Defendants' motion to dismiss. The State Defendants argue that the Court should dismiss the complaint for lack of subject matter jurisdiction, lack of personal jurisdiction, improper venue, and failure to state a claim.

separate occasions, Mindiola's "financial ruin" resulting from the Arizona Court of Appeals' appellate decision, and Mindiola's mental anguish and humiliation resulting from the proceedings.)

Finally, applying the third factor, although Mindiola does not explicitly appeal the state court judgment, his allegations make clear that he is challenging the state court's denial of the relief he sought in the family law proceedings. Thus, for Mindiola to prevail on those claims, the Court necessarily would have to determine that the Arizona courts wrongly decided the underlying family law case. *See Safouane v. Fleck*, 226 F. App'x 753, 758 (9th Cir. 2007) (affirming dismissal under *Rooker-Feldman* because federal courts lack jurisdiction to determine validity of state court parental rights proceedings); *see also Scharfenberger v. Jacques*, No. 2:18-cv-1939-TLN-EFB-PS, 2020 WL 589421, at *2 (E.D. Cal. Feb. 6, 2020) (holding that *Rooker-Feldman* barred federal court jurisdiction where the "plaintiff's alleged injury arises out of the state court order requiring him to make child support payments"); *Richards v. Cnty. of L.A.*, No. 17-cv-0400 PSG (AGRx), 2017 WL 7410985, at *8 (C.D. Cal. Oct. 20, 2017) ("[T]he essence underlying Plaintiff's claims is his dissatisfaction with and attempt to circumvent the paternity ruling by the state court . . . [and] the crux of the allegations are inextricably intertwined with the state court findings. Accordingly, the Court finds that the [complaint] is effectively a *de facto* appeal of the final state court decision and as such is barred by the *Rooker-Feldman* doctrine."); *Smith v. Hamilton*, No. 2:14-cv-2445 KJM DAD PS, 2015 WL 1956365, at *3-4 (E.D. Cal. Apr. 29, 2015) (concluding that *Rooker-Feldman* precluded federal court from hearing action where the plaintiff's claims against ex-

spouse amounted to a challenge of a state court order to pay child support).

An exception to the *Rooker-Feldman* doctrine exists when a state court judgment is based on extrinsic fraud. *See Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1141 (9th Cir. 2004) ("It has long been the law that a plaintiff in federal court can seek to set aside a state court judgment obtained through extrinsic fraud.") Extrinsic fraud is "conduct which prevents a party from presenting his claim in court." Id. at 1140 (quoting Wood v. McEwen, 644 F.2d 797, 801 (9th Cir. 1981)). This exception, however, does not apply when a plaintiff alleges intrinsic fraud. See Dixon v. State Bar of Cal., 32 F. App'x 355, 356-57 (9th Cir. 2002). Intrinsic fraud is fraud that "goes to the very heart of the issues contested in the state court action." Id. at 357 (quoting Green v. Ancora-Citronelle, 577 F.2d 1380, 1384 (9th Cir. 1978)). For example, the Ninth Circuit has found that allegations of "discriminatory prosecution, the use of fabricated evidence, and the wrongful exclusion of supposedly exculpatory evidence" described intrinsic, not extrinsic, fraud. Dixon, 32 F. App'x at 357; see also Wood, 644 F.2d at 801 (holding that allegations of perjury, are, at best, intrinsic fraud) (citation omitted).

Here, Mindiola does not allege any facts indicating that he was prevented from presenting his allegations in Arizona state court. Although his allegations are not entirely clear, it appears that Mindiola is alleging that individuals may have engaged in misconduct during the state court proceeding, such as discriminating against him by forcing him to disclose his mental health records. (Compl. at 5.) Mindiola, however, does not allege deceitful or fraudulent conduct that was extrinsic to the

matters involved in his state court case. Accordingly, his allegations do not establish an exception to the *Rooker-Feldman* doctrine. *See Hucul v. Mathew-Burwell*, No. 16-cv-1244 JLS (DHB), 2017 WL 476547, at *5 (S.D. Cal. Feb. 6, 2017) (finding that the plaintiff's complaint alleging a conspiracy to deprive him of his constitutional rights failed to allege facts supporting the extrinsic fraud exception to the *Rooker-Feldman* doctrine in family court proceedings); *Rossi v. Garrison*, No. 1:14-cv-01642-CL, 2016 WL 3003209, at *3 (D. Or. Mar. 22, 2016) (holding that the plaintiff's allegations that local judges worked with law enforcement and private persons to secure a false judgment against him "undoubtedly amounts to intrinsic fraud").

The Court recommends that the district judge dismiss Mindiola's claims against the State of Arizona and Judge Bergin for lack of subject matter jurisdiction without prejudice but without leave to amend in this action. *See Kelly v. Fleetwood Enters., Inc.*, 377 F.3d 1034, 1036 (9th Cir. 2004) ("[B]ecause the district court lacked subject matter jurisdiction, the claims should have been dismissed without prejudice."); *see also White v. Dobrescu*, 651 F. App'x 701, 702 (9th Cir. 2016) (affirming dismissal under the *Rooker-Feldman* doctrine "but revers[ing] the district court's decision to do so with prejudice"); *Wills v. Bank of N.Y. Mellon*, No. 3:22-cv-2005-HZ, 2022 WL 18025203, at *2 (D. Or. Dec. 30, 2022) ("A dismissal under th[e *Rooker-Feldman*] doctrine generally is without prejudice, although one from which the plaintiff will not be able to replead in this Court.") (citations omitted).

2. DCSS

The Court concludes that the *Rooker-Feldman* doctrine

does not bar Mindiola's claims against DCSS.

The Court finds that the second and third factors of the *Rooker-Feldman* doctrine are not satisfied with respect to Mindiola's claims against DCSS.[4] Applying the second factor, although the basis for Mindiola's claim against DCSS is unclear, it does not appear that the state court's ruling is at the core of Mindiola's claims. Mindiola alleges violations of the Fourteenth Amendment against DCSS based on its demanding of his "financial records before considering providing relief from suspending Plaintiffs Drivers [sic] Licenses or Passport" and failing to provide Mindiola "with any form of financial statements illustrating where and how the distribution of funds are being allocated from Plaintiff's [Income Withholding Order]." (Compl. at 5.) Although Mindiola's grievances are related to the state court's underlying child support order, his claims against DCSS appear to relate only to the collection of his child support payments.

[4]As discussed, the first and fourth factors are satisfied: Mindiola lost in a state court family law proceeding and the state court judgment preceded this action. (*See* Compl. at 7.)

In other words, the Court does not understand Mindiola to challenge the state court order itself, but rather child support collection procedures and a resulting credit report that arose subsequent to the Arizona state court decisions. As far as the Court can decipher from the instant complaint and the underlying family court case records,[5]

[5]At the State Defendants' request (Defs.' Mot. at 5 n.3, 6 n.5), the Court takes judicial notice of relevant court documents from the underlying family law litigation, including the Decree of Dissolution, Mindiola's Opening Brief in the Arizona Court of Appeals, and the memorandum decision by the Arizona Court of Appeals. *See United States v. Raygoza-Garcia*, 902 F.3d 994, 1001 (9th Cir. 2018) ("A court may take judicial notice of undisputed matters of public record, which may include court records[.]") (citations omitted); *Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) (noting that courts "may take judicial notice of court filings"). The underlying court dockets are *Mindiola v. Mindiola*, No. FC 2018-055324, and *Mindiola v. Mindiola*, No. 1 CA-CV-21-0271 FC. (*See* Exs. 1-3, Decl. Bruce Smith Supp. State Defs.' Mot. Dismiss, ECF No. 21.)

Mindiola's Fourteenth Amendment claims against DCSS are independent of the Arizona state courts' decisions.[6] *See Cooper v. Ramos*, 704 F.3d 772, 778 (9th Cir. 2012) ("The [*Rooker-Feldman*] doctrine does not preclude a plaintiff from bringing an 'independent claim' that, though similar or even identical to issues aired in state court, was not the subject of a previous judgment by the state court." (quoting *Skinner v. Switzer*, 562 U.S. 521, 532 (2011))); *Henrichs v. Valley View Dev.*, 474 F.3d 609, 613 (9th Cir. 2007) ("The doctrine applies when the federal plaintiff's claim arises from the state court judgment, not simply when a party fails to obtain relief in state court." (citing *Noel*, 341 F.3d at 1164-65)).

In the same vein, applying the third factor, Mindiola's claims against DCSS do not require this Court to review and reject the state court verdict. For Mindiola to prevail, as far as the Court interprets Mindiola's claims as discussed above, the Court would not need to determine that the Arizona courts wrongly decided the underlying family law case.

