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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DARRELL MOORE, SR.,)	Case No. CV 13-02422 DDP (JCGx)
)	
Plaintiff,)	
)	ORDER GRANTING DEFENDANTS'
v.)	MOTIONS TO DISMISS
)	
STATE OF CALIFORNIA; STATE)	
OF CALIFORNIA SUPERIOR COURT)	
JUDGES; STATE OF CALIFORNIA)	[Dkt. Nos. 10 & 12]
SUPREME COURT; THE STATE)	
CHARTED AGENCY-THE HOUSING)	
AUTHORITY OF THE CITY OF LOS)	
ANGELES; STATE OF CALIFORNIA)	
JUDICIAL COMMISSION, et al.,)	
)	
Defendants.)	
_____)	

Presently before the court are Defendants' Motions to Dismiss Plaintiff's First Amended Complaint. Having considered the submissions of the parties, the court grants the Motions and adopts the following order.

I. Background

Plaintiff, Darrell J. Moore, Sr., seeks a declaratory judgment that the California Court of Appeal Order declaring him a vexatious litigant is an "incorrect and wrongful application of the State

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1 Statute." (First Amended Complaint ("FAC") ¶ 59.) Plaintiff
2 further seeks to "enjoin the State of California from denying [his]
3 rights to due process," and to "[reinstate] his appeals." (Id.)
4 Plaintiff names the State of California, State of California
5 Superior Court Judges, the State Appellate Court, the State of
6 California Supreme Court, the State Chartered Agency the Housing
7 Authority of the City of Los Angeles ("HACLA"), the Commissioners
8 of the HACLA, and the State of California Judicial Commission as
9 Defendants.

10 Plaintiff has previously filed multiple lawsuits against
11 Defendants including his former employer, the HACLA. At the request
12 of the HACLA, the California Court of Appeal issued an order
13 declaring Plaintiff a vexatious litigant subject to the provisions
14 of the California Code of Civil Procedure ("CCP") Section 391.
15 (State's Request for Judicial Notice ("RJN"), Exh. A.) In the
16 order, the California Court of Appeal stated, "in the preceding
17 seven years, in this District alone, [Plaintiff] has prosecuted at
18 least five appeals and writ petitions pro se which have been
19 finally determined adversely to him." (Id. at 2). The appellate
20 court denied Plaintiff's petition for rehearing. (State's RJN, Exh.
21 B.) The California Supreme Court denied Plaintiff leave to file a
22 petition for writ of mandate. (State's RJN, Exh. C.)

23 Plaintiff claims that the Court of Appeal illegally and
24 wrongfully used at least three non-final judgment interim matters
25 as litigations for purposes of declaring Plaintiff a vexatious
26 litigant. (FAC ¶¶ 21, 22.) Plaintiff further alleges that the HACLA
27 fraudulently led the court to miscalculate the required number of

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1 litigations needed to declare him a vexatious litigant. (Id.)
2 Plaintiff argues that the five cases that were used to determine
3 that Plaintiff is a vexatious litigant (B205489, B208276, B208560,
4 B231379, and B333818) are "cases that were still pending, had not
5 been fully or finally determined, or were case numbers for writs
6 and or petitions born out of cases that ended in a final resolution
7 in favor of [Plaintiff]." (FAC ¶¶ 13, 18-21.) Plaintiff claims that
8 this miscalculation resulted in the violation of many
9 constitutional and statutory rights. (FAC ¶¶ 5, 44, 47-48).

10 Defendants move to dismiss Plaintiff's First Amended Complaint
11 under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).
12 Specifically, the Defendants seek to dismiss on the grounds that
13 (1) Plaintiff's claims are barred by the Eleventh Amendment and (2)
14 federal jurisdiction to review and correct state court decisions is
15 barred by the Rooker-Feldman doctrine.

