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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

HUSSEIN ALI,

 Plaintiff,

 v.

JAWAD CO., INC. d/b/a OWN A CAR
OF FRESNO; JAWAD INVESTMENT
INC.; AUTO RESOURCES, INC.;
CARMOTIVE INC.; FRESNO AUTO
LIQUIDATION; SIERRA AUTO; NAJEH
JAWAD; JAD JAWAD; MOHAMMED
JAWAD; ABDUL JAWAD,

 Defendants.

No. 1:16-cv-00409-DAD-EPG

ORDER GRANTING DEFENDANTS’
MOTION TO DISMISS WITH PREJUDICE

(Doc. Nos. 109, 112)

On June 30, 2015, plaintiff Hussein Ali filed a *pro se* complaint in the United States District Court for the Middle District of Florida. (Doc. No. 1.) That court *sua sponte* dismissed that complaint, noting its use of “shotgun” pleading. (Doc. No. 6.) Plaintiff then filed his first amended complaint (“FAC”) on July 20, 2015. (Doc. No. 7.) Thereafter, the case was transferred to this court on March 25, 2016. (Doc. No. 72.) On November 2 and 3, 2016, defendants Abdul Jawad, Jawad Co., Inc. d/b/a Own A Car of Fresno, Fresno Auto Liquidation Center, Sierra Auto, and Jawad Investment, Inc. filed a motion to dismiss pursuant to Rule 12(b)(6). (Doc. Nos. 109 and 112.) The moving defendants argue that the *res judicata* doctrine compels dismissal of plaintiff’s third through seventh claims because each of those claims has

1 already been dismissed on their merits by a California state court. (Doc. No. 112 at 2.) The
2 moving defendants further contend that all of plaintiff’s present claims should be dismissed due
3 to his failure to plead sufficient facts. (*Id.*) Plaintiff filed an opposition to the pending motion to
4 dismiss and defendants filed a reply. (Doc. Nos. 113 and 114.) The court heard oral arguments
5 with respect to the pending motion on December 6, 2016. Plaintiff appeared on his own behalf at
6 the hearing. (Doc. No. 116.) Attorney Russell Reynolds appeared in person on behalf of moving
7 defendants Abdul Jawad, Jawad Co., Inc. d/b/a Own A Car of Fresno, Fresno Auto Liquidation
8 Center, Sierra Auto, and Jawad Investment, Inc. and attorney Roger Bonakdar appeared
9 telephonically on behalf of defendants Carmotive Inc., Mohammed Jawad, Jad Jawad, and Najeh
10 Jawad. (*Id.*)

11 **I. Background**

12 *a. Factual Allegations*

13 In his FAC, plaintiff alleges as follows. (See Doc. No. 7.) In December 2009, plaintiff
14 loaned two individuals—defendants Najeh Jawad and Abdul Jawad—\$22,000 for an unspecified
15 purpose. That same month, at plaintiff’s place of business located in Fresno County, California,
16 defendants Abdul, Najeh, Jad and Mohammed Jawad (collectively, the “individual defendants”)
17 verbally represented to plaintiff in the presence of “more than two witnesses” that they would
18 repay the loaned money upon plaintiff’s request. However, the individual defendants never
19 intended to repay the loan, a fact they disclosed at about the same time to other witnesses. The
20 individual defendants used the money loaned them by plaintiff, through various business
21 enterprises, to finance the purchase of automobiles to be sold to the public. Plaintiff asked the
22 individual defendants to repay him in March and April 2013 and enlisted the aid of “Community
23 Members” to recover the loaned funds, but the individual defendants refused to repay him for
24 unspecified reasons. According to plaintiff, defendants Mohammed and Jad conspired with
25 defendants Najeh and Abdul to “defraud plaintiff out of his hard earned money.” To that end, the
26 individual defendants sent mail and made “numerous phone calls, faxed communications,
27 e-mails, and Internet postings on the corporations [sic] web site” to perpetrate and cover up their
28 fraud. They also falsely told newspapers and television stations that plaintiff had been “involved

1 in a serious crime involving moral turpitude and felonies” and suggested that he “suffers from a
2 physical or mental defect that would cause others to refrain from associating with” him.

