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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

GREG STEVEN ELOFSON,
Plaintiff,
v.
STEPHANIE MCCOLLUM,
Defendant.

Case No. 15-cv-05761-BLF

**ORDER GRANTING DEFENDANT
MCCOLLUM'S MOTION TO DISMISS
WITHOUT LEAVE TO AMEND**

[Re: ECF 153]

The last defendant remaining in this action, Stephanie McCollum, seeks dismissal of the operative first amended complaint (“FAC”) pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(2) for lack of subject matter jurisdiction and lack of personal jurisdiction, respectively. After completion of briefing, the Court issued an order submitting the motion without oral argument and vacating the hearing which had been scheduled for June 29, 2017. Order Submitting Motion Without Oral Argument, ECF 160. For the reasons discussed below, the motion to dismiss is GRANTED WITHOUT LEAVE TO AMEND.

I. BACKGROUND

Plaintiff Greg Steven Elofson (“Elofson”), proceeding *pro se*, filed this action to challenge Arizona state court orders relating to the guardianship and conservatorship of his father, Milo Elofson (“Milo”).¹ The underlying facts are well-known to the parties and the Court and need not be recited in full here. In brief, the operative FAC alleges misconduct by several persons who

¹ The Court intends no disrespect in referring to Milo Elofson by his first name. It does so only to distinguish him from Plaintiff Greg Elofson.

1 either participated in Milo’s Arizona guardianship and conservatorship proceedings or honored
2 orders issued in those proceedings. *See* FAC, ECF 29. The defendants include: Milo’s step-
3 daughter, Pam Dougherty-Elofson (“Dougherty-Elofson”); Elofson’s former attorney, Stephanie
4 Bivens (“Bivens”); Milo’s court-appointed attorney, Paul Theut (“Theut”); Milo’s court-appointed
5 guardian and conservator, Stephanie McCollum (“McCollum”); McCollum’s attorney, Lawrence
6 Scaringelli (“Scaringelli”); an employee of Monterey County Adult Protective Services, Steven
7 Mudd (“Mudd”); and Community Memorial Hospital.

8 The FAC asserts twenty-one claims: (1) relief from the Arizona state court guardianship
9 order; (2) relief from the Arizona state court conservatorship order; (3) relief from the Arizona
10 state court conservatorship order; (4) relief from the Arizona state court guardianship order;
11 (5) breach of duty; (6) attorney malpractice; (7) attorney malpractice; (8) breach of fiduciary duty;
12 (9) defamation; (10) negligent infliction of emotional distress; (11) financial elder abuse; (12)
13 violation of civil rights under 42 U.S.C. § 1983; (13) human trafficking in violation of 18 U.S.C. §
14 1595; (14) violations of the Racketeer Influenced and Corrupt Organizations Act (“RICO”); (15)
15 abuse of process; (16) violation of civil rights under 42 U.S.C. § 1983; (17) violation of civil
16 rights under 42 U.S.C. § 1983; (18) defamation; (19) violation of civil rights under 42 U.S.C. §
17 1983; (20) defamation; and (21) wire fraud.

18 On February 13, 2017, the Court granted motions to dismiss brought by six of the seven
19 defendants named in the FAC, without leave to amend. *See* Order Granting Motions to Dismiss
20 First Amended Complaint Without Leave to Amend, ECF 149. The Court noted that the seventh
21 defendant, McCollum, had not yet been served with the summons and complaint. *Id.* at 1 n.2.
22 Because the Magistrate Judge previously assigned to this case granted Elofson’s motion to
23 proceed in forma pauperis, Elofson was entitled to have the United States Marshals Service effect
24 service of process on McCollum. Order Granting Leave to Proceed In Forma Pauperis, ECF 6. It
25 appears from the docket that the original summons could not be located by the United States
26 Marshals Service, and that the summons was reissued as to McCollum. Reissued Summons, ECF
27 150. The docket does not reflect the date upon which service was effected on McCollum, but on
28 March 30, 2017, McCollum filed the present motion to dismiss.

1 **II. DISCUSSION**

2 Elofson sues McCollum, Milo’s court-appointed guardian and conservator, for breach of
3 fiduciary duty (Claim 8), defamation (Claim 9), negligent infliction of emotional distress (Claim
4 10), financial elder abuse (Claim 11), violation of civil rights under § 1983 (Claims 12 and 19),
5 trafficking (Claim 13), RICO violations (Claim 14), abuse of process (Claim 15), defamation
6 (Claim 20), and wire fraud (Claim 21). Before turning to the substance of McCollum’s motion to
7 dismiss these claims, the Court addresses the admissibility of documents submitted by both
8 parties.

9 The Court may consider evidence beyond the four corners of the complaint when
10 considering a motion to dismiss for lack of subject matter jurisdiction or for lack of personal
11 jurisdiction. *See Safe Air For Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004) (subject
12 matter jurisdiction); *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1068 (9th Cir. 2015) (personal
13 jurisdiction). Such evidence must be admissible. *See Lavinia Aircraft Leasing, LLC v. Piper*
14 *Aircraft Inc.*, No. CV-16-02849-PHX-DGC, 2017 WL 1326140, at *3 (D. Ariz. Apr. 11, 2017) (to
15 defeat a motion to dismiss for lack of personal jurisdiction, the plaintiff has the burden to make a
16 prima facie showing “based on admissible evidence”); *Yhudai v. Mortg. Elec. Registration Sys.,*
17 *Inc.*, No. CV 15-05035 MMM (JPRx), 2015 WL 5826777, at *7 n.38 (C.D. Cal. Oct. 2, 2015) (“In
18 the Ninth Circuit, however, admissible evidence is required to carry a party’s burden of showing
19 that the district court has subject matter jurisdiction to hear an action.”).

20 McCollum requests judicial notice of numerous documents filed in the Arizona
21 guardianship and conservatorship proceedings entitled *In the Matter of the Guardianship and*
22 *Conservatorship of Milo Elofson*, Maricopa County Superior Court case no. PB 2013-050520. *See*
23 *Def.’s RJN*, ECF 153-2. Those documents are attached to and authenticated by McCollum’s
24 declaration. *See McCollum Decl.*, ECF 153-3. McCollum’s request for judicial notice is
25 GRANTED. *See Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir.
26 2006) (“We may take judicial notice of court filings and other matters of public record.”).

27 Elofson also submits documents for the Court’s consideration, including what appears to
28 be an Arizona state court order appointing McCollum as Milo’s conservator; a letter from an

1 attorney named John Paul Parks, dated July 15, 2016; and what appears to be an investigative
2 finding regarding alleged misconduct by McCollum in connection with her appointment as
3 guardian in another case unrelated to Milo’s case. *See* Pl.’s Opp., ECF 155. Those documents are
4 merely appended to Elofson’s opposition brief; they are not authenticated. Accordingly, they are
5 inadmissible and may not be considered by the Court. *See Orr v. Bank of Am., NT & SA*, 285 F.3d
6 764, 773 (9th Cir. 2002) (“Authentication is a condition precedent to admissibility.”) (internal
7 quotation marks and citation omitted omitted).

8 Even if it were to consider the evidence submitted by Elofson, that evidence would not
9 alter the Court’s analysis, as the documents are irrelevant to the jurisdictional issues raised by
10 McCollum’s motion to dismiss. The first document, which appears to be an order appointing
11 McCollum as Milo’s conservator, does not add any relevant information, as the fact of that
12 appointment is not in dispute. Pl.’s Opp. Exh. A, ECF 155-2. The second document, a letter from
13 an attorney named John Paul Parks, appears to be a response to an inquiry made by an Arizona
14 law firm on behalf of Elofson. Pl.’s Opp. Exh. B, ECF 155-4. In the letter, Mr. Parks states that
15 he does not have any original will or estate planning documents for Milo Elofson; that he
16 previously had mailed a copy of his file relating to Milo Elofson to Greg Elofson; and that he
17 could not disclose any other information under the rules governing attorney-client confidentiality.
18 *Id.* Finally, the third document, which appears to be an investigative finding regarding
19 McCollum’s alleged misconduct in connection with another Arizona guardianship unrelated to
20 Milo’s guardianship, does not speak to McCollum’s contacts with California or any other issue
21 relevant to this Court’s jurisdiction over the claims or the parties. Pl.’s Opp. Exh. C, ECF 155-6.

22 Having clarified which documents may be considered in addressing McCollum’s motion,
23 the Court turns to the asserted grounds for dismissal, lack of subject matter jurisdiction and lack of
24 personal jurisdiction.

25 **A. Rule 12(b)(1) – Subject Matter Jurisdiction**

26 A party may challenge the Court’s subject matter jurisdiction by bringing a motion to
27 dismiss under Federal Rule of Civil Procedure 12(b)(1). “A Rule 12(b)(1) jurisdictional attack
28 may be facial or factual.” *Safe Air*, 373 F.3d at 1039 (9th Cir. 2004). In a facial attack, the

1 movant asserts that the lack of subject matter jurisdiction is apparent from the face of the
2 complaint. *Id.* In a factual attack, the movant disputes the truth of allegations that otherwise
3 would give rise to federal jurisdiction. *Id.* “In resolving a factual attack on jurisdiction, the district
4 court may review evidence beyond the complaint without converting the motion to dismiss into a
5 motion for summary judgment.” *Id.* “The court need not presume the truthfulness of the
6 plaintiff’s allegations.” *Id.* Once the moving party has presented evidence demonstrating the lack
7 of subject matter jurisdiction, the party opposing the motion must present affidavits or other
8 evidence sufficient to establish subject matter jurisdiction. *Id.* Such evidence must be admissible.
9 *Yhudai*, 2015 WL 5826777, at *7 n.38.

10 McCollum mounts a factual attack to subject matter jurisdiction, asserting that the
11 evidence makes clear that the present action is a de facto appeal of the numerous Arizona state
12 court rulings that were adverse to Elofson, and thus that this Court lacks subject matter jurisdiction
13 under the *Rooker-Feldman* doctrine. The *Rooker-Feldman* doctrine bars a federal district court
14 from reviewing the final determinations of a state court. *See Dist. of Columbia Court of Appeals*
15 *v. Feldman*, 460 U.S. 462, 476 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923).

16 The Court twice has determined that it lacks subject matter jurisdiction over all of the
17 federal claims at issue here. The Court first addressed the application of *Rooker-Feldman* when it
18 denied Elofson’s application for a temporary restraining order. *See Order Denying Plaintiff’s*
19 *Motion for Appointment of Counsel; Denying Plaintiff’s Application for a Temporary Restraining*
20 *Order; and Granting Plaintiff’s Motion for Leave to File an Amended Complaint*, ECF 23.
21 Elofson subsequently filed the operative FAC, adding among other things a lengthy discussion of
22 the *Rooker-Feldman* doctrine and his opinions as to why *Rooker-Feldman* does not apply to his
23 claims. *See FAC*, ECF 29. The Court considered those amendments when it addressed motions to
24 dismiss brought by six of the seven named defendants. *See Order Granting Motions to Dismiss*
25 *First Amended Complaint Without Leave to Amend*, ECF 149. The Court once again concluded
26 that *Rooker-Feldman* bars Elofson’s federal claims, and in particular determined that all of
27 Elofson’s federal claims against McCollum and her attorney, Scaringelli, “depend upon the
28 asserted invalidity of the Arizona state court orders regarding Milo’s guardianship and

1 conservatorship.” *Id.* at 27-28.

2 McCollum argues that under the reasoning set forth in the Court’s prior orders, Elofson’s
3 federal claims against her are barred by *Rooker-Feldman*. In opposition, Elofson simply disagrees
4 with the Court’s application of the *Rooker-Feldman* doctrine. The Court has considered Elofson’s
5 arguments against the backdrop of the documents from the Arizona proceedings submitted by
6 McCollum, and it remains persuaded that all of Elofson’s federal claims against McCollum are
7 barred.

8 The purpose of the *Rooker-Feldman* doctrine “is to protect state judgments from collateral
9 federal attack. Because district courts lack power to hear direct appeals from state court decisions,
10 they must decline jurisdiction whenever they are ‘in essence called upon to review the state court
11 decision.’” *Doe & Assocs. Law Offices v. Napolitano*, 252 F.3d 1026, 1030 (9th Cir. 2001)
12 (quoting *Feldman*, 460 U.S. at 482 n.16). The *Rooker-Feldman* doctrine precludes not only
13 review of decisions of the state’s highest court, but also those of its lower courts. *See Dubinka v.*
14 *Judges of Superior Court*, 23 F.3d 218, 221 (9th Cir. 1994). “*Rooker-Feldman* may also apply
15 where the parties do not directly contest the merits of a state court decision, as the doctrine
16 prohibits a federal district court from exercising subject matter jurisdiction over a suit that is a de
17 facto appeal from a state court judgment.” *Reusser v. Wachovia Bank, N.A.*, 525 F.3d 855, 859
18 (9th Cir. 2008) (internal quotation marks and citation omitted). “A federal action constitutes such
19 a de facto appeal where claims raised in the federal court action are inextricably intertwined with
20 the state court’s decision such that the adjudication of the federal claims would undercut the state
21 ruling or require the district court to interpret the application of state laws or procedural rules.” *Id.*
22 (internal quotation marks and citation omitted).

