

1 legally "frivolous or malicious," "fails to state a claim upon which relief may be granted,"
2 or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C.
3 § 1915(e)(2)(B). "Notwithstanding any filing fee, or any portion thereof, that may have
4 been paid, the court shall dismiss the case at any time if the court determines that . . .
5 the action or appeal . . . fails to state a claim on which relief may be granted." 28 U.S.C.
6 § 1915(e)(2)(B)(ii).

7 **II. Pleading Standard**

8 A complaint must contain "a short and plain statement of the claim showing that
9 the pleader is entitled to relief" Fed. R. Civ. P. 8(a)(2). Detailed factual allegations
10 are not required, but "[t]hreadbare recitals of the elements of a cause of action,
11 supported by mere conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S.
12 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)).
13 Plaintiff must set forth "sufficient factual matter, accepted as true, to state a claim to relief
14 that is plausible on its face." Id. Facial plausibility demands more than the mere
15 possibility that a defendant committed misconduct and, while factual allegations are
16 accepted as true, legal conclusions are not. Id. at 677-78.

17 **III. Plaintiff's Allegations**

18 Plaintiff's allegations may be summarized essentially as follows.

19 Plaintiff gave \$22,000 cash to non-party Najeh Jawad under the assumption the
20 funds were a loan. The loan was not paid back. According to Plaintiff, Defendants
21 conspired with Najeh Jawad to defraud Plaintiff out of the money by receiving the funds
22 from Jawad. This conspiracy to defraud occurred from December 2009 through January
23 2013. Additionally, from October 2013 to October 2015, Defendants defamed Plaintiff by
24 accusing Plaintiff of being involved in illegal activities and stating he was dishonest and
25 professionally incompetent.

1 **IV. Analysis**

2 **A. Lack of Jurisdiction**

3 Federal courts are courts of limited jurisdiction and lack inherent or general
4 subject matter jurisdiction. Federal courts can adjudicate only those cases authorized by
5 the United States Constitution and Congress. Generally, such cases involve diversity of
6 citizenship or a federal question, or cases in which the United States is a party.
7 Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375 (1994); Finley v. United States, 490
8 U.S. 545 (1989). Federal courts are presumptively without jurisdiction over civil actions.
9 Kokkonen, 511 U.S. at 377. Lack of subject matter jurisdiction is never waived and may
10 be raised by the Court sua sponte. Attorneys Trust v. Videotape Computer Prods., Inc.,
11 93 F.3d 593, 594-95 (9th Cir. 1996). "Nothing is to be more jealously guarded by a court
12 than its jurisdiction. Jurisdiction is what its power rests upon. Without jurisdiction it is
13 nothing." In re Mooney, 841 F.2d 1003, 1006 (9th Cir. 1988).

14 **1. Diversity Jurisdiction**

15 28 U.S.C. § 1332(a)(1) grants federal district courts original jurisdiction over civil
16 actions between "citizens of different States" where the amount in controversy exceeds
17 \$75,000. To show state citizenship for the purposes of the statute, a party must be a
18 citizen of the United States and be domiciled in the state. Kantor v. Wellesley Galleries,
19 Ltd., 704 F.2d 1088, 1090 (9th Cir. 1983).

20 Here, Plaintiff alleges that he and all of the Defendants reside in California. There
21 are no facts to suggest any party is domiciled in another state, and thus there are no
22 facts to suggest diversity of citizenship.

23 Based on the foregoing the Court lacks diversity jurisdiction over Plaintiff's claims.

24 **2. Federal Question Jurisdiction**

25 Under federal question jurisdiction, district courts are authorized to exercise
26 original jurisdiction in "all civil actions arising under the Constitution, laws, or treaties of
27 the United States." 28 U.S.C. § 1331. A civil action can "arise under" federal law in two
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1 ways. Gunn v. Minton, -- U.S. --, 133 S. Ct. 1059, 1064, 185 L. Ed. 2d 72 (2013). Most
2 directly, “a case arises under federal law when federal law creates the cause of action
3 asserted.” Id. If, however, a claim finds its origins in state rather than federal law, federal
4 jurisdiction will lie only “if a federal issue is: (1) necessarily raised, (2) actually disputed,
5 (3) substantial, and (4) capable of resolution in federal court without disrupting the
6 federal-state balance approved by Congress.” Id.; see also Grable & Sons Metal
7 Products, Inc. v. Darue Eng'g & Mfg., 545 U.S. 308, 314 (2005).

8 Plaintiff’s claims for “aiding and abetting,” conversion and defamation appear to
9 arise only under state law and do not raise a federal issue. It is possible that Plaintiff
10 intends to pursue a cause of action for conspiracy to violate the Racketeer Influenced
11 and Corrupt Organizations Act (“RICO). However, such a claim is not expressly pled
12 and, in any event, the allegations are insufficient to state a RICO claim for the reasons
13 stated below.

