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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CHRISTOPHER VON SCHLOBOHM,

Plaintiff,

v.

COUNTY OF LOS ANGELES, et al.,

Defendants.

Case No. 2:19-07358 DOC (ADS)

REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE

This Report and Recommendation is submitted to the Honorable David O. Carter, United States District Judge, pursuant to 28 U.S.C. § 636 and General Order 05-07 of the United States District Court for the Central District of California.

I. INTRODUCTION

Plaintiff Christopher Von Schlobohm (“Plaintiff”), proceeding pro se, filed a Complaint asserting claims under 42 U.S.C. § 1983 (“Section 1983”) and the Fourteenth Amendment against six named defendants and two unnamed defendants (collectively, “Defendants”). [Dkt. No. 1]. Defendants include the County of Los Angeles, three social

1 workers with the Los Angeles County Department of Children and Family Services
2 (“DCFS”), and two California Superior Court judges. [Dkt. No. 1, pp. 4-5, 14]. The
3 alleged violations of Plaintiff’s rights occurred over the course of an acrimonious divorce
4 and ensuing custody dispute between Plaintiff’s wife (Dr. Susan Spell, a.k.a. Susan S. E.
5 Vonsclobohm, a.k.a. Susan Von Schlobohm) and her ex-husband (Dr. Brian Evans) over
6 their four children, Plaintiff’s step-children. [Id., pp. 5-7]. Plaintiff’s wife has filed six
7 federal court cases regarding the child custody dispute. Spell v. Cunningham III, Case
8 No. 2:14-cv-09806 SJO MRW (Dec. 23, 2014); Spell v. County of Los Angeles, Case
9 No. 2:15-cv-07775 GW PJW (Oct. 4, 2015);¹ Vonsclobohm v. County of Los Angeles,
10 Case No. 2:18-cv-0457 JFW ADS (May 24, 2018); Spell v. Stone, 2:19-cv-02073 JGB JC
11 (Mar. 20, 2019); Spell v. Stone, 2:19-cv-05886 JGB JC (Jul. 9, 2019); Spell v. County of
12 Los Angeles, Case No. 2:19-cv-06652 FMO ADS (Jul. 31, 2019).²

13 Before the Court is a Motion to Dismiss Complaint (“Motion to Dismiss”) filed by
14 Defendants Judge Mark Juhas (“Judge Juhas”) and Judge Natalie Stone (“Judge Stone”)
15 (collectively, “Judicial Defendants”). [Dkt. No. 10]. Based on a review and
16 consideration all papers filed in support of and in opposition to the Motion to Dismiss,
17 the Court recommends granting the Motion to Dismiss because Plaintiff’s claims against
18 the Judicial Defendants are barred by the Rooker-Feldman doctrine and by absolute
19 judicial immunity.

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21 ¹ Plaintiff’s wife also opened a case on the same day as Case No. 2:15-cv-07775, which
22 was closed by the court four days after it was opened because no documents were filed,
including a complaint. Spell v. County of Los Angeles, Case No. 2:15-cv-07776.

23 ² Plaintiff’s wife’s eldest son also joined as a pro se plaintiff in Spell v. County of Los
24 Angeles, Case No. 2:19-cv-06652 FMO ADS (Jul. 31, 2019), which was filed after he
became a legal adult.

1 **II. BACKGROUND**

2 In the Complaint, Plaintiff asserts that Defendants engaged in various
3 misconduct related to the custody dispute between Plaintiff's wife and her ex-husband.
4 [Dkt. No. 1]. Plaintiff alleges that social worker defendants presented false evidence and
5 presented a fraudulent domestic violence restraining order against Plaintiff, resulting in
6 Judge Stone terminating Plaintiff's wife's unmonitored visits with the children, and
7 Judge Juhas issuing a "stay away" order. [Dkt. No. 1, pp. 5-6]. Plaintiff asserts two
8 claims: (1) violation of Section 1983 and (2) violation of the Fourteenth Amendment.
9 [Dkt. No. 1, pp. 15-16]. Plaintiff seeks punitive damages in the amount of \$30,000,000,
10 compensatory damages in the amount of \$30,000,000, a permanent injunction
11 enjoining Defendants from further violation of Section 1983 and the Fourteenth
12 Amendment, "Declaratory relief to vacate orders of Case Number VQ22698 in Norwalk
13 Superior Court," and reasonable attorney's fees and costs. [Dkt. No. 1, p. 17].