16 **II. Legal Standard**

17 **A. Lack of Subject Matter Jurisdiction Under Federal Rule of**
18 **Civil Procedure 12(b)(1)**

19 The district court must dismiss an action if the court lacks
20 jurisdiction over the subject matter of the suit. See Fed. R. Civ.
21 P. 12(b)(1). The party seeking to invoke federal jurisdiction bears
22 the burden of establishing that jurisdiction exists. Scott v.
23 Breeland, 792 F.2d 925, 927 (9th Cir.1986). A complaint will be
24 dismissed under Rule 12(b)(1) for lack of subject matter
25 jurisdiction where a plaintiff's claim is barred by sovereign
26 immunity. See Porter ex rel. Porter v. Board of Trustees of
27 Manhattan Beach Unified School Dist., 123 F.Supp.2d 1187, 1194

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1 (C.D.Cal.2000)(reversed on other grounds); Wright, Miller & Cooper,
2 Federal Practice & Procedure: Civil § 1350 (3d ed.1998).

3 **B. Failure to State a Claim Under Federal Rule of Civil**
4 **Procedure 12(b)(6)**

5 The district court may grant dismissal when a complaint fails
6 to state a claim upon which relief may be granted. See Fed. R. Civ.
7 P. 12(b)(6). A well-pleaded complaint must provide "enough facts to
8 state a claim to relief that is plausible on its face." Bell
9 Atlantic Corp. v. Twombly, 550 U.S. 544(2007). When considering a
10 motion to dismiss under Rule 12(b)(6), the Court must presume all
11 well-pleaded factual allegations of the complaint to be true.
12 Syverson v. IBM Corp., 472 F.3d 1072, 1075 (9th Cir.2007).

13 However, the court need not presume as true allegations of law that
14 are conclusory, unwarranted deductions of fact, or unreasonable
15 inferences. See Sprewell v. Golden State Warriors, 266 F.3d 979,
16 988(9th Cir. 2001).

17 **III. Discussion**

18 **A. Plaintiff's Claims against the State of California**

19 **1. Eleventh Amendment Bars Plaintiffs Claims against**
20 **the State of California**

21 The Eleventh Amendment immunizes states from suits brought by
22 their citizens in federal court without their consent. Hans v.
23 Louisiana, 134 U.S. 1(1890); U.S. Const. amend. XI. Waiver of
24 Eleventh Amendment immunity by a state will be found "only where
25 stated by the most express language or by such overwhelming
26 implication from the text as [will] leave no room for any other
27 reasonable construction." Atascadero State Hosp. v. Scanlon, 473

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1 U.S. 34, 239-40 (quoting Edelman v. Jordan, 415 U.S. 651, 673 (1974))
2 (internal quotation marks omitted).

3 The present case is a classic example of a state's Eleventh
4 Amendment immunity. Plaintiff, a citizen of California, is bringing
5 suit against the State of California. The State of California does
6 not purport to waive its immunity. (State of California Motion to
7 Dismiss ("Cal. Motion") at 3.) Nor does Plaintiff claim that the
8 State has waived its immunity. (Plaintiff's Opposition to State of
9 California's Motion to Dismiss First Amended Complaint ("Cal.
10 Opposition") at 5). Plaintiff has failed to show why this Court has
11 jurisdiction over his claims against the State of California. Thus,
12 this court must dismiss all claims against the State of California
13 for lack of jurisdiction under Fed. R. Civ. P. 12(b)(1).

14 **2. The Rooker-Feldman Doctrine Bars Plaintiff's Claims**
15 **against the State of California**

16 Under the Rooker-Feldman doctrine, jurisdiction to review
17 final state court judgments rests with the United States Supreme
18 Court. Rooker v. Fidelity Trust Co., 263 U.S. 413, 415-16 (1923);
19 Noel v. Hall, 341 F.3d 1148, 1154 (9th Cir. 2003). District courts
20 do not have jurisdiction "over challenges to state court
21 decisions." Dist. of Columbia Court of Appeals v. Feldman, 460 U.S.
22 462, 486 (1983); see also 28 U.S.C. § 1257. When a non-prevailing
23 plaintiff in state court seeks to set aside the judgment of the
24 state court in a federal district court, "the federal suit is a
25 forbidden de facto appeal." Noel 341 F.3d at 1156; see also Carmona
26 v. Carmona, 603 F.3d 1041, 1050 (9th Cir. 2008) (holding that
27 Rooker-Feldman bars suits by state-court losers "complaining of

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1 injuries caused by state-court judgments"). "To reverse or modify
2 the judgment of the state court because of such errors 'would be an
3 exercise of appellate jurisdiction' possessed only by the Supreme
4 Court." Noel, 341 F.3d at 1156 (quoting Rooker, 263 U.S. at 416).