3 Relying on “Mediators and Community Leaders,” plaintiff attempted to collect on the
4 loans from defendants Jawad Co., Jawad Investment, Auto Resources, and Carmotive
5 (collectively, “corporate defendants”). None of those entities responded to his requests, and they
6 did not investigate why the loan had not been timely repaid. Originally named defendants
7 American Safety Casualty Insurance Company, Hudson Insurance Company, Aegis Security
8 Insurance Company, Philadelphia Indemnity Insurance Company, and Western (collectively, “the
9 surety defendants”) formerly provided and/or currently provide bonds under California law to the
10 corporate defendants. Plaintiff contends that these surety defendants “should have known and
11 discovered when issuing Bond coverage” that the corporate defendants had defaulted on
12 plaintiff’s loan and were “conducting fraudulent activities.”¹

13 As a result of defendants’ failure to repay the loan, plaintiff’s family was forced to sell
14 their belongings for “pennies on the dollar[]” or discard them and move across the country from
15 Fresno, California to Florida at a cost of approximately \$100,000. That displacement ultimately
16 caused plaintiff to suffer about \$1.5 million in damages and “severe emotional distress.”

17 b. *Claims*

18 In his FAC, plaintiff asserts the following seven claims: (1) “Fraud and Deceit by
19 Intentional Conversion,” brought against the individual defendants; (2) “Conspiracy to Violate
20 RICO,” (the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961–1968)
21 brought against the individual defendants; (3) defamation, brought against the individual
22 defendants; (4) negligence, brought against the corporate defendants and the surety defendants;
23 (5) “Intentional Infliction of Willful Misconduct” apparently brought against all defendants; (6)
24 intentional infliction of emotional distress, brought against the individual defendants; and (7)
25 conversion, apparently brought against all defendants. Plaintiff also requests the award of
26 compensator, treble, and punitive damages; attorney’s fees; costs; declaratory and/or injunctive

27 ¹ As noted and as will be discussed below, these surety defendants have previously been
28 dismissed from this action.

1 relief; imposition of a constructive trust; and restitution.

2 *c. The Fresno County Superior Court Action*

3 On December 1, 2014, plaintiff initiated an action, entitled *Hussein Ali v. Najeh Jawad, et*
4 *al.*, Case No. 14(ECG03594), in the Fresno County Superior Court. (Doc. No. 112-3 at 4.) After
5 that court dismissed plaintiff’s complaint and granted him leave to amend many of his claims,
6 plaintiff filed a first amended complaint in that state court action on February 25, 2015. (*Id.* at
7 13.) In that first amended state court complaint, plaintiff alleged the same facts as alleged in the
8 pending FAC before this federal court, namely, that he entered into an agreement to loan \$22,000
9 to defendants Najeh and Abdul, that they—as well as defendants Mohamed and Jad—guaranteed
10 repayment of the loan, but never planned on—and never did—repay plaintiff. (*Id.* at 16–19.)
11 Plaintiff also alleged multiple causes of action in his state court action, including: (1) breach of
12 verbal and written contract; (2) conversion; (3) defamation; (4) negligence; (5) fraud and deceit
13 by intentional conversion; (6) intentional infliction of willful misconduct; and (7) intentional
14 infliction of emotional distress. (*Id.* at 17–32.)

15 On May 11, 2015, Fresno County Superior Court Judge Mark W. Snauffer issued a
16 tentative ruling in response to defendants’ demurrers to plaintiff’s complaint. (Doc. No. 112-3 at
17 71–86.) The court dismissed the breach of contract claim against Abdul Jawad, Jad Jawad,
18 Mohammed Jawad, the corporate defendants, and the surety defendants without leave to amend.
19 (*Id.* at 72.) The state court, however, found that defendant had stated a cognizable breach of
20 contract claim against defendant Najeh Jawad. (*Id.*) The court also dismissed plaintiff’s “fraud
21 and deceit by intentional conversion” claim against all defendants for failure to state a claim. (*Id.*
22 at 79–81.) The dismissal of that claim was without leave to amend as to the corporate defendants
23 and the sureties, but with leave to amend as to the individual defendants. (*Id.*) Finally, the court
24 dismissed plaintiff’s conversion, defamation, negligence, intentional infliction of willful
25 misconduct, and intentional infliction of emotional distress claims as to all defendants for failure
26 to state a claim and without leave to amend. (*Id.* at 76–83.)

27 Thereafter, plaintiff filed a second amended complaint in the state court action on June 15,
28 2015. (*Id.* at 33–53.) However, shortly thereafter plaintiff voluntarily dismissed his second

1 amended complaint in the state court action on June 22, 2015. (*Id.* at 87.) As noted above, on
2 June 30, 2015, plaintiff initiated this federal action by filing his complaint in the U.S. District
3 Court for the Middle District of Florida. (Doc. No. 1.)

