UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SUSAN SPELL, et al., Plaintiffs, v. COUNTY OF LOS ANGELES, et al., Defendants.	Case No. 2:19-06652 FMO (ADS) REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

This Report and Recommendation is submitted to the Honorable Fernando M. Olguin, 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 Susan Spell ("Plaintiff") and her co-plaintiff and son, B. Nicholas Evans ("Co-Plaintiff") (collectively, "Plaintiffs"), both proceeding pro se, filed a Complaint asserting claims under 42 U.S.C. § 1983 ("Section 1983"), the Fourteenth Amendment, the Racketeer Influenced and Corrupt Organizations Act ("RICO"), and California state

law against eight named defendants and two unnamed defendants (collectively, "Defendants"). [Dkt. No. 1]. Defendants include the County of Los Angeles, four social workers with the Los Angeles County Department of Children and Family Services ("DCFS"), a Deputy Counsel for Los Angeles County, and two California Superior Court judges. [Dkt. No. 1, pp. 4-5, 14].

The alleged violations of Plaintiff's rights occurred over the course of an acrimonious divorce and ensuing custody dispute over Plaintiff's four children. [Dkt. No. 1]. This is the most recent of six federal court cases filed by Plaintiff regarding this child custody dispute. Spell v. Cunningham III, Case No. 2:14-cv-09806 SJO MRW (Dec. 23, 2014); Spell v. County of Los Angeles, Case No. 2:15-cv-07775 GW PJW (Oct. 4, 2015);[1] Spell v. Stone, 2:19-cv-02073 JGB JC (March 20, 2019); Spell v. Stone, 2:19-cv-05886 JGB JC (Jul. 9, 2019); Vonsclobohm v. County of Los Angeles, Case No. 2:18-cv-0457 JFW ADS (May 24, 2018); Spell v. County of Los Angeles, Case No. 2:19-cv-06652 FMO ADS (Jul. 31, 2019).

Before the Court are two motions. First, Plaintiff filed a Motion for Temporary Restraining Order and for Preliminary Injunction and Order to Show Cause ("Motion for TRO and PI"). [Dkt. No. 10]. Second, Defendants Judge Mark Juhas ("Judge Juhas") and Judge Natalie Stone ("Judge Stone") (collectively, "Judicial Defendants") filed a Motion to Dismiss Complaint ("Motion to Dismiss"). [Dkt. No. 28]. The Court has reviewed and considered all papers filed in support of and in opposition to the

[1] Plaintiff also opened a case on the same day as Case No. 2:15-cv-07775, which was closed by the court four days after Plaintiff opened it because Plaintiff failed to upload any documents, including a complaint. Spell v. County of Los Angeles, Case No. 2:15-cv-07776.

Motion for TRO and PI and the Motion to Dismiss. The Court recommends denying the Motion for TRO and PI and granting the Motion to Dismiss because Plaintiffs' requested injunctive relief and claims against the Judicial Defendants are barred by the Rooker-Feldman doctrine, or alternatively by the Younger abstention doctrine, and by absolute judicial immunity.

II. BACKGROUND

In the Complaint, Plaintiff and Co-Plaintiff assert that Defendants engaged in various misconduct related to the custody dispute between Plaintiff and her ex-husband and separate child abuse proceedings. [Dkt. No. 1]. Plaintiff and Co-Plaintiff allege that social worker defendants ignored evidence of Plaintiff's ex-husband's abuse of their children and falsified evidence that Plaintiff abused the children, that county counsel fabricated evidence that Plaintiff's ex-husband is the children's biological father, and that the Superior Court judges improperly found Plaintiff guilty of abuse and improperly permitted Plaintiff's ex-husband to obtain and retain custody over the minor children. [Dkt. No. 1].

In this Complaint, Plaintiffs assert four claims: (1) violation of civil rights pursuant to Section 1983; (2) violation of the Fourteenth Amendment; (3) a RICO violation; and (4) loss of consortium. [Dkt. No. 1]. Plaintiffs seek punitive damages in the amount of $750,000,000, compensatory damages in the amount of $750,000,000, a permanent injunction enjoining Defendants from further violation of Section 1983, the Fourteenth Amendment, RICO, and common law, and reasonable attorney's fees and costs. [Dkt. No. 1, p. 40].