5 In the present case, Plaintiff asserts that the California
6 state court decision to declare him a vexatious litigant is a legal
7 wrong and is seeking to set aside the state court judgment.

8 Plaintiff also asks the federal district court to reverse the
9 California Supreme Court's decision to deny Plaintiff leave to file
10 a petition for a writ of mandate. Plaintiff, a state-court loser,
11 discontented with the state-court judgments, is "seeking district
12 court review and rejection of those judgments." Carmona, at 1050.

13 In Kougasian v. TMSL, Inc., the Ninth Circuit held that
14 Rooker-Feldman does not bar federal jurisdiction over claims
15 asserting that state-court judgments had been obtained by extrinsic
16 fraud upon the court. 359 F.3d 1136 (9th Cir. 2004). Rooker-Feldman
17 applies "only when the plaintiff both asserts as her injury legal
18 error or errors by the state court and seeks as her remedy relief
19 from the state court judgment." Id. at 1140. However, if a
20 plaintiff "asserts as a legal wrong an allegedly illegal act or
21 omission by an adverse party, Rooker-Feldman does not bar
22 jurisdiction." Noel, 341 F.3d 1148, 1164 (9th Cir. 2003).

23 Thus, if Plaintiff can state a claim for fraud on the court,
24 such claims are not barred by Rooker-Feldman. "A plaintiff alleging
25 extrinsic fraud on a state court is not alleging a legal error by
26 the state court; rather, he or she is alleging a wrongful act by
27 the adverse party." Kougasian, at 1140-41. Plaintiff is asserting a

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1 wrongful act, fraud upon the court, by an adverse party, the HACLA.
2 Thus, the district court is not deprived of subject matter
3 jurisdiction as to Plaintiffs claims against HACLA.

4 **2. Plaintiff Fails to State a Claim for Fraud on the**
5 **Court**

6 A state court judgment may be set aside for fraud on the
7 court. Pumphrey v. K.W. Thompson Tool Co., 62 F.3d 1128, 1130 (9th
8 Cir. 1995). However, a claim of fraud on the court "should be read
9 narrowly, in the interest of preserving the finality of judgments."
10 Toscano v. Comm'r, 441 F.2d 930, 934 (9th Cir.1971). Plaintiffs
11 seeking relief from a judgment based on fraud on the court face a
12 high burden and must establish fraud upon the court by clear and
13 convincing evidence. Latshaw v. Trainer Wortham & Co., Inc., 452
14 F.3d 1097, 1104 (9th Cir. 2006). Plaintiff must establish that the
15 alleged fraud involved "an unconscionable plan or scheme which is
16 designed to improperly influence the court in its decision." Abatti
17 v. Commissioner, 859 F.2d 115, 118 (9th Cir.1988). See also England
18 v. Doyle, 281 F.2d 304, 309-10 (9th Cir. 1960) (to set aside a
19 judgment arising out of fraud on the court "it is necessary to show
20 an unconscionable plan or scheme which is designed to improperly
21 influence the court in its decision."). Fraud "connected with the
22 presentation of a case to a court" does not necessarily improperly
23 influence the judicial process. United States v. Estate of
24 Stonehill, 660 F.3d 415, 444 (9th Cir. 2011). Also, non-disclosure
25 by itself or a failure to produce evidence do not necessarily
26 constitute fraud on the court. See In re Levander, 180 F.3d 1114,
27 1119 (9th Cir. 1999); Doyle, 281 F.2d at 310 (9th Cir.1960).