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[6]For similar reasons, because the claims against DCSS arose after the Arizona state court proceedings and were not actually litigated nor could they have been raised in the prior action, the Court does not recommend dismissal of the claims against DCSS based on the doctrines of issue or claim preclusion. *See GP Vincent II v. Est. of Beard*, 68 F.4th 508, 514 (9th Cir. 2023) ("[C]laim preclusion[] bars litigation in a subsequent action of any claims that were raised or could have been raised in the prior action." (quoting *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 713 (9th Cir. 2001))).

For these reasons, the Court does not recommend dismissal of Mindiola's claims against DCSS based on the *Rooker-Feldman* doctrine. *See Benavidez v. Cnty. of San Diego*, 993 F.3d 1134, 1143 (9th Cir. 2021) ("The [plaintiffs'] claims are not a de facto appeal from the juvenile court Orders. Instead, they allege that the misrepresentations by [the defendants] and further inaction by those social workers and other County employees resulted in violations of [the plaintiffs'] constitutional rights."); *Anglin v. Merchants Credit Corp.*, No. 18-cv-507-BJR, 2020 WL 4000966, at *3 (W.D. Wash. July 15, 2020) (rejecting the defendants' *Rooker-Feldman* argument where "the garnishment-based claims in this lawsuit, while related in subject matter to the claims underlying the [state court] lawsuit, are otherwise independent of those claims") (simplified), *aff'd*, No. 20-35820, 2022 WL 964216 (9th Cir. Mar. 30, 2022); *Reyna v. PNC Bank, N.A.*, No. 19-cv-00248-LEK-RT, 2020 WL 2309248, at *5 (D. Haw. May 8, 2020) ("The remaining claims, however, do not directly challenge the Foreclosure Judgment and, although related to, they are not 'inextricably intertwined' with the issues in the Foreclosure Action, and therefore they do not trigger preclusion under the *Rooker-Feldman* doctrine.").

3. Conclusion

The Court recommends that the district judge dismiss all of Mindiola's claims for lack of subject matter jurisdiction except for his claims against DCSS arising after and apart from the state court decisions.

Although the Court recommends dismissal of most of Mindiola's complaint for lack of subject matter jurisdiction, the Court addresses some of the State Defendants' other arguments as alternative causes for dismissal. *See*

Ebalu v. Portland Police Bureau, No. 3:21-cv-01536-HZ, 2022 WL 4599186, at *2 (D. Or. Sept. 29, 2022) (concluding that the court lacked subject matter jurisdiction and, alternatively, the plaintiff failed to state a claim); *Wilson v. Colorado*, No. 6:19-cv-00799-MK, 2019 WL 7476685, at *4 (D. Or. Oct. 10, 2019) (concluding that the court lacked subject matter jurisdiction to review a state court adjudication and the plaintiff failed to state a claim), *findings and recommendation adopted*, 2020 WL 42793 (D. Or. Jan. 3, 2020); *Mattson v. Quicken Loans, Inc.*, No. 3:17-cv-01840-YY, 2018 WL 2749571, at *1-2 (D. Or. June 7, 2018) (noting that the plaintiff failed to state a claim and insufficiently alleged personal jurisdiction).

II. PERSONAL JURISDICTION

Judge Bergin, Mayes, and Rogers move for dismissal for lack of personal jurisdiction. (Defs.' Mot. at 14.) The Court agrees that Mindiola has not satisfied his burden of demonstrating that the Court has personal jurisdiction over Judge Bergin, Mayes, and Rogers.

A. Legal Standards

Defendants' motion to dismiss is based on written materials rather than an evidentiary hearing. As a result, Mindiola bears the burden of making only a prima facie showing of jurisdictional facts. *See Glob. Commodities Trading Grp., Inc. v. Beneficio de Arroz Choloma, S.A.*, 972 F.3d 1101, 1106 (9th Cir. 2020) ("[W]here . . . the motion is based on written materials rather than an evidentiary hearing, the plaintiff need only make a prima facie showing of jurisdictional facts.") (simplified); *LNS Enters. LLC v. Cont'l Motors, Inc.*, 22 F.4th 852, 862 (9th Cir. 2022) ("If the court determines that it will receive only affidavits[,] . . . a plaintiff bears the burden of

making only a prima facie showing of jurisdictional facts[.]") (simplified). "In this posture, [a court] take[s] as true all uncontroverted allegations in the complaint and resolve[s] all genuine factual disputes in the plaintiff's favor." *Glob. Commodities*, 972 F.3d at 1106 (citation omitted).

"An exercise of personal jurisdiction in federal court must comport with both the applicable state's long-arm statute and the federal Due Process Clause." *Burri L. PA v. Skurla*, 35 F.4th 1207, 1212 (9th Cir. 2022) (citing *Chan v. Soc'y Expeditions, Inc.*, 39 F.3d 1398, 1404-05 (9th Cir. 1994)). Oregon's long-arm statute "authorizes personal jurisdiction over defendants to the full extent permitted by the United States Constitution." *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1068 (9th Cir. 2015) (citing OR. R. CIV. P. 4(L)). Accordingly, the Court must inquire whether its exercise of jurisdiction over Defendants would comport with the limits imposed by federal due process. *See id.* ("We therefore inquire whether the District of Oregon's exercise of jurisdiction over [the defendant] comports with the limits imposed by federal due process.") (simplified).

"Federal due process permits a court to exercise personal jurisdiction over a nonresident defendant if that defendant has 'at least minimum contacts with the relevant forum such that the exercise of jurisdiction does not offend traditional notions of fair play and substantial justice.'"[7] *Glob. Commodities*, 972 F.3d at 1106 (simplified). The Ninth Circuit uses a three-prong "test to analyze whether a party's minimum contacts meet the due process standard for the exercise of specific personal jurisdiction[.]" *LNS Enters.*, 22 F.4th at 859 (simplified); *Briskin v. Shopify, Inc.*, 87 F.4th 404, 411 (9th Cir. 2023) ("For specific jurisdiction to exist over a non-resident defendant, three conditions must be met."); *see also Freestream Aircraft (Berm.) Ltd. v. Aero Law Grp.*, 905 F.3d 597, 603 (9th Cir. 2018) (explaining that the three-prong inquiry is "commonly referred to as the minimum contacts test").

"First, '[t]he non-resident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform some act by which he purposefully avails himself of the privilege

[7]Although there are two bases for personal jurisdiction (i.e., specific and general jurisdiction), the Court need engage only in a specific jurisdiction analysis here because Mindiola does not assert that Defendants are subject to general jurisdiction in Oregon. (Pl.'s Resp. at 21); *cf. Burri, 35 F.4th at 1213 n.4* ("Personal jurisdiction may be specific or general. . . . [The plaintiff] does not contend that the [d]efendants are subject to general personal jurisdiction in [the forum state], so we do not address the analytical framework applicable to general personal jurisdiction cases.").

of conducting activities in the forum, thereby invoking the benefits and protections of its laws.'" *Glob. Commodities*, 972 F.3d at 1107 (alteration in original) (quoting *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004)). Second, the plaintiff's "claim must arise out of or relate to the defendant's forum-related activities." *Id.* (citing *Schwarzenegger*, 374 F.3d at 802). Third, the district court's exercise of personal jurisdiction over the defendant must be reasonable. *Id.*

"All three prongs must be satisfied [for a court] to assert personal jurisdiction[.]" *LNS Enters.*, 22 F.4th at 859. "If the plaintiff succeeds in satisfying both of the first two prongs, the burden then shifts to the defendant to present a compelling case that the exercise of jurisdiction would not be reasonable." *Glob. Commodities*, 972 F.3d at 1107 (simplified).

B. Analysis

Taking the uncontroverted allegations in Mindiola's complaint as true and resolving all genuine factual disputes in Mindiola's favor, the Court concludes that Mindiola has not satisfied his burden of making a prima facie showing of jurisdictional facts. *See generally id. at 1106* (explaining that where, as here, a motion is based on written material rather than an evidentiary hearing, a court "take[s] as true all uncontroverted allegations in the complaint and resolve[s] all genuine factual disputes in the plaintiff's favor") (citation omitted).