III. PROCEDURAL HISTORY

On August 27, 2019 Plaintiff filed the Motion for TRO and PI. [Dkt. No. 10]. On September 10, 2019, the Court denied Plaintiff's Motion for TRO and PI to the extent Plaintiff sought a temporary restraining order. [Dkt. No. 27]. The Judicial Defendants filed an Opposition to the Motion for Preliminary Injunction ("Opposition to Preliminary Injunction"). [Dkt. No. 42]. Plaintiff filed a Memorandum of Law in reply to the Opposition to Preliminary Injunction ("Reply Regarding Preliminary Injunction"). [Dkt. No. 50]. Plaintiff also filed two Declarations in support of the Reply Regarding Preliminary Injunction. [Dkt. Nos. 51, 52].

On September 16, 2019, the Judicial Defendants filed the Motion to Dismiss. [Dkt. No. 28]. Defendants also filed a "Request for Judicial Notice in Support of Defendant, the Hon. Mark A. Juhas, et al's, Motion to Dismiss Complaint" ("Request for Judicial Notice"). [Dkt. No. 29]. Plaintiff filed a memorandum of Law in opposition to the Motion to Dismiss ("Opposition to Motion to Dismiss"). [Dkt. No. 35]. Defendants filed a Reply to the Opposition to Motion to Dismiss ("Reply Regarding Motion to Dismiss"). [Dkt. No. 44].

A. Motion for Preliminary Injunction

In the Motion for TRO and PI, Plaintiff seeks a preliminary injunction against defendant County of Los Angeles from enforcing the Juvenile Dependency Court's judgment issued on May 11, 2016 and order issued July 7, 2016 in case DK02119 ("Juvenile Dependency Orders") and the orders issued in Family Court case BD565529 ("Family Orders") that awarded Plaintiff's ex-husband custody of the children. [Dkt. Nos. 10 and 16].

Plaintiff reasserts many of the allegations in the Complaint to argue that she will

likely be successful on the merits. [Dkt. No. 16, pp. 5-12]. Plaintiff then alleges her ex-husband is verbally, physically, and sexually abusing the minor children to show that there is a substantial threat of irreparable harm if a preliminary injunction does not issue. [Id., pp. 13-16]. Plaintiff asserts that the Juvenile Dependency Orders are the cause of this harm, that the irreparable harm itself shows that the balance of the equities weighs in favor of granting an injunction, and that her likelihood of success on the merits shows that an injunction would be in the public interest. [Id., pp. 17-18]. Further, Plaintiff attaches multiple exhibits reflecting documentation from various stages of the state court litigation, three declarations, and various documents reflecting social workers' and other investigations into allegations similar to those in the Complaint. [Id., pp. 22-21]. Plaintiff also filed multiple documents purportedly in support of the Motion for TRO and PI, which are described in the Court's September 10, 2019 Order Denying Motion for Temporary Restraining Order. [Dkt. No. 27].

In their Opposition to Preliminary Injunction, the Judicial Defendants assert Plaintiff cannot show likelihood of success on the merits because her claims are barred by the Rooker-Feldman doctrine, Eleventh Amendment immunity, absolute judicial immunity, and the language of Section 1983.[2] [Dkt. No. 42, p. 4]. In her Reply Regarding Preliminary Injunction, Plaintiff argues that she is not complaining of injuries caused by a state court judgment, but rather she is complaining of "invalid 'findings' and 'determinations' of the family court." [Dkt. No. 50, p. 7]. Plaintiff also argues that she has not yet lost at the state level because she has a pending Motion for

[2] To the extent the Court does not address any arguments raised by the parties, this is because those arguments are not necessary for resolution of the motions before the Court.