14 **III. PROCEDURAL HISTORY**

15 On September 16, 2019, the Judicial Defendants filed the Motion to Dismiss.
16 [Dkt. No. 10]. Defendants also filed a "Request for Judicial Notice in Support of
17 Defendant, the Hon. Mark A. Juhas, et al's, Motion to Dismiss Complaint" ("Request for
18 Judicial Notice"). [Dkt. No. 11]. Plaintiff filed a Memorandum of Law in opposition to
19 the Motion to Dismiss ("Opposition"). [Dkt. No. 16]. Defendants filed a Reply to the
20 Memorandum of Law in opposition to the Motion to Dismiss ("Reply"). [Dkt. No. 17].

21 In the Motion to Dismiss, the Judicial Defendants argue that the Court lacks
22 subject matter jurisdiction under the Rooker-Feldman doctrine and Eleventh
23 Amendment immunity, that the Complaint fails to state a claim against the Judicial
24 Defendants because they are afforded absolute judicial immunity and because Plaintiff

1 has failed to establish grounds for granting injunctive relief under Section 1983 or
2 RICO, and that Plaintiff lacks standing to bring suit against the Judicial Defendants.³
3 [Dkt. No. 10, p. 10].

4 In the Opposition, Plaintiff argues that the Judicial Defendants lacked the
5 authority to grant custody to Plaintiff's wife's ex-husband. [Dkt. No. 16, pp. 5-10].
6 Plaintiff then argues that the Rooker-Feldman doctrine does not bar the instant action
7 because Plaintiff is not seeking reversal of state court judgments and because Plaintiff
8 has never brought an action in Superior Court, so he is not "a total State loser." [Id., pp.
9 12-13]. Plaintiff asserts Eleventh Amendment immunity does not apply because he is
10 suing the Judicial Defendants in their individual capacity, and that the Judicial
11 Defendants are not entitled to qualified immunity or absolute judicial immunity because
12 they "committed constitutional violations" and "abused [their] discretion and
13 overstepped [their] bounds as a judge." [Id., pp. 14-16]. Finally, Plaintiff argues he has
14 stated a claim under Section 1983 and that he has standing because the Judicial
15 Defendants lacked jurisdiction to issue the orders awarding custody of Plaintiff's wife's
16 children to Plaintiff's wife's ex-husband. [Id., p. 10]. In their Reply, the Judicial
17 Defendants largely reassert arguments from the Motion to Dismiss. [Dkt. No. 17].

18 **IV. ANALYSIS**

19 **A. Standard of Review**

20 Federal Rule of Civil Procedure 12(b)(1) ("Rule 12(b)(1)") allows a motion to
21 dismiss to be asserted for lack of subject matter jurisdiction. Although defendant is the
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23 ³ To the extent the Court does not address any arguments raised by the parties, this is
24 because those arguments are not necessary for resolution of the Motion to Dismiss.

1 moving party on a Rule 12(b)(1) motion, plaintiff, the party invoking the court's
2 jurisdiction, bears the burden of establishing subject matter jurisdiction. Kokkonen v.
3 Guardian Life Ins. Co. of America, 511 U.S. 375, 376-78 (1994) (noting that it is to be
4 presumed that a cause lies outside limited federal court jurisdiction and the burden of
5 establishing otherwise rests upon the party asserting jurisdiction); In re Wilshire
6 Courtyard, 729 F.3d 1279, 1284 (9th Cir. 2013). There are two different ways to
7 challenge subject matter jurisdiction with a Rule 12(b)(1) motion: a "facial" attack of
8 jurisdiction solely on the basis of the allegations in the complaint; and a "factual" attack
9 of jurisdiction where the court is permitted to look beyond the complaint to extrinsic
10 evidence. Courthouse News Service v. Planet, 750 F.3d 776, 780 & n.3 (9th Cir. 2014).
11 A facial attack, unlike a factual attack, does not rely on affidavits or other evidence to
12 contest the truth of the allegations in the complaint. Id. When evaluating a facial
13 attack, the Court must accept the allegations of the complaint as true. See Leite v. Crane
14 Co., 749 F.3d 1117, 1121 (9th Cir. 2014).

15 Federal Rule of Civil Procedure 12(b)(6) ("Rule 12(b)(6)") allows a motion to
16 dismiss a complaint for plaintiff's failure to state a claim upon which relief can be
17 granted. Fed. R. Civ. P. 12(b)(6). The legal sufficiency of a plaintiff's asserted claim or
18 claims in his complaint is tested with a Rule 12(b)(6) motion. Strom v. United
19 States, 641 F.3d 1051, 1067 (9th Cir. 2011). Dismissal is proper under Rule 12(b)(6)
20 when the complaint either fails to allege a "cognizable legal theory" or fails to allege
21 sufficient facts "to support a cognizable legal theory." Caltex Plastics, Inc. v. Lockheed
22 Martin Corp., 824 F.3d 1156, 1159 (9th Cir. 2016); Balisteri v. Pacifica Police Dept., 901
23 F.2d 696, 699 (9th Cir. 1990).