Under the first prong, Mindiola must establish that Judge Bergin, Mayes, and Rogers purposefully directed their activities toward Oregon, purposefully availed themselves of the privilege of conducting activities in Oregon, or "some combination thereof." *Davis v.*

Cranfield Aerospace Sols., Ltd., 71 F.4th 1154, 1162 (9th Cir. 2023) (quoting *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme*, 433 F.3d 1199, 1206 (9th Cir. 2006) (en banc)). Courts "evaluate purposeful direction under the *Calder* effects test[.]" *Briskin v. Shopify, Inc.*, 87 F.4th 404, 412 (9th Cir. 2023). The *Calder* effects test generally applies to intentional torts, not to breach of contract or negligence claims. *Holland Am. Line Inc. v. Wartsila N. Am., Inc.*, 485 F.3d 450, 460 (9th Cir. 2007) (citing *Calder v. Jones*, 465 U.S. 783, 789 (1984)). For the purpose of personal jurisdiction, "[a] section 1983 claim for deprivation of a constitutional right is more akin to a tort claim than a contract claim." *Ziegler v. Indian River Cnty.*, 64 F.3d 470, 474 (9th Cir. 1995). Accordingly, because Mindiola primarily alleges constitutional claims, the *Calder* effects test applies.

Under the *Calder* effects test, "if a defendant: (1) commits an intentional act, (2) expressly aimed at the forum state, that (3) causes harm the defendant knew was likely to be suffered in the forum state, then the defendant has purposefully directed conduct at the forum state." *Burri, 35 F.4th at 1212* (citing *Axiom Foods, Inc. v. Acerchem Int'l, Inc.*, 874 F.3d 1064, 1068-69 (9th Cir. 2017), *Dole Food Co. v. Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002), and *Calder*, 465 U.S. at 788-89). Importantly, "[e]xpress aiming requires more than the defendant's awareness that the plaintiff it is alleged to have harmed resides in or has strong ties to the forum, because the plaintiff cannot be the only link between the defendant and the forum. 'Something more'—conduct directly targeting the forum—is required to confer personal jurisdiction." *Ayla, LLC v. Alya Skin Pty. Ltd.*, 11 F.4th 972, 980 (9th Cir. 2021) (simplified).

Here, Mindiola has not alleged any facts demonstrating that Judge Bergin, Mayes, or Rogers expressly aimed action at Oregon. All of the alleged wrongful conduct occurred in Arizona. (*See* Compl. at 5, 7, describing Judge Bergin taking jurisdiction over the marriage dissolution case, requiring Mindiola to disclose his mental health records, awarding attorney's fees to Mindiola's ex-wife, and calculating spousal maintenance and child support in Arizona.) Although the complaint indicates that Judge Bergin removed Mindiola's daughter from Oregon, the complaint also indicates that Mindiola traveled with his daughter to Oregon "despite Arizona Court Orders." (*Id.*) Thus, it was Mindiola's conduct that led to that connection with Oregon, not Judge Bergin's. *See Walden v. Fiore*, 571 U.S. 277, 285 (2014) ("[T]he plaintiff cannot be the only link between the defendant and the forum. Rather, it is the defendant's conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him." (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 478 (1985) and *Kulko v. Superior Ct. of Cal., City and Cnty. of S.F.*, 436 U.S. 84, 93 (1978))). Accordingly, Mindiola has not alleged sufficient facts to demonstrate that Defendants purposefully directed their activities toward Oregon. *See Miller v. San Mateo Cnty.*, No. 6:18-cv-00884-JR, 2018 WL 5269842, at *3 (D. Or. Sept. 18, 2018) (dismissing Defendants San Mateo County and San Mateo County Department of Child Support Services for lack of personal jurisdiction and explaining that "the only communication defendants had with the forum is contacting plaintiff regarding missed child support payment"; "[t]he act of providing court notices is not the type of affirmative conduct which allows or promotes the transaction of business within Oregon"; and "[i]n other words, plaintiff's residence in Oregon is

immaterial and incidental to the services provided by defendants in California.") (citations omitted), *findings and recommendation adopted*, 2018 WL 5270320 (D. Or. Oct. 22, 2018); *Taylor v. Hennepin Cnty. Child Support*, No. 06-cv-5473 FDB, 2006 WL 2781333, at *2 (W.D. Wash. Sept. 25, 2006) (concluding that the county defendants had not purposefully availed themselves of the benefits of Washington when they had not "purposefully directed their activities or consummated a transaction with Washington residents" and any alleged wrongful conduct "necessarily occurred in Minnesota where [the] application for child support benefits was received and processed"); *Eaton v. Davis*, No. 3:01-cv-00854-AS, 2002 WL 31441217, at *4 (D. Or. Feb. 28, 2002) (concluding that the court lacked personal jurisdiction where "the sole contact defendants had with the State of Oregon was to forward the California Order [to pay child support] for registration, which, in turn, apparently placed a lien on Plaintiff's tax refunds" and "[t]his contact was initiated only after Plaintiff elected to make the State of Oregon his residence" and "[a]ll previous interactions between the Orange County Defendants and Plaintiff . . . have occurred in the State of California") (footnotes omitted).

Because Mindiola has not met his burden of establishing the first prong of the specific jurisdiction test, the Court does not address the other two prongs. *See Boschetto v. Hansing*, 539 F.3d 1011, 1016 (9th Cir. 2008) ("[I]f the plaintiff fails at the first step, the jurisdictional inquiry ends and the case must be dismissed." (citing *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1155 (9th Cir. 2006))); *CSX Transp., Inc. v. Apex Directional Drilling, LLC*, No. 3:14-cv-00470-HA, 2014 WL 6473554, at *4 (D. Or. Nov. 18, 2014) ("Given that [the

defendant] cannot establish that [a third-party defendant] purposefully availed itself of the Oregon forum, this court need not proceed to the remaining inquiries under the Ninth Circuit's specific jurisdiction test." (citing *Boschetto*, 539 F.3d at 1016)).

Mindiola has not made a prima facie showing of specific personal jurisdiction over Judge Bergin, Mayes, or Rogers, and the Court recommends that the district judge grant the State Defendants' motion to dismiss for lack of personal jurisdiction and dismiss Mindiola's claims against them without prejudice to pursuing the claims in a different jurisdiction. *See Harper v. Amur Equip. Fin., Inc.*, No. 3:22-cv-01723-YY, 2023 WL 2761365, at *3 (D. Or. Mar. 3, 2023) (dismissing for lack of personal jurisdiction without prejudice), *findings and recommendation adopted*, 2023 WL 2756185 (D. Or. Apr. 3, 2023); *Raze v. Walbridge*, No. 3:20-cv-00957-AR, 2022 WL 2670149, at *9 (D. Or. June 23, 2022) (dismissing for lack of personal jurisdiction without prejudice), *findings and recommendation adopted*, 2022 WL 2667014 (D. Or. July 11, 2022); see also *Pac. Vibrations, LLC v. Slow Gold Ltd.*, No. 22-cv-1118-LL-DDL, 2023 WL 4375633, at *4 (S.D. Cal. July 6, 2023) ("[T]he Court's Order granting dismissal in this case is without prejudice to Plaintiff pursuing its claims . . . in a jurisdiction where Defendants . . . are subject to personal jurisdiction[.]").

III. ELEVENTH AMENDMENT IMMUNITY

The State Defendants argue that the Court should dismiss Mindiola's claims against Mayes and Rogers in their official capacities and against the State of Arizona and DCSS because the Eleventh Amendment bars suit. (Defs.' Mot. at 7, 9-10.) The Court agrees.

A. Legal Standard

"The Eleventh Amendment bars suits against the State or its agencies for all types of relief, absent unequivocal consent by the state." *Romano v. Bible*, 169 F.3d 1182, 1185 (9th Cir. 1999) (citing *Pennhurst v. Halderman*, 465 U.S. 89, 100 (1984)). Accordingly, "agencies of the state are immune from private damage actions or suits for injunctive relief brought in federal court." *Brown v. Cal. Dep't of Corr.*, 554 F.3d 747, 752 (9th Cir. 2009) (citation omitted); *see also Sato v. Orange Cnty. Dep't of Educ.*, 861 F.3d 923, 928 (9th Cir. 2017) (noting that state agencies' immunity in federal court from suits for private damages or injunctive relief "is well established") (citation omitted). Additionally, "damages claims against the individual defendants in their official capacities are barred by the Eleventh Amendment." *Brown v. Or. Dep't of Corr.*, 751 F.3d 983, 989 (9th Cir. 2014).

Section 1983 permits suit against "persons," which the U.S. Supreme Court has construed to mean "state officials sued in their individual capacities[.]" *Hafer v. Melo*, 502 U.S. 21, 23 (1991). "State agencies . . . are not 'persons' within the meaning of § 1983, and are therefore not amenable to suit under that statute." *Maldonado v. Harris*, 370 F.3d 945, 951 (9th Cir. 2004) (citing *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 70 (1989)).

B. Analysis

Mindiola filed claims against the State of Arizona and DCSS. Although Mindiola's complaint suggests that DCSS is a division of Maricopa County (Compl. at 5), Mindiola acknowledges in his response that DCSS is a

state agency. (Pl.'s Resp. at 19.) Additionally, the Court takes judicial notice of the fact that DCSS is a division of the state.[8] *See* https://perma.cc/EXX2-PLSU (indicating that DCSS is a division of the Department of Economic Security, an agency of the state of Arizona).

Accordingly, the Court recommends that the district judge dismiss Mindiola's claims against the State of Arizona and DCSS with prejudice. *See R.W. v. Columbia Basin Coll.*, 572 F. Supp. 3d 1010, 1019 (E.D. Wash. 2021) (dismissing Section 1983 claim against a state agency with prejudice), *aff'd in part, appeal dismissed in part*, 77 F.4th 1214 (9th Cir. 2023);

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[8]A court may consider matters of judicial notice without converting a motion to dismiss into a motion for summary judgment. *See United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003); see also FED. R. EVID. 201(b) (permitting courts to take judicial notice of "a fact that is not subject to reasonable dispute" that "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned"); *City of Sausalito v. O'Neill*, 386 F.3d 1186, 1223 n.2 (9th Cir. 2004) (noting that courts "may take judicial notice of a record of a state agency not subject to reasonable dispute").

Eaton v. Two Rivers Corr. Inst. Grievance Coordinator Enyon, No. 2:20-cv-01251-SI, 2020 WL 7364975, at *6 (D. Or. Dec. 15, 2020) (concluding that the plaintiff's Section 1983 "claim against ODOC is barred by sovereign immunity"); *Fletcher v. Idaho Dep't of Corr.*, No. 1:18-cv-00267-BLW, 2019 WL 3646614, at *4 (D. Idaho Aug. 6, 2019) ("Defendants' arguments about Eleventh Amendment immunity apply with equal force to the claims for injunctive relief against state agencies[.]"), *aff'd sub nom. Fletcher v. Idaho Dep't of Corr.*, No. 21-35128, 2023 WL 3018288 (9th Cir. Apr. 20, 2023); *Ferguson v. Cal. Dep't of Just.*, No. 16-cv-06627-HSG, 2017 WL 2851195, at *3 (N.D. Cal. July 4, 2017) (dismissing Section 1983 claims against a state agency with prejudice, collecting cases).[9]

Further, Mindiola brings claims against Mayes and Rodgers in their official capacities. (*See* Compl. at 2-3, marking the box for an official capacity claim and not the box for an individual capacity claim.) Accordingly, the Court recommends dismissal with prejudice of Mindiola's Section 1983 claims for damages against Mayes and Rodgers in their official capacities. *See Will*, 491 U.S. at 71 (holding that officials acting in their official capacities are not "persons" subject to suit for damages under Section 1983); *Johnson v. Oregon*, No. 3:21-cv-00702-MO, 2022 WL 1224897, at *4 (D. Or. Apr. 26, 2022)

[9]Mindiola also has not demonstrated an abrogation of sovereign immunity for his claims pursuant to 18 U.S.C. § 241 and Arizona Revised Statute § 25-403(5).

("Therefore, the Eleventh Amendment insulates the State, DHS, and its employees acting in the official capacities from § 1983 liability, and . . . the claims are dismissed with prejudice."); *Gefroh v. Crawford*, No. 6:20-cv-00471-MK, 2021 WL 1165934, at *5 (D. Or. Feb. 8, 2021) (dismissing Section 1983 claims against the state defendants in their official capacities with prejudice), *findings and recommendation adopted*, 2021 WL 1172963 (D. Or. Mar. 26, 2021).[10]

IV. DISMISSAL WITH PREJUDICE

The State Defendants request dismissal of all claims with prejudice. (Defs.' Mot. at 19.) "Under Ninth Circuit case law, district courts are only required to grant leave to amend if a complaint can possibly be saved." *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc).

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[10] To the extent Mindiola attempts to allege a claim for violation of the Americans with Disabilities Act, claims seeking prospective injunctive relief, or claims against the defendants in their individual capacities (*see, e.g.*, Pl.'s Resp. at 8, 10, 13), any such claims are not part of Mindiola's current pleading. *See Schneider v. Cal. Dep't of Corr.*, 151 F.3d 1194, 1197 n.1 (9th Cir. 1998) ("In determining the propriety of a Rule 12(b)(6) dismissal, a court may not look beyond the complaint to a plaintiff's moving papers, such as a memorandum in opposition to a defendant's motion to dismiss.") (citation omitted); *Barnett v. E:Space Labs LLC*, No. 6:18-cv-00419-MC, 2018 WL 3364660, at *5 (D. Or. July 10, 2018) ("Plaintiff's Response asserts facts and allegations that are not found in her Amended Complaint. . . . On a Rule 12(b)(6) motion to dismiss, the scope of review is generally limited to the allegations in the complaint. . . . [T]he Court will not consider allegations outside the amended complaint.") (citation omitted).

A. Judicial Immunity

"A judge is absolutely immune from liability for [the judge's] judicial acts even if [the] exercise of authority is flawed by the commission of grave procedural errors." *Stump v Sparkman*, 435 U.S. 349, 359 (1978). "The relevant cases demonstrate that the factors determining whether an act by a judge is a 'judicial' one relate to the nature of the act itself, *i.e.*, whether it is a function normally performed by a judge, and to the expectations of the parties, *i.e.*, whether they dealt with the judge in his judicial capacity." *Id. at 362.*

A judge is not immune if the judge's actions were "taken in the complete absence of all jurisdiction." *Mireles v. Waco*, 502 U.S. 9, 11-12 (1991) (citations omitted). "A clear absence of all jurisdiction means a clear lack of all subject matter jurisdiction." *Mullis v. U.S. Bankr. Ct. for Dist. of Nev.*, 828 F.2d 1385, 1389 (9th Cir. 1987) (citations omitted); *see also Ashelman v. Pope*, 793 F.2d 1072, 1076 (9th Cir. 1986) ("To determine if the judge acted with jurisdiction, courts focus on whether the judge was acting clearly beyond the scope of subject matter jurisdiction in contrast to personal jurisdiction.") (citations omitted); *Langston v. Orr*, 569 F. App'x 487, 488 (9th Cir. 2014) (holding that "[t]he district court properly dismissed [the self-represented plaintiff's] claims against [the defendant judge] in his individual capacity on the basis of judicial immunity because [the plaintiff] failed to allege facts showing that [the judge] took nonjudicial actions against him, or that [the judge's] judicial actions were taken in complete absence of all jurisdiction" (citing, *inter alia*, *Ashelman*, 793 F.2d at 1075-76, 1078)). "If judicial and prosecutorial immunity bar recovery, no amendment could cure the deficiency and the action [is] properly terminated on a motion to dismiss." *Ashelman*, 793 F.2d at 1075.

Mindiola's factual allegations against Judge Bergin reveal that the acts in question were a function normally performed by a judge. Mindiola faults Judge Bergin for, in the course of a marital dissolution case, taking jurisdiction over the marital dissolution case, requiring disclosure of his mental health records, awarding Mindiola's ex-wife attorney's fees, calculating spousal maintenance and child support awards, and ordering his daughter's removal from Oregon. (Compl. at 5.) With respect to jurisdiction, Mindiola appears to argue that Judge Bergin lacked personal jurisdiction over the parties to the case "due to the Bona Fide connection the Family had with Oregon." (*Id.*)

Because Judge Bergin's only relevant conduct at issue in this action was judicial in nature, Judge Bergin is entitled to judicial immunity from suit and any amendment to Mindiola's complaint would be futile. The Court further concludes that Mindiola has not established that Judge Bergin acted with the clear lack of all subject matter jurisdiction. *See Stump,* 435 U.S. at 357 n.7 (discussing the difference between a clear absence of jurisdiction and acting in excess of the judge's jurisdiction); *Ashelman*, 793 F.2d at 1076 ("Where not clearly lacking subject matter jurisdiction, a judge is entitled to immunity even if there was no personal jurisdiction over the complaining party."); *Shuler v. Scott*, No. 22-cv-07652-VKD, 2023 WL 8600707, at *7 (N.D. Cal. Dec. 12, 2023) (dismissing claims against a state court judge who presided over a family law matter because "assuming, without deciding, that [the plaintiff's] allegations amount to acts in excess of jurisdiction, such acts do not abrogate judicial immunity, even if they result in 'grave procedural errors'") (citation omitted).

Accordingly, the Court recommends that the district judge dismiss Mindiola's claims against Judge Bergin with prejudice. *See, e.g.*, *McCoy v. Uale*, No. 21-16877, 2022 WL 10382922, at *1 (9th Cir. Oct. 18, 2022) (affirming dismissal of claims against a judge with prejudice because "all of [the judge's] relevant conduct was judicial in nature and therefore covered by his judicial immunity" (citing *Lund v. Cowan*, 5 F.4th 964, 971 (9th Cir. 2021))).

