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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSEPH EDWARD MARTY,

Plaintiff,

No. 2:10-cv-01823 KJM KJN PS

v.

LOUIS B. GREEN, et al.,

Defendants.

ORDER, FINDINGS AND RECOMMENDATION,  
and ORDER TO SHOW CAUSE

Presently before the court is a motion to dismiss plaintiff’s First Amended Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(5), and 12(b)(6), which was filed by the following 18 defendants: Joan Barbee, Robert J. Barbot, Ron Briggs, Janet Walker Conroy, Mark Contois (erroneously sued as “Mark Tontois”), Worth Dikeman, Louis B. Green, Melinda Iremonger, Edward L. Knapp, John R. Knight, Beth McCourt, Becky Nelson, Ray Nutting, Vern R. Pierson, Norman Santiago, James R. Sweeney, Tim William, and Angela Wilson (collectively, the “Moving Defendants”).<sup>1</sup> (Mot. to Dismiss, Dkt. No. 19.) Briefly stated, the Moving Defendants argue that plaintiff’s First Amended Complaint should be dismissed because: (1) plaintiff failed to properly serve them with process; (2) this court lacks jurisdiction

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<sup>1</sup> This action proceeds before the undersigned pursuant to Eastern District of California Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1).

1 over plaintiff's claims because plaintiff's claims constitute an appeal of 18 state court judgments  
2 that is barred by the Rooker-Feldman doctrine; and (3) plaintiff's claims are subject to dismissal  
3 for failure to state a claim on which relief can be granted.

4           Plaintiff failed to file a written opposition to the pending motion to dismiss  
5 despite being given multiple opportunities to do so, and despite being warned that his failure to  
6 file a written opposition would constitute consent to the grant of the motion to dismiss and result  
7 in a recommendation that plaintiff's case be dismissed with prejudice. (See Order, Feb. 1, 2011,  
8 Dkt. No. 25.) Instead of filing a written opposition, plaintiff filed several documents that are not  
9 responsive to the motion to dismiss. (See Dkt. Nos. 24, 26, 28-33.)

10           Because oral argument would not have materially aided the resolution of the  
11 pending motion, this matter was submitted on the briefs and record without a hearing. See Fed.  
12 R. Civ. P. 78(b); E. Dist. Local Rule 230(g); Minute Order, Mar. 11, 2011, Dkt. No. 34. The  
13 undersigned has considered the briefs, and the appropriate portions of the record in this case and,  
14 for the reasons stated below: (1) grants the Moving Defendant's request for judicial notice filed  
15 January 4, 2011; (2) recommends that the Moving Defendants' motion to be dismissed be granted;  
16 and (3) recommends that the claims alleged against the Moving Defendants be dismissed with  
17 prejudice and that the Moving Defendants be dismissed from this action. The undersigned  
18 recommends that the Moving Defendants' request for sanctions be denied.

19           Finally, it is not clear from the court's records whether plaintiff served the  
20 remaining named defendants within the time provided in Federal Rule of Civil Procedure 4(m).  
21 Accordingly, the undersigned orders plaintiff to show cause in writing why the First Amended  
22 Complaint should not be dismissed with prejudice as to defendants Kelly Bently, "Sargent  
23 Foxworthy," Jeff Neves, Barbara Newman, Carol Stowell, and Tania Urgin pursuant to Federal  
24 Rules of Civil Procedure 4(m) and 41(b).

25 I.       BACKGROUND

26           On July 14, 2010, plaintiff filed an application for a temporary restraining order

1 (“TRO”), that United States District Judge Morrison E. England, Jr.<sup>2</sup> denied on July 15, 2010.<sup>3</sup>  
2 (Mot. for Emergency Inj., Dkt. No. 1; Order, July 15, 2010, Dkt. No. 6.) Judge England’s order  
3 denying the application for a TRO noted several deficiencies in plaintiff’s application, including  
4 that plaintiff failed to file a separate complaint, as required by the court’s Local Rules. (Order,  
5 July 15, 2010, at 3.) Furthermore, noting that plaintiff’s action seeks, among other things,  
6 damages of approximately \$500 billion dollars, Judge England denied plaintiff’s application for a  
7 TRO and stated, in part, that “[t]he inherent implausibility of the claims asserted by Marty makes  
8 it impossible for this Court to conclude there is any likelihood [he] will ultimately prevail.” (Id.  
9 at 3.) Plaintiff subsequently filed a “Response” to Judge England’s order denying plaintiff’s  
10 application for a TRO (Dkt. No. 7), which Judge England denied to the extent that the  
11 “Response” constituted a motion for reconsideration (Order, Aug. 13, 2010, Dkt. No 8).

12           On September 8, 2010, plaintiff filed a document entitled “Motion For Orders To  
13 Void and Vacate: Judgments and Orders To Strike Liens of El Dorado County Superior Court,”  
14 and noticed the “motion” for hearing on September 30, 2010. (Dkt. No. 9.) Because plaintiff’s  
15 document was styled as a “motion” and was defectively noticed, the court ordered plaintiff to re-  
16 notice the motion in compliance with this court’s Local Rule 230(b). (Minute Order, Sept. 13,  
17 2010, Dkt. No. 10.) On October 5, 2010, plaintiff filed a document entitled “Amended Motion  
18 For Orders To Void and Vacate: Judgments and Orders To Strike Liens of El Dorado County  
19 Superior Court,” which he noticed for hearing on November 18, 2010 (the “Amended Motion”).  
20 (Dkt. No. 11.)

21           Upon review of plaintiff’s Amended Motion, the undersigned concluded that  
22 although styled as a “motion,” the Amended Motion was not in fact a motion; instead, the  
23 Amended Motion appeared to be an amended complaint seeking relief relative to several

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24           <sup>2</sup> Judge England was the district judge previously assigned to this matter.

25           <sup>3</sup> The court’s docket reflects that none of the named defendants made an appearance in  
26 response to plaintiff’s application for a TRO.

1 decisions of the California Superior Court for the County of El Dorado. (Order, Oct. 14, 2010,  
2 Dkt. No. 12.) Accordingly, the undersigned construed the Amended Motion as a first amended  
3 complaint. (Id. at 2 (“Plaintiff’s ‘Amended Motion For Orders To Void and Vacate: Judgments  
4 and Orders To Strike Liens of El Dorado County Superior Court’ (Dkt. No. 11) is hereby deemed  
5 to constitute a ‘First Amended Complaint.’”).) The undersigned refers to the Amended Motion  
6 as the First Amended Complaint in the remainder of this order.

7           On October 14, 2010, the court issued a summons requiring defendants to respond  
8 to plaintiff’s First Amended Complaint within 21 days of being served with the summons and the  
9 First Amended Complaint. (See Dkt. No. 13.) The “Proof of Service” appended to plaintiff’s  
10 First Amended Complaint indicates that plaintiff served the First Amended Complaint only by  
11 U.S. Mail on:

12                   CAULFIELD, DAVIES & DONAHUE, LLP  
13                   Attn: Richard Caulfield  
14                   P.O. BOX 277010  
15                   Sacramento, CA 95827-7010

16 (Proof of Service, attached to First Am. Compl., Dkt. No. 11 at 37-39; see also Mot. for Default  
17 J., Ex. A.) Caulfield, Davies & Donahue, LLP is not a named defendant. The court’s docket  
18 does not contain a subsequently filed proof of service or certificate of service reflecting that  
19 plaintiff served the summons and First Amended Complaint on any defendants after the  
20 summons issued.<sup>4</sup>

21           On December 6, 2010, plaintiff filed a motion for default judgment. (Mot. for  
22 Default J., Dkt. No. 14.) On January 28, 2011, the undersigned denied, after a hearing, plaintiff’s  
23 motion for default judgment. (Order, Jan. 28, 2011, Dkt. No. 23.) The undersigned denied  
24 plaintiff’s motion on the grounds that: (1) the motion was procedurally improper because  
25 plaintiff failed to seek and obtain a clerk’s entry of default judgment pursuant to Federal Rule of

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26           <sup>4</sup> At a January 27, 2011 hearing on plaintiff’s motion for default judgment, plaintiff conceded  
that he has not personally served the named defendants with process.