24 To overcome a Rule 12(b)(6) motion to dismiss, a complaint must allege "enough

1 facts to state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v.
2 Twombly, 550 U.S. 544, 570 (2007). “The plausibility standard is a screening
3 mechanism designed to weed out cases that do not warrant either discovery or trial.” Id.
4 at 558-59. “A claim has facial plausibility when the plaintiff pleads factual content that
5 allows the court to draw the reasonable inference that the defendant is liable for the
6 misconduct alleged.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

7 **B. Plaintiff’s Claims are Barred by the Rooker-Feldman Doctrine**

8 Plaintiff’s claims are barred by the Rooker-Feldman doctrine. The Rooker-
9 Feldman doctrine provides that federal district courts may exercise only original
10 jurisdiction; they may not exercise appellate jurisdiction over state court decisions. See
11 District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482, 482-86 (1983);
12 Rooker v. Fidelity Trust Co., 263 U.S. 413, 416 (1923). The Rooker-Feldman doctrine
13 applies when a plaintiff in federal court alleges a “de facto appeal” by (1) asserting errors
14 by the state court as an injury, and (2) seeking relief from the state court judgment as a
15 remedy. Kougasian v. TMSL, Inc., 359 F.3d 1136, 1139-40 (9th Cir. 2004).

16 Here, Plaintiff seeks declaratory judgment that the orders of the California
17 Superior Court are void. This challenge to the outcome of Plaintiff’s restraining order
18 proceedings must be made through the state courts. See Gimbel v. California, 2008 U.S.
19 Dist. LEXIS 28201, 2008 WL 590504, at *2 (N.D. Cal. Feb. 29, 2008), aff’d, 308 F.
20 App’x 124 (9th Cir. 2009) (dismissing claim under Rooker-Feldman doctrine where
21 complaint challenged restraining order issued against him in state court and requested
22 invalidation and enjoinder of the state court’s order). The Complaint as it relates to
23 the Judicial Defendants asserts errors by the state court as an injury and seeks relief
24 from the state court judgment as a remedy. See Kougasian v. TMSL, Inc., 359 F.3d 1136,

1 1139-40 (9th Cir. 2004). Plaintiff argues that he “sues to recover money damages not to
2 overturn any State court decision” and that there is “not one word, in one sentence, on
3 one line, and on one page that seeks to reverse any State court decision.” [Dkt. No. 16,
4 pp. 13, 10]. However, this is directly contradicted by the relief he is seeking, which
5 requests declaratory judgment vacating state court orders. [Dkt. No. 1, p. 17].

6 Plaintiff’s reliance on Malhan v. Sec’y U.S. Dep’t of State, 938 F.3d 453 (3rd
7 Cir. 2019), is misplaced because this case is from another Circuit, and therefore is
8 persuasive but not binding authority. This Court is bound by Ninth Circuit precedent.
9 As such, the Judicial Defendants’ Motion to Dismiss should be granted because the
10 Court lacks subject matter jurisdiction over the claims against these defendants.

11 **C. Judicial Defendants Are Entitled to Absolute Judicial Immunity**

12 The Judicial Defendants are entitled to absolute judicial immunity for Plaintiff’s
13 claims against them because all of these claims relate to actions taken in their judicial
14 capacity. Judges are absolutely immune from individual capacity claims when those
15 claims arise from judicial acts undertaken in their judicial capacities within the
16 jurisdiction of their courts. See Ashelman v. Pope, 793 F.2d 1072, 1075-76 (9th
17 Cir. 1986) (en banc) (citing Richardson v. Koshiba, 693 F.2d 911, 913 (9th Cir.1982));
18 see also Ashelman, 793 F.2d at 1075 (holding that judicial immunity applies “however
19 erroneous the act may have been, and however injurious in its consequences it may have
20 proved to the plaintiff.” (internal citations omitted)). An act is considered “judicial”
21 when it is a “function normally performed by a judge” and the parties “dealt with the
22 judge in his judicial capacity.” Stump v. Sparkman, 435 U.S. 349, 362 (1978).