4 *d. Dismissal of Surety Defendants in this Action*

5 On June 1, 2016, this court granted defendant Western’s motion to dismiss with prejudice.
6 (Doc. No. 89.) In the dismissal order the court found that all claims brought by plaintiff against
7 defendant Western were barred by the doctrine of *res judicata* due to the final judgment on the
8 merits entered in the Fresno County Superior Court action *Hussein Ali v. Najeh Jawad, et al.*,
9 Case No. 12(ECG03594). (*Id.*) Plaintiff subsequently voluntarily dismissed without prejudice
10 from this action the remaining surety defendants Aegis Security Insurance, Hudson Insurance
11 Company, American Safety Casualty Insurance, and Philadelphia Indemnity Insurance. (Doc.
12 Nos. 101 and 108.)

13 *e. Multiple Actions in Federal Court*

14 On June 22, 2016, plaintiff filed a second action in this court against previously unnamed
15 defendants Nadya Jawad, Nasr Jawad, Fawzi Sood, and Jamal Taha, alleging substantially similar
16 facts as alleged here, claiming that these defendants had conspired with Najeh Jawad to defraud
17 plaintiff out of \$22,000. *Ali v. Jawad, et al.*, No. 1:16-cv-00879-DAD-MJS (E.D. Cal. filed June
18 22, 2016).

19 On November 17, 2016, plaintiff filed a third action in this court alleging substantially
20 similar facts alleged here and against the surety defendants that he had just voluntarily dismissed
21 from this action. *See Ali v. Hudson Insurance Co., et al.*, No. 1:16-cv-01743-DAD-EPG (E.D.
22 Cal.). On December 12, 2016, the assigned magistrate judge issued a findings and
23 recommendations in that case finding that “the Complaint in this action is not filed in good faith
24 and has been filed to delay proceedings and harass the Defendants” and recommending that
25 plaintiff’s *in forma pauperis* application be denied. *Ali v. Hudson Insurance Co., et al.*, No.
26 1:16-cv-01743-DAD-EPG, Doc. No. 4 at 3 (E.D. Cal. Dec. 12, 2016). On June 5, 2016, this court
27 adopted the findings and recommendations in full, finding that the action was not filed in good
28 faith and has been filed to delay proceedings and harass the defendants. *Ali v. Hudson Insurance*

1 Co., et al., No. 1:16-cv-01743-DAD-EPG, Doc. No. 6 at 1 (E.D. Cal. Jan. 5, 2017).

2 II. Legal Standards Applicable to a Rule 12(b)(6) Motion

3 The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the legal
4 sufficiency of the complaint. *N. Star Int'l v. Ariz. Corp. Comm'n*, 720 F.2d 578, 581 (9th Cir.
5 1983). “Dismissal can be based on the lack of a cognizable legal theory or the absence of
6 sufficient facts alleged under a cognizable legal theory.” *Balistreri v. Pacifica Police Dep't*, 901
7 F.2d 696, 699 (9th Cir. 1990). A plaintiff is required to allege “enough facts to state a claim to
8 relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A
9 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
10 the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v.*
11 *Iqbal*, 556 U.S. 662, 678 (2009).

12 In determining whether a complaint states a claim on which relief may be granted, the
13 court accepts as true the allegations in the complaint and construes the allegations in the light
14 most favorable to the plaintiff. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984); *Love v.*
15 *United States*, 915 F.2d 1242, 1245 (9th Cir. 1989). It is inappropriate to assume that the plaintiff
16 “can prove facts which it has not alleged or that the defendants have violated the . . . laws in ways
17 that have not been alleged.” *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of*
18 *Carpenters*, 459 U.S. 519, 526 (1983).

19 In ruling on a motion to dismiss brought pursuant to Rule 12(b)(6), the court is permitted
20 to consider material which is properly submitted as part of the complaint, documents that are not
21 physically attached to the complaint if their authenticity is not contested and the plaintiff’s
22 complaint necessarily relies on them, and matters of public record. *Lee v. City of Los Angeles*,
23 250 F.3d 668, 688–89 (9th Cir. 2001).