1 Civil Procedure 55(a) prior to filing a motion for default judgment; and (2) plaintiff had not  
2 properly served the defendants against whom plaintiff sought a default judgment. (See Order,  
3 Jan. 28, 2011, at 5-10.)

4 On January 4, 2011, the Moving Defendants filed the pending motion to dismiss  
5 plaintiff's First Amended Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1),  
6 12(b)(5), and 12(b)(6). As noted above, plaintiff failed to file a written opposition to the motion  
7 to dismiss and, accordingly, the undersigned continued the hearing on the motion to dismiss and  
8 provided plaintiff with an additional opportunity to file a written opposition or statement of non-  
9 opposition. (See Order, Feb. 1, 2011.) Plaintiff has filed numerous documents since the entry of  
10 the undersigned's February 1, 2011 order, but none of them constitutes an opposition to the  
11 pending motion to dismiss.

12 II. DISCUSSION

13 Plaintiff's First Amended Complaint is subject to dismissal with prejudice as to  
14 the Moving Defendants for several reasons. First, plaintiff's claims are subject to involuntary  
15 dismissal pursuant to Federal Rule of Civil Procedure 41(b) based on plaintiff's failure to comply  
16 with the court's Local Rules and previously entered orders. Second, plaintiff's claims against the  
17 Moving Defendants are subject to dismissal because plaintiff failed to properly serve those  
18 defendants with the operative complaint and summons in this case. Finally, even assuming  
19 plaintiff properly served the Moving Defendants, this court lacks jurisdiction to hear plaintiff's  
20 claims against the Moving Defendants under the Rooker-Feldman doctrine. Accordingly, the  
21 undersigned recommends that the Moving Defendants' motion to dismiss be granted and need  
22 not reach the Moving Defendants' remaining arguments in favor of dismissal.

23 A. Plaintiff's Claims Against the Moving Defendants Are Subject to Dismissal  
24 Pursuant to Federal Rule of Civil Procedure 41(b)

25 As noted above, on January 4, 2011, the Moving Defendants filed a motion to  
26 dismiss plaintiff's complaint and noticed that motion for a hearing before the undersigned to take

1 place on February 3, 2011. Pursuant to this court's Local Rules, plaintiff was obligated to file  
2 and serve a written opposition or statement of non-opposition to the Moving Defendants' motion  
3 at least fourteen days prior to the hearing date, or January 20, 2011. See E. Dist. Local Rule  
4 230(c).<sup>5</sup> Plaintiff failed to file any response to the motion to dismiss.

5 On February 1, 2011, and in response to plaintiff's failure to file a response to the  
6 Moving Defendants' motion, the undersigned entered an order that: (1) continued the hearing on  
7 the Moving Defendants' motion to dismiss until March 17, 2011; and (2) required plaintiff to file  
8 a written opposition or statement of non-opposition to the pending motion to dismiss on or  
9 before February 10, 2011. (Order, Feb. 1, 2011, at 3-4.) That order states, in part:

10 Eastern District Local Rule 110 provides that "[f]ailure of counsel  
11 or of a party to comply with these Rules or with any order of the Court  
12 may be grounds for imposition by the Court of any and all sanctions  
13 authorized by statute or Rule or within the inherent power of the Court."  
14 Moreover, Eastern District Local Rule 183(a) provides, in part:

15 Any individual representing himself or herself without an  
16 attorney is bound by the Federal Rules of Civil or Criminal  
17 Procedure, these Rules, and all other applicable law. All  
18 obligations placed on "counsel" by these Rules apply to  
19 individuals appearing in propria persona. Failure to comply  
20 therewith may be ground for dismissal . . . or any other  
21 sanction appropriate under these Rules.