B. Individual Defendants

The State Defendants argue that the Court should also dismiss any claims against Mayes and Rogers with prejudice because any amendment raising claims against them in their individual capacities would be futile. (Defs.' Mot. at 8-9.) The State Defendants argue that both Mayes and Rogers assumed their current positions in 2023 and cannot be sued in their individual capacities for events that happened before they assumed public office. (*Id.*) Further, the State Defendants assert that the doctrines of issue and claim preclusion, as well as the statute of limitations, bar claims against Mayes and Rogers. (*Id.* at 12-13, 16-17.)

Mindiola's complaint does not identify which claims, if any, he seeks to assert against Mayes and Rogers. The Court notes that the State Defendants' arguments are well taken, but because the Court cannot determine from the instant complaint the timing or nature of the claims against Mayes and Roger, the Court cannot conclude that amendment would be futile. For example, it is possible that Mindiola could allege a set of facts demonstrating Mayes' or Rogers' involvement in the purported suspension of his driver's licenses or passport,

the timing of which is unclear from Mindiola's complaint. The Court therefore recommends that the district court dismiss claims against Mayes and Rogers without leave to amend, but without prejudice to refile the claims in a court with personal jurisdiction.[11] *See Gilliam v. United States*, No. 3:22-cv-01269-HZ, 2023 WL 136538, at *3 (D. Or. Jan. 9, 2023) (dismissing claims without prejudice despite "strong evidence" that the plaintiff's claims were barred because that evidence did not "conclusively establish" that the plaintiff could not allege facts permitting the claims to proceed); *Holloway v. Clackamas River Water*, No. 3:13-cv-01787-AC, 2015 WL 13678932, at *9 (D. Or. Oct. 2, 2015) (dismissing claims without prejudice where "the court cannot conclude at this time that [the plaintiff] can allege no facts which could demonstrate" a valid claim, so long as the plaintiff could amend "in good faith"), *findings and recommendation adopted*, 2015 WL 13678931 (D. Or. Nov. 25, 2015).

[11] Because the Court recommends dismissal on these grounds, the Court does not address the State Defendants' alternative argument that the case should be dismissed for improper venue. (Defs.' Mot. at 18.)

CONCLUSION

For the reasons stated, the Court recommends that the district judge GRANT the State Defendants' motion to dismiss (ECF No. 20) as follows:

- GRANT WITHOUT LEAVE TO AMEND AND WITH PREJUDICE:
  - State Defendants' motion to dismiss Mindiola's claims against the State of Arizona, DCSS, and Judge Bergin; and
  - State Defendants' motion to dismiss Mindiola's claims for damages against Mayes and Rogers in their official capacities.

- GRANT WITHOUT LEAVE TO AMEND BUT WITHOUT PREJUDICE:
  - State Defendants' motion to dismiss Section 1983 claims for damages against Mayes and Rogers in their individual capacities or claims for injunctive relief against Mayes and Rogers in their official capacities.

SCHEDULING ORDER

The Court will refer its Findings and Recommendation to a district judge. Objections, if any, are due within fourteen (14) days from service of the Findings and Recommendation. If no objections are filed, the Findings and Recommendation will go under advisement on that date. If objections are filed, a response is due within fourteen (14) days after being served with a copy of the objections. When the response is due or filed, whichever date is earlier, the Findings and Recommendation will go under advisement.

IT IS SO ORDERED.
DATED this 29th day of January, 2024.

Stacie F. Beckerman
HON. STACIE F. BECKERMAN
United States Magistrate Judge

APPENDIX C2

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

No. 3:23-CV-01008-SB

AARON JACOB MINDIOLA,
PLAINTIFF

v.

STATE OF ARIZONA ET AL, DEFENDANTS

Filed: January 19, 2024

FINDINGS AND RECOMMENDATION

BECKERMAN, U.S. Magistrate Judge.

Plaintiff Aaron Jacob Mindiola ("Mindiola"), a self-represented litigant, filed this action against various defendants alleging claims of negligence and violations of the United States Constitution. Now before the Court is Maricopa County's and Jennifer Pokorski's (together "the County Defendants") motion to dismiss.[1] (ECF No. 18.)

[1]Mindiola failed to name Jennifer Pokorski in the caption of his complaint, in violation of Rule 10(a) of the Federal Rules of Civil Procedure. To the extent that Mindiola intended to name both Maricopa County and Jennifer Pokorski as separate defendants, the Court considers both as parties to the instant motion.

The parties have not consented to the jurisdiction of a magistrate judge under 28 U.S.C. § 636. For the reasons that follow, the Court recommends that the district judge grant the County Defendants' motion to dismiss.

BACKGROUND

Mindiola filed this action against various defendants, including Maricopa County and Jennifer Pokorski, as well as the Arizona Department of Economic Security, Division of Child Support Services ("DCSS"). (Compl. at 1-3, ECF No. 1.) The alleged events relate to a family law case litigated in the State of Arizona from approximately 2018 to 2022. (*Id.* at 7.)

Starting around 2017, Mindiola, his wife at the time, and his children lived in Oregon. (*Id.*) Mindiola worked temporarily in Arizona and, while there, his then-wife served him with a petition for dissolution of marriage. (*Id.*) Mindiola attended a court hearing, and an Arizona state court assumed jurisdiction over the case. (*Id.*) The court required Mindiola's daughter to move to Arizona, where she lived with Mindiola. (*Id.*) After a change in employment, Mindiola and his daughter moved back to Oregon "despite Arizona Court Orders." (*Id.*)

The Arizona court entered a decree of dissolution and an income withholding order on March 31, 2021. (*Id.*) The court also entered an order of assistance, requiring Mindiola's daughter's return to Arizona. (*Id.*) The court faulted Mindiola for moving his daughter to Oregon against court order and for not providing the court with his military mental health records. (*Id.*) On August 10, 2022, the Arizona Court of Appeals

affirmed the trial court's orders. (*Id.*) The Arizona Supreme Court declined review. (*Id.*)

Mindiola asserts that, subsequently, over $100,000 "show[ed] up on his credit report in back child support." (*Id.*) According to Mindiola, DCSS failed to provide "any form of financial statements illustrating where and how the distribution of funds are being allocated" from his income withholdings. (*Id.* at 5.) DCSS also "demand[ed Mindiola's] financial records before considering providing relief from suspending [his] Drivers Licenses or Passport." (*Id.*)

On July 10, 2023, Mindiola filed this case alleging constitutional violations against various defendants and a claim for "[n]egligence in training and oversight over [DCSS] practices and policies" against the County Defendants. (*Id.* at 5.) Mindiola asserts that he suffered mental anguish and humiliation and, as a result, needed to attend counseling and sought medical treatment for irregular heart rhythms. (*Id.* at 8.) He seeks $500,000 in damages and "any other available remedy for tort damages incurred." (*Id.*)

DISCUSSION

The County Defendants move for dismissal, arguing that the Court should dismiss the complaint for lack of subject matter jurisdiction, lack of personal jurisdiction, and failure to state a claim.

I. SUBJECT MATTER JURISDICTION

The County Defendants raise a facial challenge under Rule 12(b)(1) of the Federal Rules of Civil Procedure, arguing that the Court lacks subject matter jurisdiction pursuant to the *Rooker-Feldman* doctrine. (Defs.'

Mot. Dismiss ("Defs.' Mot.") at 4, ECF No. 18.) The Court does not agree that the *Rooker-Feldman* doctrine bars Mindiola's negligence claim against the County Defendants.

A. Legal Standards

The *Rooker-Feldman* doctrine prohibits a federal district court from exercising subject matter jurisdiction over a claim that is a *de facto* appeal from a state court judgment. *See Noel v. Hall*, 341 F.3d 1148, 1155 (9th Cir. 2003). A federal action constitutes a *de facto* appeal where claims raised in the federal court are "inextricably intertwined" with a state court judgment. *Reusser v. Wachovia Bank, N.A.*, 525 F.3d 855, 859 (9th Cir. 2008) (citation omitted). An issue is inextricably intertwined with a state court judgment if the federal claim can succeed only to the extent that the state court wrongly decided the issues before it, or if the relief requested would effectively reverse or void the state court decision. *See Fontana Empire Cir., LLC v. City of Fontana*, 307 F.3d 987, 992 (9th Cir. 2002) (quoting, *inter alia*, *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 25 (1987) (Marshall, J., concurring)).