23 Here, the Judicial Defendants are immune from Plaintiff’s claims for injuries
24 allegedly caused by the Judicial Defendants’ decisions made in the course of child

1 custody and child abuse proceedings because these actions were taken in their judicial
2 capacity. See Ashelman v. Pope, 793 F.2d 1072, 1075-76 (9th Cir. 1986) (en banc). This
3 extends to Plaintiff's requested declaratory relief seeking to vacate the Judicial
4 Defendants' prior orders. See Moore v. Brewster, 96 F.3d 1240, 1243 (9th Cir. 1996)
5 ("The judicial or quasi-judicial immunity available to federal officers is not limited to
6 immunity from damages, but extends to actions for declaratory, injunctive and other
7 equitable relief." (quoting Mullis v. Bankruptcy Court for the District of Nevada, 828
8 F.2d 1385, 1394 (9th Cir. 1987))), superseded by statute on other ground.

9 Plaintiff's argument that the Judicial Defendants lacked jurisdiction to issue the
10 orders in question is without merit. Plaintiff relies on multiple California state cases to
11 support the proposition that the Judicial Defendants could not award custody to
12 Plaintiff's wife's ex-husband. However, each of these cases is distinguishable from this
13 case and do not apply here.⁴ Plaintiff has failed to show that the Judicial Defendants
14 acted in "clear absence of all jurisdiction." See Stump, 435 U.S. at 356-57. As such,
15 Plaintiff has not stated a claim upon which relief can be granted against the Judicial
16 Defendants, and the Motion to Dismiss should be granted under Rule 12(b)(6).

17 **V. LEAVE TO AMEND**

18 If the Court finds that a complaint fails to state a claim, the Court has discretion
19 to dismiss with or without leave to amend. See Lopez v. Smith, 203 F.3d 1122, 1126-30
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21 ⁴ For example, Plaintiff relies on Barkaloff v. Woodward, 55 Cal. Rptr. 2d 167 (1st Cal.
22 Ct. App. Jul. 15, 1996), which involved awarding custody to the non-natural father
23 where the parties had never been married. Id. at 170. Plaintiff also relies on Polin v.
24 Cosio, 20 Cal. Rptr. 2d 714 (3rd Cal. Ct. App. Jun. 29, 1993), which involved awarding
temporary custody to an aunt. Id. at 718 (noting that the minor was not a "child of the
parties' marriage nor an offspring of the parties' nonmarital relationship."). Here,
Plaintiff's wife was married to her ex-husband.

1 (9th Cir. 2000) (en banc). In the Ninth Circuit, courts should grant leave to amend if it
2 appears possible that the defects in the complaint could be corrected. See id. at 1130-31;
3 see also Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995) (“A pro se litigant must
4 be given leave to amend his or her complaint, and some notice of its deficiencies, unless
5 it is absolutely clear that the deficiencies of the complaint could not be cured by
6 amendment.”). However, if, after careful consideration, it is clear that amendment
7 cannot cure a complaint, the Court may dismiss without leave to amend. Cato, 70 F.3d
8 at 1105-06 (affirming district court’s dismissal of the complaint with prejudice pursuant
9 to 28 U.S.C. § 1915(d)).

10 In this case, amendment would be futile. See Cato, 70 F.3d at 1105-06.
11 Amendment will not cure the absence of subject matter jurisdiction under the Rooker-
12 Feldman doctrine, even if Plaintiff amends his complaint. “It is immaterial that [the
13 plaintiff] frames his federal complaint as a constitutional challenge to the state courts’
14 decisions, rather than as a direct appeal of those decisions. The Rooker-Feldman
15 doctrine prevents lower federal courts from exercising jurisdiction over any claim that is
16 ‘inextricably intertwined’ with the decision of a state court, even where the party does
17 not directly challenge the merits of the state court’s decision but rather brings an
18 indirect challenge based on constitutional principles.” Bianchi v. Rylaarsdam, 334 F.3d
19 895, 900 n.4; see Watkins v. Proulx, 235 Fed. App’x. 678, 679 (9th Cir. 2007) (holding
20 that because plaintiff’s Section 1983 action alleging constitutional violations arising out
21 of state-court child proceeding was barred by Rooker-Feldman, amendment of
22 complaint would have been futile”) (citing Saul v. United States, 928 F.2d 829, 843 (9th
23 Cir. 2007)). Therefore, Plaintiff should not be granted leave to amend.

24

1 **VI. CONCLUSION**

2 For the foregoing reasons, it is recommended that the District Judge issue an
3 Order (1) accepting this Report and Recommendation and (2) granting the Judicial
4 Defendants' Motion to Dismiss and dismissing all claims against defendants Juhas and
5 Stone without leave to amend.

6 IT IS SO ORDERED.

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8 Dated: November 06, 2019

9 /s/ Autumn D. Spaeth
10 THE HONORABLE AUTUMN D. SPAETH
United States Magistrate Judge

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