Modification before Judge Juhas, and so the Rooker-Feldman doctrine does not apply. [Id.]. Plaintiff asserts Eleventh Amendment immunity does not apply because she is suing the Judicial Defendants in their individual capacity, and that the Judicial Defendants are not entitled to qualified immunity or absolute judicial immunity because they "committed constitutional violations" and "abused [their] discretion and overstepped [their] bounds as a judge." [Id., pp. 7 10]. Finally, Plaintiff argues Section 1983 does apply to the Judicial Defendants. [Id., p. 10].

B. Motion to Dismiss

In the Motion to Dismiss, the Judicial Defendants argue that the Court lacks subject matter jurisdiction under the Rooker-Feldman doctrine and Eleventh Amendment immunity, that the Complaint fails to state a claim against the Judicial Defendants because they are afforded absolute judicial immunity and because Plaintiff has failed to establish grounds for granting injunctive relief under Section 1983 or RICO, and that Plaintiff lacks standing to bring suit against the Judicial Defendants. [Dkt. No. 28, p. 10].

In the Opposition to Motion to Dismiss, Plaintiffs argue that the Judicial Defendants lacked the authority to enter the judgments Plaintiffs are challenging. [Dkt. No. 35, pp. 7-8]. Plaintiffs then argue that the Rooker-Feldman doctrine does not bar the instant action because they are not seeking reversal of state court judgments and because Plaintiff is not a "total State loser" for the same reasons Plaintiff raised in her Reply Regarding Preliminary Injunction. [Id., p. 14]. Plaintiffs also raise the same arguments regarding Eleventh Amendment immunity and Section 1938 requirements as Plaintiff raised in her Reply Regarding Preliminary Injunction. [Id., pp. 15-17]. Plaintiffs then argue they have met the elements required to state a claim under RICO

and argues that they have suffered an actual and imminent injury. [Id., pp. 18-22]. In their Reply Regarding Motion to Dismiss, the Judicial Defendants largely reassert arguments from the Motion to Dismiss. [Dkt. No. 8].

IV. ANALYSIS

A. Standard of Review for Preliminary Injunction

A preliminary injunction is an "extraordinary remedy never awarded as of right." Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 24 (2008). The Ninth Circuit recognizes two tests for demonstrating preliminary injunctive relief. Cassim v. Bowen, 824 F.2d 791, 795 (9th Cir. 1987). A plaintiff seeking preliminary injunctive relief "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." Am. Trucking Ass'n, Inc. v. City of Los Angeles, 559 F.3d 1046, 1052 (9th Cir. 2009) (quoting Winter, 555 U.S. at 20)). Alternatively, "serious questions going to the merits and a hardship balance that tips sharply toward the plaintiff can support issuance of an injunction, assuming the other two elements of the Winter test are also met." Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1132 (9th Cir. 2011) (internal quotation omitted).

B. Standard of Review for Motion to Dismiss

Federal Rule of Civil Procedure 12(b)(1) ("Rule 12(b)(1)") allows a motion to dismiss to be asserted for lack of subject matter jurisdiction. Although defendant is the moving party on a Rule 12(b)(1) motion, plaintiff, the party invoking the court's jurisdiction, bears the burden of establishing subject matter jurisdiction. Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375, 376-78 (1994) (noting that it is to be presumed that a cause lies outside limited federal court jurisdiction and the burden of

establishing otherwise rests upon the party asserting jurisdiction); In re Wilshire Courtyard, 729 F.3d 1279, 1284 (9th Cir. 2013). There are two different ways to challenge subject matter jurisdiction with a Rule 12(b)(1) motion: a "facial" attack of jurisdiction solely on the basis of the allegations in the complaint; and a "factual" attack of jurisdiction where the court is permitted to look beyond the complaint to extrinsic evidence. Courthouse News Service v. Planet, 750 F.3d 776, 780 & n.3 (9th Cir. 2014). A facial attack, unlike a factual attack, does not rely on affidavits or other evidence to contest the truth of the allegations in the complaint. Id. When evaluating a facial attack, the Court must accept the allegations of the complaint as true. See Leite v. Crane Co., 749 F.3d 1117, 1121 (9th Cir. 2014).