The doctrine bars a suit from going forward if:
(a) the plaintiff in the federal suit lost in the state court proceeding; (b) the state court determination is at the core of the federal lawsuit; (c) the federal lawsuit seeks review and rejection of the state court verdict; and (d) the state court judgment was entered before commencement of the federal action.
Pierce v. Heiple, No. 3:17-cv-570-SI, 2017 WL 1439669, at *3 (D. Or. Apr. 21, 2017) (citation omitted).

B. Analysis

The Court finds that the second and third factors of the *Rooker-Feldman* doctrine are not satisfied here.[2]

Applying the second factor, although the basis for Mindiola's negligence claim against the County Defendants is unclear, it does not appear that the state court's ruling is at the core of Mindiola's claim. Mindiola appears to allege that the County Defendants were negligent in their training and oversight over DCSS's child support collection practices and policies which resulted in a harmful credit report. (Compl. at 5.) Mindiola alleges violations of the Fourteenth Amendment against DCSS based on its demanding of his "financial records before considering providing relief from suspending Plaintiffs Drivers [sic] Licenses or Passport" and failing to provide Mindiola "with any form of financial statements illustrating where and how the distribution of funds are being allocated from Plaintiff's [Income Withholding Order]." (*Id.*) Although Mindiola's grievances are related to the state court's underlying child support order, his negligence claim against the County Defendants appears to relate only to the collection of his child support payments.

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[2]The first and fourth factors are satisfied: Mindiola lost in the state court proceeding and the state court judgment preceded this action. (See Compl. at 7.)

In other words, the Court does not understand Mindiola to challenge the state court order itself, but rather child support collection procedures and a resulting credit report that arose subsequent to the Arizona state court decisions. As far as the Court can decipher from the instant complaint and the underlying family court case records,[3] Mindiola's negligence claim is independent of the Arizona state courts' decisions. *See Cooper v. Ramos*, 704 F.3d 772, 778 (9th Cir. 2012) ("The [*Rooker-Feldman*] doctrine does not preclude a plaintiff from bringing an 'independent claim' that, though similar or even identical to issues aired in state court, was not the subject of a previous judgment by the state court." (quoting *Skinner v. Switzer*, 562 U.S. 521, 532 (2011))); *Henrichs v. Valley View Dev.*, 474 F.3d 609, 613 (9th Cir. 2007) ("The doctrine applies when the federal plaintiff's claim arises from the state court judgment, not simply when a party fails to obtain relief in state court." (citing *Noel*, 341 F.3d at 1164-65)).

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[3]The Court takes judicial notice of relevant court documents from the underlying family law litigation, including the Decree of Dissolution, Mindiola's Opening Brief in the Arizona Court of Appeals, and the memorandum decision by the Arizona Court of Appeals. *See United States v. Raygoza-Garcia*, 902 F.3d 994, 1001 (9th Cir. 2018) ("A court may take judicial notice of undisputed matters of public record, which may include court records[.]") (citations omitted); *Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) (noting that courts "may take judicial notice of court filings"). The underlying court dockets are *Mindiola v. Mindiola*, No. FC 2018-055324, and *Mindiola v. Mindiola*, No. 1 CA-CV-21-0271 FC. (*See* Exs. 1-3, Decl. Bruce Smith Supp. State Defs.' Mot. Dismiss, ECF No. 21.)

In the same vein, applying the third factor, Mindiola's negligence claim does not require this Court to review and reject the state court verdict. For Mindiola to prevail, as far as the Court interprets Mindiola's negligence claim as discussed above, the Court would not need to determine that the Arizona courts wrongly decided the underlying family law case.

For these reasons, the Court does not recommend dismissal of Mindiola's negligence claim against the County Defendants based on the *Rooker-Feldman* doctrine. *See Benavidez v. Cnty. of San Diego*, 993 F.3d 1134, 1143 (9th Cir. 2021) ("The [plaintiffs'] claims are not a de facto appeal from the juvenile court Orders. Instead, they allege that the misrepresentations by [the defendants] and further inaction by those social workers and other County employees resulted in violations of [the plaintiffs'] constitutional rights."); *Anglin v. Merchants Credit Corp.*, No. 18-cv-507-BJR, 2020 WL 4000966, at *3 (W.D. Wash. July 15, 2020) (rejecting the defendants' *Rooker-Feldman* argument where "the garnishment-based claims in this lawsuit, while related in subject matter to the claims underlying the [state court] lawsuit, are otherwise independent of those claims") (simplified), *aff'd*, No. 20-35820, 2022 WL 964216 (9th Cir. Mar. 30, 2022); *Reyna v. PNC Bank, N.A.*, No. 19-cv-00248-LEK-RT, 2020 WL 2309248, at *5 (D. Haw. May 8, 2020) ("The remaining claims, however, do not directly challenge the Foreclosure Judgment and, although related to, they are not 'inextricably intertwined' with the issues in the Foreclosure Action, and therefore they do not trigger preclusion under the *Rooker-Feldman* doctrine.").

II. PERSONAL JURISDICTION

The County Defendants also move for dismissal for lack of personal jurisdiction over the County Defendants. (Defs.' Mot. at 5.) The Court agrees that Mindiola has not satisfied his burden of demonstrating that the Court has personal jurisdiction over the County Defendants.

A. Legal Standards

The County Defendants' motion to dismiss is based on written materials rather than an evidentiary hearing. As a result, Mindiola bears the burden of making only a prima facie showing of jurisdictional facts. *See Glob. Commodities Trading Grp., Inc. v. Beneficio de Arroz Choloma, S.A.*, 972 F.3d 1101, 1106 (9th Cir. 2020) ("[W]here . . . the motion is based on written materials rather than an evidentiary hearing, the plaintiff need only make a prima facie showing of jurisdictional facts.") (simplified); *LNS Enters. LLC v. Cont'l Motors, Inc.*, 22 F.4th 852, 862 (9th Cir. 2022) ("If the court determines that it will receive only affidavits[,] . . . a plaintiff bears the burden of making only a prima facie showing of jurisdictional facts[.]") (simplified). "In this posture, [a court] take[s] as true all uncontroverted allegations in the complaint and resolve[s] all genuine factual disputes in the plaintiff's favor." *Glob. Commodities*, 972 F.3d at 1106 (citation omitted).

"An exercise of personal jurisdiction in federal court must comport with both the applicable state's long-arm statute and the federal Due Process Clause." *Burri Law PA v. Skurla*, 35 F.4th 1207, 1212 (9th Cir. 2022) (citing *Chan v. Soc'y Expeditions, Inc.*, 39 F.3d 1398, 1404-05 (9th Cir. 1994)). Oregon's long-arm statute "authorizes personal jurisdiction over

defendants to the full extent permitted by the United States Constitution." *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1068 (9th Cir. 2015) (citing OR. R. CIV. P. 4(L)). Accordingly, the Court must inquire whether its exercise of jurisdiction over the County Defendants would comport with the limits imposed by federal due process. *See id.* ("We therefore inquire whether the District of Oregon's exercise of jurisdiction over [the defendant] comports with the limits imposed by federal due process.") (simplified).

"Federal due process permits a court to exercise personal jurisdiction over a nonresident defendant if that defendant has 'at least minimum contacts with the relevant forum such that the exercise of jurisdiction does not offend traditional notions of fair play and substantial justice.'"[4] *Glob. Commodities*, 972 F.3d at 1106 (simplified). The Ninth Circuit uses a three-prong "test to analyze whether a party's minimum contacts meet the due process standard for the exercise of specific personal jurisdiction[.]" *LNS Enters.*, 22 F.4th at 859 (simplified); *Briskin v. Shopify, Inc.*, 87 F.4th 404, 411 (9th Cir. 2023) ("For specific

[4]Although there are two bases for personal jurisdiction (i.e., specific and general jurisdiction), the Court need engage only in a specific jurisdiction analysis here because Mindiola does not assert that the County Defendants are subject to general jurisdiction in Oregon. (Pl.'s Resp. at 10, ECF No. 19); *cf. Burri*, 35 F.4th at 1213 n.4 ("Personal jurisdiction may be specific or general. . . . [The plaintiff] does not contend that the [d]efendants are subject to general personal jurisdiction in [the forum state], so we do not address the analytical framework applicable to general personal jurisdiction cases.").

jurisdiction to exist over a non-resident defendant, three conditions must be met."); *see also Freestream Aircraft (Berm.) Ltd. v. Aero Law Grp.*, 905 F.3d 597, 603 (9th Cir. 2018) (explaining that the three-prong inquiry is "commonly referred to as the minimum contacts test").