24 III. Analysis

25 A. Res Judicata

26 “Res judicata, also known as claim preclusion, bars litigation in a subsequent action of
27 any claims that were raised or could have been raised in the prior action.” *Idaho Sporting*
28 *Congress, Inc. v. Rittenhouse*, 305 F.3d 957, 964 (9th Cir. 2002) (quoting *W. Radio Servs. Co. v.*

1 *Glickman*, 123 F.3d 1189, 1192 (9th Cir. 1997)); accord *Owens v. Kaiser Found. Health Plan,*
2 *Inc.*, 244 F.3d 708, 713 (9th Cir. 2001). Res judicata is applicable whenever there is: “(1) an
3 identity of claims[;] (2) a final judgment on the merits[;] and (3) identity or privity between
4 parties.” *W. Radio Servs. Co.*, 123 F.3d at 1192 (citing *Blonder-Tongue Lab. v. Univ. of Ill.*
5 *Found.*, 402 U.S. 313, 323–24 (1971)); see also *United States v. Wanland*, 830 F.3d 947, 956 (9th
6 Cir. 2016).

7 1) *Final Judgment on the Merits*

8 “In determining whether a prior state court action bars a subsequent federal action, the
9 federal court must look to the res judicata principles of the state court in which the judgment was
10 rendered.” *Pedrina v. Chun*, 97 F.3d 1296, 1301 (9th Cir. 1996) (citing *Migra v. Warren City*
11 *School Dist. Bd. of Education*, 465 U.S. 75, 80); see also *Green v. Univ. of San Francisco*, No. C
12 06-3321 JF (PVT), 2006 WL 3545024, at *2 (N.D. Cal. 2006) (“Federal courts apply the doctrine
13 of res judicata to a state court judgment to the same extent that courts to that state would apply the
14 doctrine.”) (citing *Eichman v. Fotomat Corp.*, 759 F.2d 1434, 1438 (9th Cir. 1985)). “Under
15 California law, a superior court judgment on an order sustaining a demurrer without leave to
16 amend is a final judgment on the merits for purposes of *res judicata* analysis.” *Green*, 2006 WL
17 3545024, at *2 (citing *Crowley v. Modern Faucet Manufacturing*, 44 Cal.2d 321, 323 (1955)); see
18 also *Federated Dept. Stores v. Moitie*, 452 U.S. 394, 399 n.3 (1981) (“The dismissal for failure to
19 state a claim . . . is a ‘judgment on the merits.’”); *Tobin v. Nationstar Mortgage, Inc.*, Case No.
20 2:16-cv-0836 CAS(ASx), 2016 WL 1948786, at *8 (C.D. Cal. May 2, 2016) (“Courts have
21 routinely held that, pursuant to California law, sustaining a general demurrer and dismissing a
22 case with prejudice constitutes a judgment on the merits.”). “The fact that a plaintiff requests a
23 different type of relief, or even presents a different legal theory, does not negate or lessen the
24 binding effect of the previous state court judgment.” *Moore v. City of Costa Mesa*, 678 F. Supp.
25 1448, 1450 (C.D. Cal. 1987).

26 The Fresno County Superior Court dismissed plaintiff’s conversion, defamation,
27 negligence, intentional infliction of willful misconduct, and intentional infliction of emotional
28 distress claims without leave to amend as to all defendants due to plaintiff’s failure to state a

1 claim. (Doc. No. 112-3 at 76–83.) The state court also dismissed plaintiff’s “fraud and deceit by
2 intentional conversion” claim without leave to amend as to the corporate and surety defendants.
3 (*Id.* at 79-81.) Pursuant to the authorities cited above, as to those claims which plaintiff was
4 denied leave to amend, the superior court’s dismissal order constitutes a final judgment on the
5 merits of plaintiff’s state court action.²

6 2) *Identity or Privity Between Parties*

7 Here, Hussein Ali was the plaintiff and Najeh Jawad, Mohammed Jawad, Jad Jawad,
8 Abdul Jawad, Jawad Co., Jawad Investment Inc., Carmotive Inc., Own A Car, Fresno Auto
9 Liquidation, Sierra Auto, and Auto Resources Inc. were all defendants in the earlier Fresno
10 County Superior Court action filed by plaintiff. All of the same parties are named in this action
11 as well. Therefore, identity or privity between the parties is satisfied here.