14 Accordingly, the Court finds no basis for federal question jurisdiction.

15 **B. RICO**

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

13 Here, Plaintiff has failed to plead any predicate acts with particularity. He does not
14 explain how the Defendants participated in a conspiracy to defraud him of funds, nor
15 does he allege any “pattern of racketeering activity” arising from any criminal acts
16 enumerated by statute. He alleges only that Defendants received funds from Najeh
17 Jawad. This allegation falls far short of the heightened pleading requirements applicable
18 to fraud claims under Rule 9(b).

19 Accordingly, to the extent Plaintiff’s complaint can be construed as intending to
20 state a cause of action under RICO, this claim will be dismissed as well.

21 **C. Leave to Amend**

22 In general, a pro se Plaintiff is entitled to leave to amend unless “it appears
23 beyond doubt that the plaintiff can prove no set of facts in support of his claim which
24 would entitle him to relief.” Franklin v. Murphy, 745 F.2d 1221, 1228 (9th Cir. 1984)
25 (citation omitted). “Valid reasons for denying leave to amend include undue delay, bad
26 faith, prejudice and futility.” Cal. Architectural Bldg. Prod. v. Franciscan Ceramics, 818
27 F.2d 1276, 1293 (9th Cir. 1983); Lockman Found. v. Evangelical Alliance Mission, 930
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1 F.2d 764, 772 (9th Cir. 1991).

2 In considering whether Plaintiff should be afforded leave to amend, the Court
3 takes judicial notice of Ali v. Jawad Co., Inc., No. 1:16-cv-00409-DAD-EPG, 2017 WL
4 117859 (E.D. Cal. Jan. 11, 2017). Therein, Plaintiff raised substantially the same
5 allegations as those presented here, but against different defendants. Id. at *1-2. His
6 claims for conversion, defamation, negligence, intentional infliction of willful misconduct,
7 and intentional infliction of emotion distress were barred under res judicata based on the
8 ruling of the Fresno County Superior Court in Ali v. Najeh Jawad, Case No.
9 14(ECG03594). His state law fraud claim and RICO claim were dismissed on the ground
10 that the allegations were vague, conclusory, and altogether insufficient. Jawad Co. at *6-
11 7.

12 The Court denied Plaintiff the opportunity to amend further, stating,

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

1 4 at 3 and Doc. No. 6 at 1. In addition, the sole claim that the
2 Fresno County Superior Court had found cognizable, the
3 breach of contract claim against Najeh Jawad, has not yet
4 been alleged by plaintiff in any of the actions plaintiff has
5 subsequently initiated in federal court. Based upon all these
6 circumstances, the court finds that plaintiff is proceeding in
7 bad faith in this action, unduly delaying the proceedings, and
8 prejudicing the opposing parties by filing multiple related
9 complaints in various courts, subsequently voluntarily
10 dismissing his claims when it appears that dismissal without
11 leave to amend is imminent, and by declining to file a
12 complaint containing his sole claim that any court has found
13 to be cognizable.

14 Id. at *8.

15 The Court also noted that further leave to amend appeared futile, given that
16 Plaintiff had been advised of applicable pleading standards in both state and federal
17 court, but nonetheless had failed to present allegations with sufficient specificity to plead
18 a cognizable claim. Id.

19 The Court concludes that these same factors weigh against leave to amend in the
20 instant action. The instant case is one of a series of cases the Court has previously
21 found to be filed in bad faith. Id. at *8. And, the allegations are as conclusory and vague
22 as those alleged in Plaintiff's other actions. Nothing before the Court suggests that
23 Plaintiff could plead sufficient facts to support a claim that would confer jurisdiction on
24 the Court. The complaint should be dismissed without leave to amend.

25 **V. Conclusion and Recommendation**

26 Based on the foregoing, it is HEREBY RECOMMENDED that Plaintiff's complaint
27 (ECF No. 1) be dismissed with prejudice and without further leave to amend due to
28 Plaintiff's failure to state a cognizable claim that would confer jurisdiction on the Court.

The findings and recommendation will be submitted to the United States District
Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1).
Within fourteen (14) days after being served with the findings and recommendation, the
parties may file written objections with the Court. The document should be captioned

1 “Objections to Magistrate Judge’s Findings and Recommendation.” A party may respond
2 to another party’s objections by filing a response within fourteen (14) days after being
3 served with a copy of that party’s objections. The parties are advised that failure to file
4 objections within the specified time may result in the waiver of rights on appeal.
5 Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923
6 F.2d 1391, 1394 (9th Cir. 1991)).

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IT IS SO ORDERED.

Dated: April 14, 2017

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE