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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8 Donald J Gregory,

9 Plaintiff,

10 vs.

11 Arizona Division of Child Support
12 Enforcement, et al.,

13 Defendants.

No. CV11-0372-PHX-DGC

ORDER

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15 Defendant Melanie Gregory moves to dismiss on grounds that the complaint does
16 not allege facts that would plausibly entitle Plaintiff to relief against her. Doc. 7.
17 Defendant Gregory also argues that she is misjoined in this suit. *Id.* Defendants
18 Veronica Ragland and the Arizona Division of Child Support Enforcement (“AZDCSE”)
19 move to dismiss on grounds that the *Rooker-Feldman* doctrine and the § 1983 statute of
20 limitations bar this suit, that the State of Arizona is immune under the Eleventh
21 Amendment, that neither of the State Defendants are persons under § 1983 when acting
22 in their official capacities, and that the complaint fails to allege facts that would plausibly
23 entitle Plaintiff to relief against Defendant Ragland in her individual capacity. Doc. 8.
24 Defendants Ragland and AZDCSE will be referred to collectively as “State Defendants.”

25 *Pro se* Plaintiff responds that Defendant Gregory was responsible for enforcing
26 the child-support judgment against him. Doc. 9 at 2. He further argues that *Rooker-*
27 *Feldman* does not apply because he alleged a claim independent of a state court
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1 judgment, and that the § 1983 statute of limitations does not apply because Defendants’
2 last action took place on June 21, 2010. *Id.* at 2, 3. As to sovereign immunity, Plaintiff
3 asserts that his due process claims under the Fourteenth Amendment trump the Eleventh
4 Amendment. *Id.* at 3. Moreover, Plaintiff argues that both Gregory and Ragland are
5 persons contemplated by § 1983. *Id.* Defendants have not filed replies, and the parties
6 do not request oral argument.

7 Plaintiff’s complaint alleges that Defendants, in enforcing a child-support debt,
8 have placed levies, liens, and tax offsets against Plaintiff’s property contrary to state law.
9 Doc. 1. Plaintiff also alleges that Defendants misinformed him about the law, that
10 Defendants have failed to follow the processes required by law for state agencies and
11 officials, and that this Court has judicial review under 5 U.S.C. § 706. Doc. 1 at 6. The
12 complaint demands a cessation of all debt-enforcement actions by Defendants; a vacatur
13 of all liens, levies, and tax offsets; a curing of Plaintiff’s credit profile with three credit
14 reporting agencies; \$172,000 in compensatory damages; and any other relief the Court
15 deems appropriate. *Id.* at 7.

16 The Court begins by noting that 5 U.S.C. § 706 pertains to judicial review of
17 federal agencies, not state agencies. Because AZDCSE is a state agency, its actions are
18 not reviewable under § 706.

19 With regard to the State Defendants’ *Rooker-Feldman* argument, the state-court
20 judgment was not filed with the motions and therefore the Court cannot conclude that
21 Plaintiff is attempting to collaterally-attack the judgment. A court should apply less
22 stringent pleading standards to *pro se* plaintiffs, such that inartful pleadings are still
23 considered by the court. *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972). Although the
24 complaint states that the state-court judgment denied Plaintiff his constitutional rights, the
25 complaint also states Defendants’ actions were taken using a “false court order.” Doc. 1
26 at 6. If this statement meant a “wrongfully-decided court order,” then the Court would be
27 inclined to agree that *Rooker-Feldman* bars the suit. The complaint also states, however,
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1 that Defendants did not obtain a judgment in time and that *State ex rel. Dep't of Econ.*
2 *Sec. v. Hayden*, 115 P.3d 116 (Ariz. 2005), precludes collecting arrearages. Doc. 1 at 6.
3 Therefore, the complaint may also be interpreted as alleging that Defendants falsified or
4 forged a court order in order to obtain the liens, levies, etc. or that the enforcement
5 actions were taken without a court order at all – neither of which would be subject to
6 *Rooker-Feldman*. The complaint does not allege sufficient facts from which this Court
7 may conclude that Plaintiff meant either of the latter interpretations, or that these
8 interpretations are plausible. *Starr v. Baca*, 633 F.3d 1191, 1204 (9th Cir. 2011)
9 (“[A]llegations must be sufficiently plausible [so] that it is not unfair to require the
10 opposing party to be subjected to the expense of discovery.”).

11 With regard to the claims against Defendants Gregory and Ragland individually,
12 the complaint does not state sufficient facts from which the Court may infer how they
13 were involved or that they would be liable under one or more causes of action. Although
14 Plaintiff’s response to the motion describes their involvement in general terms, this
15 description is not in the complaint. Even if it were, the description is too generic to give
16 Defendants fair notice of their alleged wrongdoing. At a minimum, “allegations in a
17 complaint or counterclaim must be sufficiently detailed to give fair notice to the opposing
18 party of the nature of the claim so that the party may effectively defend against it.” *Starr*,
19 633 F.3d at 1204. Because the Court finds the complaint deficient as to Gregory and
20 Ragland in their individual capacities, the Court need not decide the § 1983 statute of
21 limitations issue.

22 As to Defendants’ immunity argument, state officials are not immune from suits in
23 federal court for violations of federal law with regard to claims that merely seek
24 prospective relief. *E.g., Ex parte Young*, 209 U.S. 123 (1908). Plaintiff’s complaint
25 seeks in part cessation of future enforcement, vacatur of liens, and curing of his credit
26 profile. Plaintiff has not shown, however, that the officials named in the suit have the
27 power under state law to perform or not perform the acts requested. In other words,
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1 Plaintiff has not shown that the appropriate state officials have been named in this action.

2 Finally, the State Defendants' "§ 1983 person" argument is persuasive. A state
3 and officials of state agencies cannot be sued in their official capacities under § 1983.
4 *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989).

5 For the reasons above, the claims against Defendants are dismissed without
6 prejudice. Plaintiff may, by **June 10, 2011**, amend the complaint to properly plead viable
7 claims. If no amendment is filed with the Court within this period, the Clerk shall
8 terminate this matter.

9 **IT IS ORDERED:**

- 10 1. Defendants' motions (Docs. 7, 8) are **granted** as stated above.
- 11 2. Plaintiff may file an amended complaint by **June 10, 2011**.
- 12 3. The Clerk shall terminate this action, with no further leave of Court, if no
13 amended complaint is filed on or before **June 10, 2011**.

14 Dated this 10th day of May, 2011.

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18 David G. Campbell
19 United States District Judge
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