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

To overcome a Rule 12(b)(6) motion to dismiss, a complaint must allege "enough facts to state a claim to relief that is plausible on its face." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007). "The plausibility standard is a screening mechanism designed to weed out cases that do not warrant either discovery or trial." Id. at 558-59. "A claim has facial plausibility when the plaintiff pleads factual content that

allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

C. Plaintiff's Claims are Barred by the Rooker-Feldman Doctrine or by the Younger Abstention Doctrine

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

Under Younger and its progeny, equity, comity and federalism preclude the federal courts from interfering in state judicial proceedings absent extraordinary circumstances. Younger v. Harris, 401 U.S. 37, 54 (1971); Steffel v. Thompson, 415 U.S. 452, 454 (1974); Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 431-35 (1982). Younger abstention is analyzed "in light of the facts and circumstances existing at the time the federal action was filed." Rynearson v. Ferguson, 903 F.3d 920, 924 (9th Cir. 2018) (citation omitted). Abstention is appropriate "when there is a pending state proceeding that implicates important state interests and

provides the federal plaintiff with an opportunity to raise federal claims."[3] Baffert v. California Horse Racing Bd., 332 F.3d 613, 617 (9th Cir. 2003). As such, a federal court must abstain if four criteria are met: (1) the state proceedings are ongoing; (2) the proceedings implicate important state interests; (3) the state proceedings provide an adequate opportunity to litigate the federal constitutional claims; and (4) the federal relief requested seeks to enjoin or has the practical effect of enjoining the ongoing state judicial proceeding. Arevalo v. Hennessy, 882 F.3d 763, 765 (9th Cir. 2018) (quoting ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund, 754 F.3d 754, 759 (9th Cir. 2014)).

Here, to the extent Plaintiffs seek an injunction prohibiting enforcement of the California Superior Court decisions, this challenge to the outcome of Plaintiff's state court custody proceedings must be made through the state courts. See Bennett v. Yoshina, 140 F.3d 1218, 1223 (9th Cir. 1998) (noting that the rationale behind the Rooker-Feldman doctrine "is that the only federal court with the power to hear appeals from state courts is the United States Supreme Court"). The entire Motion for TRO and PI falls into this prohibition because it specifically requests that this Court issue an injunction preventing defendant Los Angeles County or its employees from enforcing Judge Stone's May 11, 2016 and the subsequent Family Court orders awarding custody of the children to Plaintiff's ex-husband. [Dkt. No. 10, pp. 1-2]. Similarly, the Complaint as it relates to the Judicial Defendants asserts errors by the state court as an

[3] While Younger abstention originally applied only to federal cases in which criminal proceedings were pending in state court, the Supreme Court has since held that the Younger doctrine is fully applicable when there are non-criminal judicial proceedings in state court. See Quackenbush v. Allstate Ins. Co., 517 U.S. 706, 716-718 (1996).

injury and seeks relief from the state court judgment as a remedy.[4] See Kougasian v. TMSL, Inc., 359 F.3d 1136, 1139-40 (9th Cir. 2004).

Further, it appears some, if not all, of Plaintiffs' factual allegations related to Plaintiff's ex-husband's and social workers' conduct have been heard by the state courts. See [Dkt. No. 16, pp. 37-43, 63 (referencing allegations of physical and sexual assault and allegations that Plaintiff's ex-husband is not the children's biological father in investigative documents)]. To the extent Plaintiff has presented her claims to state courts in her attempts to set aside the child custody orders, these claims fall within the Rooker-Feldman doctrine and are barred. See Safapou v. Marin Cty. of Cal., 2018 WL 4381552, at *4 (N.D. Cal. Jan. 23, 2018) (finding claims that "mirror" those raised in state court child custody proceedings barred by Rooker-Feldman). Plaintiffs argue that she "sues to recover money damages not to overturn any State court decision;" however, this is directly contradicted by the relief she is seeking in her preliminary injunction, which request an injunction to prevent enforcement of the state court judgments. [Dkt. No. 35, p. 11].

Plaintiff also argues that her claims are not barred by the Rooker-Feldman doctrine because she has a Motion for Modification pending in the state court. [Dkt. No. 35, p. 14; Dkt. No. 50, p. 7]. Plaintiff cites to no legal authority to support her

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[4] This analysis applies equally to Plaintiffs' claims for injunctive relief as to claims for damages. See Grimes v. Alameda County Social Servs., 2011 U.S. Dist. LEXIS 120259, 2011 WL 4948879, at *1-2 (N.D. Cal. Oct. 18, 2011) (holding that where plaintiff sought both an order restoring custody of children and damages, claims were barred by Rooker-Feldman); see also Sample v. Monterey Cnty. Family & Children Servs., 2009 U.S. Dist. LEXIS 69260, 2009 WL 2485748, at *1-3 (N.D. Cal. Aug. 7, 2009) (holding that Rooker-Feldman barred complaint against county family services agency and social worker seeking damages and alleging that state court decision removing children from her custody and placing them with relative in Texas "should be reversed").

assertion that a Motion for Modification precludes the Rooker-Feldman bar. Moreover, to the extent the state court decisions are not final, these claims are barred by the Younger abstention doctrine. See Gordon v. Koppel, 203 F.3d 610, 613 (9th Cir. 2000) (finding important state interests were implicated, and Younger abstention appropriate, where child custody proceedings were ongoing).

Plaintiff's reliance on Rhoades v. Penfold, 694 F.2d 1043, 1046-47 (5th Cir. 1983), and Malhan v. Sec'y U.S. Dep't of State, 938 F.3d 453 (3rd Cir. 2019), is misplaced because they stem from other Circuits, and therefore are persuasive but not binding authority. This Court is bound by Ninth Circuit Court of Appeals precedent. As such, Plaintiff's Motion for TRO and PI should be denied because Plaintiff has not and cannot show that she is likely to be successful on the merits. Further, the Judicial Defendants' Motion to Dismiss should be granted because the Court lacks subject matter jurisdiction over the claims against these defendants.

D. Judicial Defendants Are Entitled to Absolute Judicial Immunity

The Judicial Defendants are entitled to absolute judicial immunity for Plaintiffs' claims against them because all of these claims relate to actions taken in their judicial capacity. Judges are absolutely immune from individual capacity claims when those claims arise from judicial acts undertaken in their judicial capacities within the jurisdiction of their courts. See Ashelman v. Pope, 793 F.2d 1072, 1075-76 (9th Cir. 1986) (en banc) (citing Richardson v. Koshiba, 693 F.2d 911, 913 (9th Cir.1982)); see also Ashelman, 793 F.2d at 1075 (holding that judicial immunity applies "however erroneous the act may have been, and however injurious in its consequences it may have proved to the plaintiff." (internal citations omitted)). An act is considered "judicial" when it is a "function normally performed by a judge" and the parties "dealt with the

judge in his judicial capacity." Stump v. Sparkman, 435 U.S. 349, 362 (1978). A judge "will be subject to liability . . . when he has acted in the 'clear absence of all jurisdiction.'" Stump v. Sparkman, 435 U.S. 349, 356-57 (1978) (quoting Bradley v. Fisher, 80 U.S. 335, 351 (1871)).

Here, the Judicial Defendants are immune from Plaintiffs' claims for injuries allegedly caused by the Judicial Defendants' decisions made in the course of child custody and child abuse proceedings because these actions were taken in their judicial capacity. See Ashelman v. Pope, 793 F.2d 1072, 1075-76 (9th Cir. 1986) (en banc). This extends to Plaintiffs' requested injunctive relief seeking to prevent enforcement of the Judicial Defendants' prior decisions. See Moore v. Brewster, 96 F.3d 1240, 1243 (9th Cir. 1996) ("The judicial or quasi-judicial immunity available to federal officers is not limited to immunity from damages, but extends to actions for declaratory, injunctive and other equitable relief." (quoting Mullis v. Bankruptcy Court for the District of Nevada, 828 F.2d 1385, 1394 (9th Cir. 1987))), superseded by statute on other ground.

Plaintiffs' argument that the Judicial Defendants lacked jurisdiction to issue the orders in question is without merit. Plaintiff relies on multiple California state cases, each of which is distinguishable from this case.[5] As such, Plaintiff has failed to show that the Judicial Defendants acted in "clear absence of all jurisdiction." See Stump, 435 U.S. at 356-57.

[5] For example, Plaintiff relies on Barkaloff v. Woodward, 55 Cal. Rptr. 2d 167 (1st Cal. Ct. App. Jul. 15, 1996), which involved awarding custody to the non-natural father where the parties had never been married. Id. at 170. Plaintiff also relies on Polin v. 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 was married to her ex-husband.

Plaintiffs have failed to state a claim upon which relief can be granted against the Judicial Defendants. The Judicial Defendants' Motion to Dismiss should be granted under Rule 12(b)(6) as well as 12(b)(1). As such, all claims against the Judicial Defendants should be dismissed.

V. LEAVE TO AMEND

If the Court finds that a complaint fails to state a claim, the Court has discretion to dismiss with or without leave to amend. See Lopez v. Smith, 203 F.3d 1122, 1126–30 (9th Cir. 2000) (en banc). In the Ninth Circuit, courts should grant leave to amend if it appears possible that the defects in the complaint could be corrected. See id. at 1130-31; see also Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995) ("A pro se litigant must be given leave to amend his or her complaint, and some notice of its deficiencies, unless it is absolutely clear that the deficiencies of the complaint could not be cured by amendment."). However, if, after careful consideration, it is clear that amendment cannot cure a complaint, the Court may dismiss without leave to amend. Cato, 70 F.3d at 1105-06 (affirming district court's dismissal of the complaint with prejudice pursuant to 28 U.S.C. § 1915(d)).

In this case, Plaintiffs leave to amend would be futile. See Cato, 70 F.3d at 1105-06. Amendment will not cure the absence of subject matter jurisdiction under the Rooker-Feldman doctrine, even if Plaintiffs amend their complaint. "It is immaterial that [the plaintiff] frames his federal complaint as a constitutional challenge to the state courts' decisions, rather than as a direct appeal of those decisions. The Rooker-Feldman doctrine prevents lower federal courts from exercising jurisdiction over any claim that is 'inextricably intertwined' with the decision of a state court, even where the party does not directly challenge the merits of the state court's decision but rather brings an

indirect challenge based on constitutional principles." Bianchi v. Rylaarsdam , 334 F.3d 895, 900 n.4; see Watkins v. Proulx, 235 Fed. App'x. 678, 679 (9th Cir. 2007) (holding that because plaintiff's Section 1983 action alleging constitutional violations arising out of state-court child proceeding was barred by Rooker-Feldman, amendment of complaint would have been futile") (citing Saul v. United States, 928 F.2d 829, 843 (9th Cir. 2007)); Grimes v. Alameda County Social Servs., 2011 U.S. Dist. LEXIS 120259, 2011 WL 4948879, at *3 (N.D. Cal. Oct. 18, 2011) ("Even if plaintiff were to abandon his request for the return of his children and instead pursue only money damages, his claims still would require review of the relevant state-court decisions. Such review is barred. Even though plaintiff nominally asserts claims for alleged civil rights violations, his pleading is de facto an improper collateral attack on unfavorable state-court rulings." (citing Bianchi, 334 F.3d at 900 n.4)). Therefore, Plaintiff should not be granted leave to amend.

VI. CONCLUSION

For the foregoing reasons, it is recommended that the District Judge issue an Order (1) accepting this Report and Recommendation; (2) denying the Motion for TRO and PI; and (3) granting the Motion to Dismiss as to defendants Juhas and Stone for lack of subject matter jurisdiction.

IT IS SO ORDERED.

Dated: November 06, 2019

_____/s/ Autumn D. Spaeth_____
THE HONORABLE AUTUMN D. SPAETH
United States Magistrate Judge