22 See also King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987) ("Pro se  
23 litigants must follow the same rules of procedure that govern other  
24 litigants."). Case law is in accord that a district court may impose  
25 sanctions, *including involuntary dismissal of a plaintiff's case* pursuant to  
26 Federal Rule of Civil Procedure 41(b), where that plaintiff fails to  
prosecute his or her case or fails to comply with the court's orders, the  
Federal Rules of Civil Procedure, or the court's local rules. See Chambers

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21 <sup>5</sup> Eastern District Local Rule 230(c) provides:

22 **(c) Opposition and Non-Opposition.** Opposition, if any, to the granting of  
23 the motion shall be in writing and shall be filed and served not less than  
24 fourteen (14) days preceding the noticed (or continued) hearing date. A  
25 responding party who has no opposition to the granting of the motion shall  
26 serve and file a statement to that effect, specifically designating the motion  
in question. No party will be entitled to be heard in opposition to a motion  
at oral arguments if opposition to the motion has not been timely filed by that  
party. . . .

1 v. NASCO, Inc., 501 U.S. 32, 44 (1991) (recognizing that a court “may act  
2 *sua sponte* to dismiss a suit for failure to prosecute”); Hells Canyon  
3 Preservation Council v. U.S. Forest Serv., 403 F.3d 683, 689 (9th Cir.  
4 2005) (stating that courts may dismiss an action pursuant to Federal Rule  
5 of Civil Procedure 41(b) *sua sponte* for a plaintiff’s failure to prosecute or  
6 comply with the rules of civil procedure or the court’s orders); Ghazali v.  
7 Moran, 46 F.3d 52, 53 (9th Cir. 1995) (per curiam) (“Failure to follow a  
8 district court’s local rules is a proper ground for dismissal.”); Ferdik v.  
9 Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992) (“Pursuant to Federal Rule  
10 of Civil Procedure 41(b), the district court may dismiss an action for  
11 failure to comply with any order of the court.”); Thompson v. Housing  
12 Auth. of City of L.A., 782 F.2d 829, 831 (9th Cir. 1986) (per curiam)  
13 (stating that district courts have inherent power to control their dockets  
14 and may impose sanctions including dismissal).

15 (Id. at 2-3 (emphasis in original, footnote omitted).)<sup>6</sup> Later in that order, the undersigned  
16 provided plaintiff with an additional warning: “*Plaintiff’s failure to file a written opposition will*  
17 *be deemed a statement of non-opposition to the pending motion and consent to the granting of*  
18 *the motion to dismiss, and shall constitute an additional ground for the imposition of*  
19 *appropriate sanctions, including a recommendation that plaintiff’s case be involuntarily*  
20 *dismissed pursuant to Federal Rule of Civil Procedure 41(b).*” (Id. at 4 (emphasis in original).)  
21 Thus, the court gave plaintiff very clear warnings that his case would be dismissed for failure to  
22 prosecute his action or his failure to comply with the Federal Rules of Civil Procedure, the  
23 court’s orders, or the court’s Local Rules.

24 Plaintiff again failed to file a written opposition or statement of non-opposition to  
25 the Moving Defendants’ motion to dismiss.<sup>7</sup> Plaintiff failed to do so despite being given an  
26 additional opportunity to do so and explicit warnings that the failure to file a written opposition

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22 <sup>6</sup> The order also included the following footnote, which is omitted in the above-quoted text:  
23 “The Ninth Circuit Court of Appeals had held that under certain circumstances a district court does  
24 not abuse its discretion by dismissing a plaintiff’s case pursuant to Federal Rule of Civil Procedure  
25 41(b) for failing to file an opposition to a motion to dismiss. See, e.g., Trice v. Clark County Sch.  
26 Dist., 376 Fed. Appx. 789, 790 (9th Cir. 2010).” (Order, Feb. 1, 2011, at 2 n.2.)