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1 Plaintiff bears the burden of establishing that the alleged
2 misconduct of the HACLA "affected the integrity of the judicial
3 process," either because the court itself was defrauded or because
4 the misconduct was perpetrated by officers of the court. Alexander
5 v. Robertson, 882 F.2d 421, 424. See also In re Intermagnetics
6 Am., Inc., 926 F.2d 912, 917 (9th Cir. 1991). Moreover, Plaintiff
7 must show that the fraud "harms the integrity of the judicial
8 process, regardless of whether [Plaintiff] is prejudiced." Dixon v.
9 C.I.R., 316 F.3d 1041, 1046 (9th Cir. 2003); see also
10 Intermagnetics Am., Inc., 926 F.2d at 916 (9th Cir.
11 1991)(determining fraud on the court is focused not "in terms of
12 whether the alleged fraud prejudiced the opposing party but more in
13 terms of whether the alleged fraud harms the integrity of the
14 judicial process").

15 Here, Plaintiff fails to establish that the allege fraud
16 involved an 'unconscionable plan or scheme' to improperly influence
17 the court. To be declared a vexatious litigant under CCP § 391, a
18 person must have "commenced, prosecuted, or maintained in propria
19 persona at least five litigations ...that have been (i) finally
20 determined adversely to the person" in the immediately preceding
21 seven-year period. CCP §391(b)(1). The 'fraud' plaintiff alleges is
22 the HACLA's presentation to the California Court of Appeal of
23 interim matters and writs that were not finally determined
24 adversely to him as the litigations to declare Plaintiff a
25 vexatious litigant. Plaintiff claims that the HACLA intentionally
26 used these cases to confuse the Court of Appeal into miscalculating

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1 the required number of litigations needed to declare a plaintiff a
2 vexatious litigant.

3 However, fraud connected with the presentation of a case to a
4 court does not necessarily harm the judicial process. Estate of
5 Stonehill, 660 F.3d at 444. Non-disclosure of a case and non-
6 disclosure of the fact that a case may have been an interim case or
7 a case without final judgment does not constitute fraud on the
8 court. See In re Levander at 1119; Doyle, 281 F.2d at 310. The
9 records and case numbers are all a matter of public record easily
10 accessible by the state court, Plaintiff, and Defendant. Regardless
11 of what the HACLA presented to the court, a unanimous panel of the
12 California Court of Appeal and the California Supreme Court
13 determined that declaring Plaintiff a vexatious litigant was
14 warranted. It is clear that the HACLA did not contrive an
15 unconscionable plan in attempt to improperly obtain a favorable
16 ruling from the state court. No material fact was concealed from
17 the state court and the HACLA disclosed all that was necessary for
18 its motion to declare Plaintiff a vexatious litigant.

19 A claim of fraud upon the court must also show how the alleged
20 fraud harms the integrity of the judicial process. Dixon, 316 F.3d
21 at 146. Plaintiff fails to show that the alleged fraud harms the
22 integrity of the judicial process; rather, he focuses on how the
23 alleged fraud prejudices him. Throughout his complaint, Plaintiff
24 claims that Defendants' actions were done with intent to injure him
25 and to prevent him from asserting his legal rights. (FAC ¶ 47, 48,
26 51, 52, 55, 56.) Plaintiff alleges no facts to show that the HACLA

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1 defiled, or attempted to defile, the state court so that it could
2 not perform in its usual manner. Alexander, 882 F.2d at 424.

3 Thus, the court finds that Plaintiff has failed to state a
4 claim for fraud upon the court and that no relevant exception to
5 the Rooker-Feldman doctrine applies. The action is therefore
6 barred by the Rooker-Feldman doctrine as improperly challenging a
7 state court judgment in federal court.

8 **IV. Conclusion**

9 For these reasons, Defendants' motions to dismiss are GRANTED.
10 Plaintiff's Ex Parte Application for Extension of Time to File
11 (Dckt. No. 23) and Ex Parte Application for Leave to Amend the
12 Complaint (Dckt. No. 24) are VACATED as moot.

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14 IT IS SO ORDERED.

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16 Dated: August 7, 2013

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DEAN D. PREGERSON
United States District Judge