12 3) *Identity of Claims*

13 To establish that the *res judicata* doctrine applies, there must be identity between the
14 claims brought in the previous action and the ones brought in the current action. *See W. Radio*
15 *Servs. Co.*, 123 F.3d at 1192; *see also Turtle Island Restoration Network v. U.S. Dept. of State*,
16 673 F.3d 914, 916-17 (9th Cir. 2012); *In re Schimmels*, 127 F.3d 875, 881 (9th Cir. 1997) (noting
17 that the purpose of *res judicata* is to prevent parties from re-litigating claims against parties
18 whom they have already filed suit against or could have filed suit against in a previous action). In
19 this action pending before this federal court, plaintiff has removed the breach of verbal and
20 written contract claim that he plead in his state court complaint, but added a RICO conspiracy
21 claim under 18 U.S.C. § 1962(d). (Doc. No. 7 at 6.) All of the remaining claims brought in this
22 action, were also brought by plaintiff in his state court action. Furthermore, in his state court
23 complaint plaintiff alleged essentially the same facts he has alleged in his FAC pending before
24 this court. Accordingly, this element of the *res judicata* doctrine is also satisfied with respect to
25 all of plaintiff’s current claims except his RICO claim.

26
27 ² There was no final judgment on the merits in the state court action, however, with respect to
28 plaintiff’s “fraud and deceit by intentional conversion” claim against the individual defendants
because the superior court dismissed that claim with leave to amend.

1 4) *Conclusion*

2 Accordingly, all of the elements of the *res judicata* doctrine are met here with respect to
3 all of plaintiff’s claims except for his “fraud and deceit by intentional conversion” claim brought
4 against the individual defendants and his RICO claim alleged against the individual and corporate
5 defendants. All of the claims in plaintiff’s FAC, except for the two claims identified above, are
6 therefore barred by application of the *res judicata* doctrine.

7 ***B. “Fraud and Deceit by Intentional Conversion”***

8 As noted above, plaintiff’s first cause of action in the complaint now before this court is
9 for “fraud and deceit by intentional conversion” against the individual defendants.³ It appears
10 that plaintiff is actually alleging that defendants made a promise without the intent to perform.

11 Under California law a claim of fraud must allege the following elements: “(a) a
12 misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity
13 (or ‘scienter’); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e)
14 resulting damage.” *In re Estate of Young*, 160 Cal.App.4th 62, 79 (2008) (quoting *Lazar v.*
15 *Superior Court*, 12 Cal.4th 631, 638 (1996) (internal quotation marks omitted). When asserting a
16 fraud claim against a corporation, “the plaintiff’s burden . . . is even greater The plaintiff
17 must ‘allege the names of the persons who made the allegedly fraudulent representations, their
18 authority to speak, to whom they spoke, what they said or wrote, and when it was said or
19 written.’” *Lazar*, 12 Cal.4th at 645 (quoting *Tarmann v. State Farm Mutual Auto. Ins. Co.*, 2
20 Cal. App. 4th 153, 157 (1991)).

21 Similarly, federal law requires that “[i]n all averments of fraud or mistake, the
22 circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent,
23 knowledge and other condition of mind of a person may be averred generally.” Fed. R. Civ. Proc.
24 9(b). The Ninth Circuit has “interpreted Rule 9(b) to mean that the pleader must state the time,
25 place and specific content of the false representations as well as the identities of the parties to the
26

27 ³ As discussed above, this claim brought by plaintiff against the corporate defendants is barred by
28 application of the *res judicata* doctrine and the surety defendants have already been dismissed
from this action.

1 misrepresentation.” *Alan Neuman Productions, Inc. v. Albright*, 862 F.2d 1388, 1393 (9th Cir.
2 1988). *See also e.g. Spencer v. DHI Mortgage Co.*, No. CV F 09–0925 LJO DLB, 2009 WL
3 1930161, at *6 (E.D. Cal. June 30, 2009). Dismissal of a fraud claim is appropriate when its
4 allegations fail to meet the required pleading standard. *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d
5 1097, 1107 (9th Cir. 2003); *see also Cooper v. Pickett*, 137 F.3d 616, 627 (9th Cir. 1997) (“fraud
6 allegations must be accompanied by ‘the who, what, when, where, and how’ of the misconduct
7 alleged”); *Decker v. Glenfed, Inc.*, 42 F.3d 1541, 1548 (9th Cir. 1994); *Tarmann*, 2 Cal. App. 4th
8 at 157.