23 Elofson’s federal claims against McCollum are inextricably intertwined with the Arizona
24 state court proceedings and resulting orders, and Elofson could not prevail on those claims without
25 undercutting the Arizona orders. For example, Claims 12 and 19, asserted under § 1983, allege
26 that the Arizona state court proceedings deprived Plaintiff and Milo of due process and free
27 association rights protected under the Fourteenth Amendment. Claim 13 for trafficking and Claim
28 14 for RICO violations allege that Defendants’ control over Milo’s assets and person pursuant to

1 the Arizona state court orders constitute human trafficking and racketeering activity. Claim 21 for
2 wire fraud alleges that McCollum and Scaringelli committed wire fraud when they asserted
3 McCollum’s rights as Milo’s guardian and conservator in communications to Mudd and
4 Community Memorial Hospital. All of these claims are premised on the asserted illegality of the
5 Arizona court’s rulings and actions taken pursuant to those rulings. Accordingly, they are subject
6 to dismissal under the *Rooker-Feldman* doctrine for lack of subject matter jurisdiction.

7 Having concluded that all federal claims remaining in the FAC are subject to dismissal, the
8 Court declines to exercise supplemental jurisdiction over Elofson’s state law claims. “A district
9 court ‘may decline to exercise supplemental jurisdiction’ if it ‘has dismissed all claims over which
10 it has original jurisdiction.’” *Sanford v. MemberWorks, Inc.*, 625 F.3d 550, 561 (9th Cir. 2010)
11 (quoting 28 U.S.C. § 1367(c)(3)). “[I]n the usual case in which all federal-law claims are
12 eliminated before trial, the balance of factors to be considered under the pendent jurisdiction
13 doctrine – judicial economy, convenience, fairness, and comity – will point toward declining to
14 exercise jurisdiction over the remaining state-law claims.” *Id.* (quoting *Carnegie-Mellon Univ. v.*
15 *Cohill*, 484 U.S. 343, 350 n. 7 (1988)). Here, the case is still at the pleading stage. Under these
16 circumstances, the Court perceives no reason to exercise supplemental jurisdiction over Elofson’s
17 state law claims.

18 **B. Rule 12(b)(2) – Personal Jurisdiction**

19 A party may challenge the Court’s personal jurisdiction over it by bringing a motion to
20 dismiss under Federal Rule of Civil Procedure 12(b)(2). When a defendant raises a challenge to
21 personal jurisdiction, the plaintiff bears the burden of establishing that jurisdiction is proper.
22 *Ranza*, 793 F.3d at 1068. The plaintiff may meet that burden by submitting affidavits and
23 discovery materials. *Id.* “Where, as here, the defendant’s motion is based on written materials
24 rather than an evidentiary hearing, the plaintiff need only make a prima facie showing of
25 jurisdictional facts to withstand the motion to dismiss.” *Id.* (internal quotation marks and citation
26 omitted). “[T]he plaintiff cannot simply rest on the bare allegations of its complaint,” but when
27 evaluating the plaintiff’s showing, the court must accept uncontroverted allegations in the
28 complaint as true and resolve factual disputes created by conflicting affidavits in the plaintiff’s

1 favor.” *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004) (internal
2 quotation marks and citation omitted). Such evidence must be admissible. *See Lavinia Aircraft*
3 *Leasing*, 2017 WL 1326140, at *3.

4 McCollum seeks dismissal for lack of personal jurisdiction based on her declaration stating
5 that she resides in Mesa, Arizona; she is a licensed fiduciary only in the State of Arizona; she has
6 not spent any significant time in California other than an eighteen-month period spent working at
7 an architectural firm in California, which occurred thirty-six years ago; she does not do business or
8 advertise in California; and she does not own or lease property in California. McCollum Decl. ¶¶
9 29-31, ECF 153-3. Elofson asserts that McCollum is subject to personal jurisdiction in this Court
10 under RICO’s “ends of justice” provision, 18 U.S.C. § 1965(b). Although he argued in opposition
11 to other defendants’ Rule 12(b)(2) motions that personal jurisdiction existed under California’s
12 long-arm statute, Elofson does not make that argument with respect to McCollum. Because
13 Elofson has the burden to establish personal jurisdiction, the Court limits its consideration of
14 personal jurisdiction to the RICO statute asserted in his brief.