"First, '[t]he non-resident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws.'" *Glob. Commodities*, 972 F.3d at 1107 (alteration in original) (quoting *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004)). Second, the plaintiff's "claim must arise out of or relate to the defendant's forum-related activities." *Id.* (citing *Schwarzenegger*, 374 F.3d at 802). Third, the district court's exercise of personal jurisdiction over the defendant must be reasonable. *Id.*

"All three prongs must be satisfied [for a court] to assert personal jurisdiction[.]" LNS Enters., 22 F.4th at 859. "If the plaintiff succeeds in satisfying both of the first two prongs, the burden then shifts to the defendant to present a compelling case that the exercise of jurisdiction would not be reasonable." *Glob. Commodities*, 972 F.3d at 1107 (simplified).

B. Analysis

Taking the uncontroverted allegations in Mindiola's complaint as true and resolving all genuine factual

disputes in Mindiola's favor, the Court concludes that Mindiola has not satisfied his burden of making a prima facie showing of jurisdictional facts. *See generally id. at 1106* (explaining that where, as here, a motion is based on written material rather than an evidentiary hearing, a court "take[s] as true all uncontroverted allegations in the complaint and resolve[s] all genuine factual disputes in the plaintiff's favor") (citation omitted).

Under the first prong, Mindiola must establish that the County Defendants purposefully availed themselves of the privilege of conducting activities in Oregon, purposefully directed their activities toward Oregon, or "some combination thereof." *Davis v. Cranfield Aerospace Sols., Ltd.*, 71 F.4th 1154, 1162 (9th Cir. 2023) (quoting *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme*, 433 F.3d 1199, 1206 (9th Cir. 2006) (en banc)). Courts "evaluate purposeful direction under the *Calder* effects test[.]" *Briskin v. Shopify, Inc.*, 87 F.4th 404, 412 (9th Cir. 2023). Generally, though, the *Calder* effects test "applies only to intentional torts, not to . . . breach of contract and negligence claims[.]" *Holland Am. Line Inc. v. Wartsila N. Am., Inc.*, 485 F.3d 450, 460 (9th Cir. 2007) (citing *Calder v. Jones*, 465 U.S. 783, 789 (1984)); see also *Calder*, 465 U.S. at 789 (distinguishing between intentional actions and "mere untargeted negligence").

Mindiola alleges in his claim against the County Defendants only negligence in training and oversight over DCSS's practices and policies (Compl. at 5), and therefore the Court applies the purposeful availment analysis. *See Jenkins v. Shelton*, No. 3:15-cv-558-SI,

2018 WL 1528753, at *12 (D. Or. Mar. 28, 2018) ("A purposeful availment analysis is proper for a claim of negligence." (citing *Holland Am. Line Inc.*, 485 F.3d at 460)), aff'd, 765 F. App'x 156 (9th Cir. 2019); see also *Burton v. Air France - KLM*, No. 3:20-cv-01085-IM, 2020 WL 7212566, at *3 (D. Or. Dec. 7, 2020) ("Because this dispute does not concern intentional tortious conduct, this Court will apply the purposeful availment analysis in this case.") (citation omitted); *Ortega v. Pomerantz*, No. 3:18-cv-00451-HZ, 2018 WL 3364670, at *6 (D. Or. July 6, 2018) ("[C]ourts in the Ninth Circuit apply the purposeful availment test to negligence claims.") (citations omitted).

The purposeful availment test "is satisfied when 'the defendant has taken deliberate action within the forum state or . . . has created continuing obligations to forum residents.'" *Impossible Foods Inc. v. Impossible X LLC*, 80 F.4th 1079, 1088 (9th Cir. 2023) (alteration in original) (quoting *Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995)); see also *Picot v. Weston*, 780 F.3d 1206, 1212 (9th Cir. 2015) (explaining that the purposeful availment analysis asks "whether a defendant has purposefully availed himself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws") (simplified). The "[p]urposeful availment analysis examines whether the defendant's contacts with the forum are attributable to his own actions or are solely the actions of the plaintiff." *Sinatra v. Nat'l Enquirer, Inc.*, 854 F.2d 1191, 1195 (9th Cir. 1988) (citing, *inter alia*, *Asahi Metal Indus. Co. v. Superior Ct. of Cal., Solano Cnty.*, 480 U.S. 102, 108 (1987)); see also *Davis*, 71 F.4th at 1163 ("The 'unilateral activity' of

another party does not meet [the purposeful availment] standard." (citing *Yamashita v. LG Chem, Ltd.*, 62 F.4th 496, 503 (9th Cir. 2023))). "In order to have purposefully availed oneself of conducting activities in the forum, the defendant must have performed some type of affirmative conduct which allows or promotes the transaction of business with the forum state." *Sinatra*, 854 F.2d at 1195 (citation omitted).

Here, Mindiola has not alleged any facts demonstrating that the County Defendants performed any affirmative conduct availing themselves of the privilege of conducting activities in Oregon. All of the alleged wrongful conduct occurred in Arizona. (*See* Compl. at 5, 7.) There is no indication that the allegedly negligent training and oversight occurred in Oregon nor that the underlying actions of DCSS related to the suspension of Mindiola's driver's license or passport occurred in Oregon. Any contact with Oregon is solely attributable to Mindiola's actions. (*Id.* at 7, describing Mindiola's decision to move back to Oregon.) Accordingly, Mindiola has not adduced sufficient evidence that the County Defendants purposefully availed themselves of the privilege of conducting activities in Oregon. *See Walden v. Fiore*, 571 U.S. 277, 285 (2014) ("[T]he plaintiff cannot be the only link between the defendant and the forum. Rather, it is the defendant's conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him." (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 478 (1985) and *Kulko v. Superior Ct. of Cal., City and Cnty. of S.F.*, 436 U.S. 84, 93 (1978)); see also *Miller v. San Mateo Cnty.*, No. 6:18-cv-00884-JR, 2018 WL 5269842, at *3 (D. Or. Sept. 18, 2018)

(dismissing Defendants San Mateo County and San Mateo County Department of Child Support Services for lack of personal jurisdiction and explaining that "the only communication defendants had with the forum is contacting plaintiff regarding missed child support payments"; "[t]he act of providing court notices is not the type of affirmative conduct which allows or promotes the transaction of business within Oregon"; and "[i]n other words, plaintiff's residence in Oregon is immaterial and incidental to the services provided by defendants in California") (citations omitted), *findings and recommendation adopted*, 2018 WL 5270320 (D. Or. Oct. 22, 2018); *Taylor v. Hennepin Cnty. Child Support*, No. 06-cv-5473 FDB, 2006 WL 2781333, at *2 (W.D. Wash. Sept. 25, 2006) (concluding that the county defendants had not purposefully availed themselves of the benefits of Washington when they had not "purposefully directed their activities or consummated a transaction with Washington residents" and any alleged wrongful conduct "necessarily occurred in Minnesota where [the] application for child support benefits was received and processed"); *Eaton v. Davis*, No. 3:01-cv-00854-AS, 2002 WL 31441217, at *4 (D. Or. Feb. 28, 2002) (concluding that the Court lacked personal jurisdiction where "the sole contact defendants had with the State of Oregon was to forward the California Order [to pay child support] for registration, which, in turn, apparently placed a lien on Plaintiff's tax refunds" and "[t]his contact was initiated only after Plaintiff elected to make the State of Oregon his residence" and "[a]ll previous interactions between the Orange County Defendants and Plaintiff . . . have occurred in the State of California") (footnotes omitted).

Because Mindiola has not met his burden of establishing the first prong of the specific jurisdiction test, the Court does not address the other two prongs. *See Boschetto v. Hansing*, 539 F.3d 1011, 1016 (9th Cir. 2008) ("[I]f the plaintiff fails at the first step, the jurisdictional inquiry ends and the case must be dismissed." (citing *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1155 (9th Cir. 2006))); *CSX Transp., Inc. v. Apex Directional Drilling, LLC*, No. 3:14-cv-00470-HA, 2014 WL 6473554, at *4 (D. Or. Nov. 18, 2014) ("Given that [the defendant] cannot establish that [a third-party defendant] purposefully availed itself of the Oregon forum, this court need not proceed to the remaining inquiries under the Ninth Circuit's specific jurisdiction test." (citing *Boschetto*, 539 F.3d at 1016)).

Mindiola has not made a prima facie showing of specific personal jurisdiction over the County Defendants, and the Court recommends that the district judge grant the County Defendants' motion to dismiss for lack of personal jurisdiction and dismiss Mindiola's claim against the County Defendants without prejudice to pursuing the claim in a different jurisdiction.