9 When this same claim was dismissed in plaintiff’s Fresno County Superior Court action,
10 that court noted that it was granting “plaintiff one more chance to allege specific facts showing
11 who, when, where, how and by what means the representations were made.” (Doc. No. 112-3 at
12 81.) Plaintiff, however, then voluntarily dismissed his state court action shortly after filing his
13 second amended complaint, and instead initiated this federal action. Nonetheless, plaintiff has
14 still failed to allege sufficient and specific facts to support his fraud claim despite being
15 effectively given another opportunity to do so. Instead, plaintiff has once again alleged only that
16 defendants Abdul, Najeh, Mohammed, and Jad Jawad made a verbal promise to him that the
17 funds loaned by plaintiff would be repaid upon his request. (Doc. No. 7 at 5.) Plaintiff also again
18 merely alleges that “[t]he representation was made in the present of more than two witnesses; the
19 representation was made on or around December 2009 at Plaintiff place of business located in
20 Fresno County of the State of California.” (*Id.*) In this regard, plaintiff has once again only
21 vaguely alleged when the claimed representation was made, does not identify what or where his
22 place of business was, and does not identify the referred to witnesses to the alleged agreement.
23 Moreover, plaintiff continues to fail to allege how the claimed representations were made.
24 Rather, he alleges only in conclusory fashion that he had “no reasons to doubt that the
25 representation is anything but a fact and true,” while failing to allege any facts suggesting that his
26 claimed reliance was justified. (*Id.*) Finally, plaintiff now alleges that the representation was
27 made by all four individual defendants even though that allegation conflicts with the prior
28 allegations of his state court complaint that the fraud occurred as a result of a verbal contract

1 between only himself and Abdul Jawad. (*See* Doc. No. 112-3 at 6.)

2 For all of these reasons, this court concludes that plaintiff's bare allegations of fraudulent
3 misrepresentation remain insufficient to state a cognizable fraud claim under the governing legal
4 standards.

5 **A. RICO**

6 Plaintiff's second cause of action before this court is for conspiracy to violate RICO.
7 (Doc. No. 7 at 6.) To state a RICO claim, a plaintiff must allege: (1) conduct, (2) of an enterprise,
8 (3) through a pattern, (4) of racketeering activity (known as "predicate acts"), (5) causing injury
9 to plaintiff's business or property. *Sanford v. Memberworks, Inc.*, 625 F.3d 550, 557 (9th Cir.
10 2010); *Walter v. Drayson*, 538 F.3d 1244, 1247 (9th Cir. 2008); *Grimmett v. Brown*, 75 F.3d 506,
11 510 (9th Cir. 1996). The alleged enterprise must exist "separate and apart from that inherent in
12 the perpetration of the alleged [activity]." *Chang v. Chen*, 80 F.3d 1293, 1300–01 (9th Cir.
13 1996); *see also Odom v. Microsoft Corp.*, 486 F.3d 541, 549 (9th Cir. 2007) (*quoting United*
14 *States v. Turkette*, 452 U.S. 576, 583 (1981)). A "pattern of racketeering activity" means at least
15 two criminal acts enumerated by statute. 18 U.S.C. § 1961(1), (5) (including, among many
16 others, mail fraud, wire fraud, and financial institution fraud). These so-called "predicate acts"
17 under RICO must be alleged with specificity in compliance with Federal Rule of Civil Procedure
18 9(b). *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1400–01 (9th Cir. 2004);
19 *see also Lancaster Community Hospital v. Antelope Valley Hospital Dist.*, 940 F.2d 397, 405 (9th
20 Cir. 1991) (holding with respect to the predicate act of mail fraud that a plaintiff must allege with
21 "particularity the time, place, and manner of each act of fraud, plus the role of each defendant in
22 each scheme"); *Alan Neuman Productions, Inc. v. Albright*, 862 F.2d 1388, 1392–93 (9th Cir.
23 1988); *Pineda v. Saxon Mortgage Services*, No. SacV 08–1187 JVS, 2008 WL 5187813, at *4
24 (C.D. Cal. Dec. 10, 2008) ("It is not enough for [plaintiff] to rely on mere labels and conclusions"
25 in pleading a RICO claim but rather, plaintiff must give each defendant notice of the particular
26 predicate act it participated in and must allege each predicate act with specificity).

27 Here, the FAC before the court offers no factual allegations in support of plaintiff's
28 allegations of the mail and wire fraud predicate acts with respect to his RICO conspiracy claim,

1 let alone specific facts sufficient to meet the heightened pleading requirements applicable to fraud
2 claims under Rule 9(b). Rather, plaintiff has merely alleged that:

3 All of the USPS mailings and the numerous telephone calls, faxed
4 communications, e-mails and Internet postings on the corporations
5 web site set forth above were made in furtherance of the Fraud
6 Scheme and the subsequent cover-up by the defendants. Therefore
7 all of these communications were made in violation of the mail and
8 wire fraud statutes. One or more of these mails and wires
9 defrauded plaintiff. This pattern of mails and interstate wire-
10 communications occurred over a period of 37 months from the date
11 the Fraud Scheme began when on or about December 2009 through
12 January 2013, all in furtherance of the Fraud Scheme and the
13 conspiracy by the Conspirators to engage in a massive cover-up.