15 Under 18 U.S.C. § 1965(b), a district court may exercise personal jurisdiction over non-
16 resident participants in an alleged RICO conspiracy, even if those parties otherwise would not be
17 subject to the court’s jurisdiction, if “the ends of justice” so require. This “ends of justice”
18 provision permits a court, consistent with the purpose of the RICO statute, to “enable plaintiffs to
19 bring all members of a nationwide RICO conspiracy before a court in a single trial.” *Butcher’s*
20 *Union Local No. 498, United Food & Comm. Workers v. SDC Inv., Inc.*, 788 F.2d 535, 538 (9th
21 Cir. 1986). This power is not unlimited, however. In order for a court to exercise personal
22 jurisdiction through the “ends of justice” provision, “the court must have personal jurisdiction
23 over at least one of the participants in the alleged multi-district conspiracy and the plaintiff must
24 show that there is no other district in which a court will have personal jurisdiction over all of the
25 alleged coconspirators.” *Id.* at 539.

26 Elofson asserts a single claim under RICO (Claim 14), in which he alleges that Dougherty-
27 Elofson, Bivens, Theut, Scaringelli, and McCollum engaged in a pattern of racketeering activity.
28 FAC ¶¶ 586-605, ECF 29. All five of the alleged conspirators are alleged to be residents of

1 Arizona. FAC ¶ 119.² Because the United States District Court for the District of Arizona would
2 have personal jurisdiction over all the alleged coconspirators, the “ends of justice” provision does
3 not apply.

4 Elofson asserts that Defendants Mudd and Community Memorial Hospital, both California
5 residents, are RICO coconspirators. Pl.’s Opp. at 15-16, ECF 155. However, Mudd and
6 Community Memorial Hospital are not named as coconspirators in the FAC, and the Court
7 previously concluded that Elofson could not amend his pleading to make out a plausible claim that
8 Mudd and Community Memorial Hospital were part of the alleged conspiracy. *See* Order
9 Granting Motions to Dismiss First Amended Complaint Without Leave to Amend, ECF 149. The
10 Court therefore dismissed Elofson’s claims against Mudd and Community Memorial Hospital
11 without leave to amend. *Id.* Elofson nonetheless argues in opposition to McCollum’s motion that
12 he should be granted leave to amend to add conspiracy allegations against Mudd and Community
13 Memorial Hospital. Elofson did not seek reconsideration of the Court’s order dismissing his
14 claims against Mudd and Community Memorial Hospital when it issued, and he has not presented
15 any factual or legal basis for reconsideration of that ruling now.

16 Moreover, as discussed above, Elofson has the burden of coming forward with *evidence*
17 sufficient to make a prima facie showing of personal jurisdiction. Elofson has not submitted any
18 admissible evidence in opposition to McCollum’s motion.

19 **C. Conclusion**

20 In conclusion, McCollum has presented evidence showing that this Court lacks subject
21 matter jurisdiction over Elofson’s federal claims and lacks personal jurisdiction over her. Elofson
22 has not satisfied his burden to present evidence sufficient to establish the existence of subject
23 matter jurisdiction or to make a prima facie showing of personal jurisdiction. Accordingly,
24 McCollum’s motion to dismiss is GRANTED WITHOUT LEAVE TO AMEND.

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27 ² The parties’ residences are listed in an unnumbered paragraph subheaded “PARTIES” located
28 between paragraph 119 and 120. *See* FAC at pp. 40-41, ECF 29. For ease reference, the Court
treats this unnumbered paragraph as part of paragraph 119.

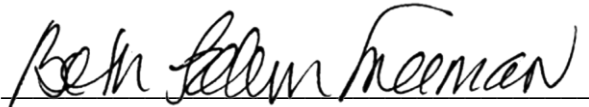
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This order is without prejudice to Elofson’s pursuit of his claims in an appropriate forum having both subject matter jurisdiction over the claims and personal jurisdiction over the parties.

III. ORDER

- (1) Defendant McCollum’s motion to dismiss for lack of subject matter jurisdiction is GRANTED WITHOUT LEAVE TO AMEND as to the federal claims alleged in the FAC. Absent a viable federal claim, the Court DECLINES to exercise supplemental jurisdiction over the state law claims alleged in the FAC.
- (2) Defendant McCollum’s motion to dismiss for lack of personal jurisdiction is GRANTED WITHOUT LEAVE TO AMEND.
- (3) This order is without prejudice to Plaintiff Elofson’s litigation of his claims in an appropriate forum.

Dated: July 6, 2017


BETH LABSON FREEMAN
United States District Judge