[5] *See Harper v. Amur Equip. Fin., Inc.*, No. 3:22-cv-01723-YY, 2023 WL 2761365, at *3 (D. Or. Mar. 3, 2023) (dismissing for lack of personal jurisdiction without prejudice), *findings and recommendation adopted*, 2023 WL 2756185 (D. Or. Apr. 3, 2023); *Raze v. Walbridge*, No. 3:20-cv-00957-AR, 2022 WL 2670149, at *9 (D. Or. June 23, 2022) (dismissing for lack of personal jurisdiction without prejudice), *findings and recommendation adopted*, 2022 WL 2667014 (D. Or. July 11, 2022); see also *Pac. Vibrations, LLC v. Slow Gold Ltd.*, No. 22-cv-1118-LL-DDL, 2023 WL 4375633, at *4 (S.D. Cal. July 6, 2023) ("[T]he Court's Order granting dismissal in this case is without prejudice to Plaintiff pursuing its claims . . . in a jurisdiction where Defendants . . . are subject to personal jurisdiction[.]").

CONCLUSION

For the reasons stated, the Court recommends that the district judge GRANT the County Defendants' motion to dismiss (ECF No. 18) and dismiss Mindiola's claims without prejudice to pursuing his claims in a jurisdiction where the County Defendants are subject to personal jurisdiction.

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[5]Because the Court lacks personal jurisdiction over the County Defendants and recommends dismissal on that ground, the Court does not address the County Defendants' alternative argument that Mindiola has failed to state a claim. (Defs.' Mot. at 17-18.)

SCHEDULING ORDER

The Court will refer its Findings and Recommendation to a district judge. Objections, if any, are due within fourteen (14) days from service of the Findings and Recommendation. If no objections are filed, the Findings and Recommendation will go under advisement on that date. If objections are filed, a response is due within fourteen (14) days after being served with a copy of the objections. When the response is due or filed, whichever date is earlier, the Findings and Recommendation will go under advisement.

IT IS SO ORDERED.

DATED this 19th day of January, 2024.

Stacie F. Beckerman
HON. STACIE F. BECKERMAN
United States Magistrate Judge

APPENDIX C3

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

No. 3:23-CV-01008-SB

AARON JACOB MINDIOLA,
PLAINTIFF

v.

STATE OF ARIZONA ET AL, DEFENDANTS

Filed: January 19, 2024

ORDER

BECKERMAN, U.S. Magistrate Judge.

Plaintiff Aaron Jacob Mindiola ("Mindiola"), a self-represented litigant, filed this action against various defendants alleging claims of negligence and violations of the United States Constitution. Now before the Court is Mindiola's Motion for Pro Se Leniency. (ECF No. 17.)

The Court GRANTS Mindiola's motion for leniency (ECF No. 17) to the extent the Court will evaluate Mindiola's pleading and other filings consistent with controlling law but DENIES the motion to the extent Mindiola asks for leniency beyond what controlling law allows. See Hoffman v. Preston, 26 F.4th 1059, 1063 (9th Cir. 2022) (explaining that self-represented litigants' "complaints are construed liberally and 'held

to less stringent standards than formal pleadings drafted by lawyers'" and that courts must "afford [a self-represented litigant] the benefit of any doubt") (quoting *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010)); *Garity v. APWU Nat'l Labor Org.*, 828 F.3d 848, 854 (9th Cir. 2016) ("Unless it is absolutely clear that no amendment can cure the defect, . . . a [self-represented] litigant is entitled to notice of the complaint's deficiencies and an opportunity to amend prior to dismissal of the action." (quoting *Lucas v. Dep't of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995))).

IT IS SO ORDERED.
DATED this 19th day of January, 2024.

Stacie F. Beckerman
HON. STACIE F. BECKERMAN
United States Magistrate Judge

APPENDIX E

1. U.S. Const. Amend. XIV, Sec. 1 provides:

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

2. 15 U.S.C. §1681s-2 (a)(1)(A) and (b)(1)(A)-(E):

Responsibilities of furnishers of information to consumer reporting agencies (selected provisions)

(a) Duty of furnishers of information to provide accurate information

(1) Prohibition

(A) Reporting information with actual knowledge of errors — A person shall not furnish any information relating to a consumer to any consumer reporting agency if the person knows or has reasonable cause to believe that the information is inaccurate.

(b) Duties of furnishers of information upon notice of dispute

(1) In general — After receiving notice pursuant to section 1681i(a)(2) of this title of a dispute with regard to the completeness or accuracy of any information provided by a person to a consumer reporting agency, the person shall—

(A) conduct an investigation with respect to the

disputed information;
(B) review all relevant information provided by the consumer reporting agency;
(C) report the results of the investigation to the consumer reporting agency;
(D) if the investigation finds that the information is incomplete or inaccurate, report those results to all other consumer reporting agencies to which the person furnished the information and that compile and maintain files on consumers on a nationwide basis; and
(E) if an item of information disputed by a consumer is found to be inaccurate or incomplete or cannot be verified, the person shall, for purposes of reporting to a consumer reporting agency, as appropriate, modify, delete, or permanently block the reporting of that item of information.

3. Title 42 U.S. Code §1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of

Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

4. Title 42 U.S. Code §12131(1), 12132, 12202 (ADA Title II) provides:

§12131(1) – Definitions

The term "public entity" means— (A) any State or local government; (B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and (C) the National Railroad Passenger Corporation and any commuter authority (as defined in section 24102(4) of title 49).

§12132 – Discrimination

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

§12202 – State Immunity

A State shall not be immune under the Eleventh Amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this chapter. In any action against a State for a violation of the requirements of this chapter, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

5. 28 CFR Ch. 1 Part 35 (Nondiscrimination on the

basis of disability in state and local government services):

§35.101 Purpose and broad coverage.

(a) *Purpose.* The purpose of this part is to implement subtitle A of title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131-12134), as amended by the ADA Amendments Act of 2008 (ADA Amendments Act) (Pub. L. 110-325, 122 Stat. 3553 (2008)), which prohibits discrimination on the basis of disability by public entities.

(b) *Broad coverage.* The primary purpose of the ADA Amendments Act is to make it easier for people with disabilities to obtain protection under the ADA. Consistent with the ADA Amendments Act's purpose of reinstating a broad scope of protection under the ADA, the definition of "disability" in this part shall be construed broadly in favor of expansive coverage to the maximum extent permitted by the terms of the ADA. The primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations and whether discrimination has occurred, not whether the individual meets the definition of "disability." The question of whether an individual meets the definition of "disability" under this part should not demand extensive analysis.

§ 35.102 Application.

(a) Except as provided in paragraph (b) of this section, this part applies to all services, programs, and activities provided or made available by public entities.

(b) To the extent that public transportation services, programs, and activities of public entities are covered by subtitle B of title II of the ADA (42 U.S.C. 12141),

they are not subject to the requirements of this part.

§ 35.178 State immunity.
A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

6. **A.R.S. §25-403(A)(5):** The Mental and physical health of all individuals involved

7. **A.R.S §25-510:**

A. The support payment clearinghouse established pursuant to § 46-441 shall receive and disburse all monies, including fees and costs, applicable to support and maintenance unless the court has ordered that support or maintenance be paid directly to the party entitled to receive the support or maintenance. Within two business days the clerk of the superior court shall transmit to the support payment clearinghouse any maintenance and support payments received by the clerk.

Monies received by the support payment clearin house in cases not enforced by the state pursuant to title IV-D of the Social Security Act shall be distributed in the following priority:

- Current child support or current court-ordered

payments for the support of a family when combined with the child support obligation.

- Current spousal maintenance.
- The current monthly fee prescribed in subsection D of this section for handling support or spousal maintenance payments.
- Past due support reduced to judgment and then to associated interest.
- Past due spousal maintenance reduced to judgment and then to associated interest.
- Past due support not reduced to judgment and then to associated interest.
- Past due spousal maintenance not reduced to judgment and then to associated interest.
- Past due amounts of the fee prescribed in subsection D of this section for handling support or spousal maintenance payments.

B. In any proceeding under this chapter regarding a duty of support, the records of payments maintained by the clerk or the support payment clearinghouse are prima facie evidence of all payments made and disbursed to the person or agency to whom the support payment is to be made and are rebuttable only by a specific evidentiary showing to the contrary.

C. At no cost to the clerk of the superior court, the department shall provide electronic access to all records of payments maintained by the support payment clearinghouse, and the clerk shall use this information to provide payment histories to all litigants, attorneys and interested persons and the court.

For all non-title IV-D support cases, the clerk shall:

- Load new orders,
- Modify order amounts,
- Respond to payment inquiries,
- Research payment-related issues,
- Release payments pursuant to orders of the court,
- Update demographic and new employer information.

The clerk shall forward orders of assignment to employers for non-title IV-D support orders. Within five business days, the clerk shall provide to the department any new address, order of assignment, or employment information the clerk receives regarding any support order.

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