14 (Doc. No. 7 at 7.) Notably, plaintiff has failed to plead any details about any specific mailing,
15 telephone call, faxed communication, e-mail, or internet posting. Plaintiff generally alleges that
16 the RICO violation occurred over a thirty-seven month period. However, he has failed to allege
17 when any individual mailing was sent, to whom and where it was sent, and what was contained in
18 any mailing which amounts to fraud, much less facts alleged in sufficient detail to adequately
19 advise the defendants of their alleged role with any specificity in the purported scheme. *See*
20 *Aizusss v. Commonwealth Equity Trust*, 847 F. Supp. 1482, 1490–91 (E.D. Cal. 1993) (dismissing
21 RICO claim where predicate fraud claim was inadequately pled).

22 The conclusory allegations found in plaintiff’s FAC are vague, conclusory and wholly
23 insufficient to state a cognizable RICO conspiracy claim. Accordingly, that claim will be
24 dismissed as well.

25 **IV. Leave to Amend**

26 The court has carefully considered whether plaintiff is capable of further amending his
27 FAC to state a cognizable claim. “Valid reasons for denying leave to amend include undue delay,
28 bad faith, prejudice, and futility.” *California Architectural Bldg. Prod. v. Franciscan Ceramics*,
818 F.2d 1466, 1472 (9th Cir. 1988); *see also Klamath–Lake Pharm. Ass’n v. Klamath Med. Serv.*
Bureau, 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that while leave to amend shall be freely
given, the court does not have to allow futile amendments). Here, plaintiff is pro se and,
normally, the complaint of a pro se plaintiff may be dismissed “only where ‘it appears beyond
doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to

1 relief.” *Franklin v. Murphy*, 745 F.2d 1221, 1228 (9th Cir. 1984) (quoting *Haines v. Kerner*, 404
2 U.S. 519, 521 (1972)); *see also Weilburg v. Shapiro*, 488 F.3d 1202, 1205 (9th Cir. 2007)
3 (“Dismissal of a pro se complaint without leave to amend is proper only if it is absolutely clear
4 that the deficiencies of the complaint could not be cured by amendment.”) (quoting *Schucker v.*
5 *Rockwood*, 846 F.2d 1202, 1203–04 (9th Cir. 1988))). However, “[i]n determining whether leave
6 to amend is appropriate, the court is also to consider “the presence of any of four factors.” *Griggs*
7 *v. Pace Am. Group, Inc.*, 170 F.3d 877, 880 (9th Cir. 1999); *see also Carvalho v. Equifax Info.*
8 *Servs., LLC*, 629 F.3d 876, 892 (9th Cir. 2010) (quoting *Foman v. Davis*, 371 U.S. 178, 182
9 (1962)).

10 Here, the pro se plaintiff has engaged in a pattern of repeated filing of piecemeal
11 complaints – changing the claims alleged and adding to or subtracting from the various
12 defendants named – as well as moving from court to court with essentially the same allegations.
13 This conduct raises as serious question as to whether plaintiff is proceeding in this action in bad
14 faith. Indeed, as indicated at the hearing on this motion, there would appear to be factual support
15 for the declaring of plaintiff a vexatious litigant. Plaintiff was explicitly warned by the Fresno
16 County Superior Court that he would be given one last opportunity to amend his complaint before
17 he voluntarily dismissed that action and instead proceeded thereafter to file multiple, closely
18 related, actions in federal court. After one surety defendant in this action had been dismissed by
19 the court applying res judicata principles and the remaining surety defendants had filed motions
20 to dismiss on the same grounds, plaintiff voluntarily dismissed those defendants and filed a new
21 action in this court against the same surety defendants that he had just voluntarily dismissed.
22 Moreover, in that new action against the surety defendants, plaintiff alleged the same facts as he
23 had alleged in the prior federal court action. As the assigned magistrate judge and the
24 undersigned concluded in that action plaintiff’s complaint was “not filed in good faith and has
25 been filed to delay proceedings and harass the Defendants.” *Ali v. Hudson Insurance Co., et al.*,
26 No. 1:16-cv-01743-DAD-EPG, Doc. No. 4 at 3 and Doc. No. 6 at 1. In addition, the sole claim
27 that the Fresno County Superior Court had found cognizable, the breach of contract claim against
28 Najeh Jawad, has not yet been alleged by plaintiff in any of the actions plaintiff has subsequently

1 initiated in federal court. Based upon all these circumstances, the court finds that plaintiff is
2 proceeding in bad faith in this action, unduly delaying the proceedings, and prejudicing the
3 opposing parties by filing multiple related complaints in various courts, subsequently voluntary
4 dismissing his claims when it appears that dismissal without leave to amend is imminent, and by
5 declining to file a complaint containing his sole claim that any court has found to be cognizable.

