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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Howard Lee Mitchell,

10 Plaintiff,

11 v.

12 Scottsdale, City of,

13 Defendant.
14

No. CV-15-00637-PHX-JAT

ORDER

15 Pending before the Court is Defendant City of Scottsdale's Motion to Dismiss
16 Plaintiff Howard Mitchell's Amended Complaint. (Doc. 6). The Court now rules on the
17 motion.

18 **I. PROCEDURAL BACKGROUND**

19 On May 6, 2013, the City of Scottsdale ("City") filed a complaint in Scottsdale
20 Municipal Court against Howard Mitchell ("Mitchell") and on May 10, 2013, moved to
21 terminate Mitchell's possessory rights in nearly thirty animals. (Doc. 11 at 2). The
22 Municipal Court held a probable cause hearing over several non-consecutive dates
23 spanning from June through October. *Id.* On October 30, 2013, the Municipal Court
24 ordered that Mitchell's animals be seized and taken to the Arizona Humane Society. *Id.*
25 On appeal, the Superior Court remanded the case on September 18, 2014 for further
26 proceedings. *Id.* The Arizona Court of Appeals granted the City's Petition for Special
27 Action and found for the City on December 4, 2014. *Id.* The Arizona Supreme Court
28 denied review. *Id.*

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2 **II. FED. R. CIV. P. 12(b)(1) MOTION TO DISMISS**

3 The City alleges several reasons why the complaint should be dismissed. One of
4 the reasons for dismissal raised by the City is jurisdictional; thus, it falls under Federal
5 Rule of Civil Procedure (“Rule”) 12(b)(1). Claims raised under Rule 12(b)(1) should be
6 addressed before other reasons for dismissal filed under Rule 12(b). *See* Wright and
7 Miller, *Federal Practice and Procedure: Civil 2d* § 1350, 209–10 (1990) (“[W]hen the
8 motion [to dismiss] is based on more than one ground, the court should consider the Rule
9 12(b)(1) challenge first since if it must dismiss the complaint for lack of subject matter
10 jurisdiction, the accompanying defenses and objections become moot and do not need to
11 be determined.”)

12 The first reason for dismissal raised by the City is a lack of subject matter
13 jurisdiction under the *Rooker-Feldman* doctrine. (Doc. 11. at 9). Thus, the Court will
14 address this reason for dismissal of the amended complaint.

15 The *Rooker-Feldman* doctrine prevents federal district courts from having subject
16 matter jurisdiction over “cases brought by state-court losers complaining of injuries
17 caused by state-court judgments rendered before the district court proceedings
18 commenced.” *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005).
19 In recent years, the Supreme Court has narrowed the application of the *Rooker-Feldman*
20 doctrine. *See Lance v. Dennis*, 546 U.S. 459, 464 (2006) (“[O]ur cases since *Feldman*
21 have tended to emphasize the narrowness of the *Rooker-Feldman* rule.”); *see also Exxon*
22 *Mobil Corp.*, 544 U.S. at 292 (*Rooker-Feldman* does not apply to parallel state and
23 federal litigation); *Verizon Md., Inc. v. Pub. Serv. Comm’n of Md.*, 535 U.S. 635, 644 n. 3
24 (2002) (*Rooker-Feldman* “has no application to judicial review of executive action,
25 including determinations made by a state administrative agency”). Despite the Supreme
26 Court’s scaling back of the doctrine, *Rooker-Feldman* still “remains a viable
27 jurisdictional bar.” *Reusser v. Wachovia Bank, N.A.*, 525 F.3d 855, 860 n.6 (9th Cir.
28 2008).

1 There are two general situations where *Rooker-Feldman* applies: (1) where a state
2 court loser explicitly asks a federal district court to exercise appellate review of the state-
3 court judgment, and (2) where a state court loser’s federal claim constitutes a de facto
4 appeal from a state court judgment. *Id.* at 858–59 (citing *Kougasian v. TMSL, Inc.*, 359
5 F.3d 1136, 1139 (9th Cir. 2004)). The Ninth Circuit Court of Appeals has held that:

6 A federal claim constitutes a de facto appeal where “claims raised in the
7 federal court action are ‘inextricably intertwined’ with the state court’s
8 decision such that adjudication of the federal claims would undercut the
state court’s ruling or require the district court to interpret the application of
state laws or procedural rules.”

9 *Id.* at 859 (quoting *Bianchi v. Rylaarsdam*, 334 F.3d 895, 898 (9th Cir. 2003)). If either of
10 these two situations apply, the federal court must dismiss the complaint for lack of
11 subject matter jurisdiction. *Bianchi*, 334 F.3d at 898.

12 The City argues that the *Rooker-Feldman* doctrine bars this Court from having
13 subject matter jurisdiction over Mitchell’s complaint. (Doc. 11 at 9). The City contends
14 the first *Rooker-Feldman* bar applies, as Mitchell’s complaint constitutes a direct appeal
15 from a state court judgment. (Doc. 11 at 9–10). In support of its argument, the City
16 observes that Mitchell’s Amended Complaint opens with what appears to be a request for
17 a direct appeal of the state court’s decision. (Doc. 11 at 9). For example, Mitchell asserts
18 in his Amended Complaint that the “present Federal District Court is the next higher in
19 the hierarchy of appeal for relief from the municipal court verdict.” (Doc. 6 at 1).
20 Mitchell also “submit[s] a motion/request for relief by the overturning of the findings of
21 the AZ Appeals Court and AZ Supreme Court.” (Doc. 1 at 6).

22 The City is correct in stating that the relief Mitchell requests constitutes an appeal
23 of state court decisions. Mitchell asks that the Court order the City to return the animals
24 and property seized pursuant to a state court judgment. If the Court were to grant the
25 relief Mitchell seeks, it would necessarily involve overturning the state court judgment
26 that deprived him of his animals and property in the first place. The *Rooker-Feldman*
27 doctrine forbids federal courts from taking such action. The proper avenue for Mitchell’s
28 appeal of a state court judgment lies in the state court system and ultimately in the United

1 States Supreme Court. Therefore, this Court lacks subject matter jurisdiction to hear this
2 case.

3 **III. CONCLUSION**

4 Accordingly,

5 **IT IS ORDERED** that the City's Motion to Dismiss Mitchell's Amended
6 Complaint (Doc. 6) is **GRANTED**. The Clerk of Court shall enter judgment and dismiss
7 the case with prejudice.

8 **IT IS FURTHER ORDERED** that all other pending motions before this Court
9 are denied as moot.

10 Dated this 2nd day of October, 2015.

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James A. Teilborg
Senior United States District Judge