6 The court further finds that granting leave to amend in this matter will be futile. The
7 Fresno County Superior Court twice dismissed plaintiff's "fraud and deceit by intentional
8 conversion" claim for failure to state a claim. Plaintiff has now failed to state a cognizable claim
9 in that regard in this court as well. *See Garmon v. Cty. of Los Angeles*, 828 F.3d 837, 842 (9th
10 Cir. 2016) ("A district court abuses its discretion by denying leave to amend unless amendment
11 would be futile or the plaintiff has failed to cure the complaint's deficiencies despite repeated
12 opportunities.") Before plaintiff voluntarily dismissed the action, the Fresno County Superior
13 Court specifically warned plaintiff that it intended to grant him "one more chance to allege
14 specific facts showing who, when, where, how and by what means the representations were
15 made." (Doc. No. 112-3 at 81.) That court clearly explained to plaintiff the deficiencies of his
16 fraud and deceit by intentional conversion claim, stating:

17 There are no allegations whatsoever to explain how or where the
18 representations were made, or by what means they were tendered.
19 Plaintiff does not allege that all of the individual defendants made
20 the representations, but it is not clear if the representations were
21 made on different dates by different defendants, or by all
22 defendants at the same time. Plaintiff also does not allege to whom
23 the representations were made, other than that they were made in
24 the presence of his employees. (*Id.* at p. 14:12–14.) It is still not
clear if all of the defendants made the promise directly to plaintiff,
or if the representations were made to someone else. He also fails
to allege any facts showing that his reliance on the
misrepresentation was justified under the circumstances. Therefore,
the allegations supporting the misrepresentation claim are still
inadequate to state a valid claim.

25 (*Id.* at 80.) Nonetheless, plaintiff has failed to cure these deficiencies in his FAC filed in this
26 action. Moreover, the allegations of the FAC as to this claim state that the alleged unlawful
27 representation was made by all four individual defendants and that allegation is in direct conflict
28 with plaintiff's prior allegations in his original Fresno County Superior Court complaint that the

1 fraud occurred as a result of a verbal contract between only himself and Abdul Jawad. *See United*
2 *States v. Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir. 2011) (leave to amend is not warranted
3 if the complaint’s deficiencies can only be cured by allegations that contradict or are inconsistent
4 with the challenged pleading). After repeated opportunities to state a cognizable claim for “fraud
5 and deceit by intentional conversion” and after contradictory allegations from what was originally
6 alleged, the court finds that granting plaintiff further leave to amend this claim would be futile.

7 Likewise, granting leave to amend on plaintiff’s RICO claim would be futile as well.
8 Plaintiff’s allegations in support of his new RICO conspiracy claim are completely devoid of any
9 factual detail whatsoever. The “general rule that parties are allowed to amend their pleadings . . .
10 does not extend to cases in which any amendment would be an exercise in futility or where the
11 amended complaint would also be subject to dismissal.” *Novak v. United States*, 795 F.3d 1012,
12 1020 (9th Cir. 2015) (quoting *Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293, 1298 (9th Cir.
13 1998)). Plaintiff’s belated addition of the RICO conspiracy claim appears to be merely another
14 means by which to harass defendants and delay these proceedings rather than based upon any
15 belief that he could state a cognizable RICO conspiracy claim. Accordingly, that claim will be
16 dismissed without leave to amend as well.

17 **V. Conclusion**

18 For the all of the reasons set forth above:

- 19 1) Plaintiff’s first amended complaint (Doc. No. 113) is dismissed with prejudice and
20 without further leave to amend due to plaintiff’s failure to state a claim;
21 2) Defendants’ motion to dismiss (Doc. Nos. 109 and 112) is granted; and
22 3) The Clerk of the Court is directed to close the case.

23 IT IS SO ORDERED.

24 Dated: January 11, 2017

25 
26 UNITED STATES DISTRICT JUDGE