25 <sup>7</sup> On February 9, 2011, plaintiff filed a document entitled “Statement of Facts and Clerk  
26 Commands, February 7, 2011,” which essentially contains one page of text. (Dkt. No. 26.) None  
of this text is responsive to the pending motion to dismiss.

1 or statement of non-opposition would result in the dismissal of his lawsuit.

2           The undersigned recommends that the claims asserted against the Moving  
3 Defendants be dismissed pursuant to Federal Rule of Civil Procedure 41(b). Pursuant to  
4 Rule 41(b), a district court may dismiss an action for failure to prosecute, failure to comply with  
5 the Federal Rules of Civil Procedure, failure to comply with the court’s local rules, or failure to  
6 comply with the court’s orders.<sup>8</sup> See, e.g., Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991)  
7 (recognizing that a court “may act *sua sponte* to dismiss a suit for failure to prosecute”); Hells  
8 Canyon Preservation Council v. U.S. Forest Serv., 403 F.3d 683, 689 (9th Cir. 2005)  
9 (recognizing that courts may dismiss an action pursuant to Federal Rule of Civil Procedure 41(b)  
10 *sua sponte* for a plaintiff’s failure to prosecute or comply with the rules of civil procedure or the  
11 court’s orders); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992) (“Pursuant to Federal  
12 Rule of Civil Procedure 41(b), the district court may dismiss an action for failure to comply with  
13 any order of the court.”); Pagtalunan v. Galaza, 291 F.3d 639, 642-43 (9th Cir. 2002) (affirming  
14 district court’s dismissal of case for failure to prosecute when habeas petitioner failed to file a  
15 first amended petition). This court’s Local Rules are in accord. See E. Dist. Local Rule 110  
16 (“Failure of counsel or of a party to comply with these Rules or with any order of the Court may  
17 be grounds for imposition by the Court of any and all sanctions authorized by statute or Rule or  
18 within the inherent power of the Court.”); E. Dist. Local Rule 183(a) (providing that a pro se  
19 party’s failure to comply with the Federal Rules of Civil Procedure, the court’s Local Rules, and  
20 other applicable law may support, among other things, dismissal of that party’s action).

21           A court must weigh five factors in determining whether to dismiss a case for  
22 failure to prosecute, failure to comply with a court order, or failure to comply with a district  
23 court’s local rules. See, e.g., Ferdik, 963 F.2d at 1260. Specifically, the court must consider:

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25           <sup>8</sup> Rule 41(b) provides, in part: “**(b) Involuntary Dismissal; Effect.** If the plaintiff fails to  
26 prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action  
or any claim against it.” Fed. R. Civ. P. 41(b).



1 (1) the public's interest in expeditious resolution of litigation;  
2 (2) the court's need to manage its docket; (3) the risk of prejudice  
3 to the defendants; (4) the public policy favoring disposition of  
cases on their merits; and (5) the availability of less drastic  
alternatives.

4 Id. at 1260-61; accord Pagtalunan, 291 F.3d at 642-43; Ghazali v. Moran, 46 F.3d 52, 53 (9th  
5 Cir. 1995). The Ninth Circuit Court of Appeals has stated that “[t]hese factors are not a series of  
6 conditions precedent before the judge can do anything, but a way for a district judge to think  
7 about what to do.” In re Phenylpropanolamine (PPA) Prods. Liab. Litig., 460 F.3d 1217, 1226  
8 (9th Cir. 2006).

9 Although involuntary dismissal can be a harsh remedy, the five relevant factors  
10 weigh in favor of dismissal of this action. The first two factors strongly support dismissal of this  
11 action. Plaintiff's failure to file an opposition or statement of non-opposition to the Moving  
12 Defendants' motion to dismiss in the first instance, and his failure to do so a second time despite  
13 clear warnings of the consequences for such failures, strongly suggests that plaintiff is not  
14 interested in seriously prosecuting his case in accordance with the applicable rules of procedure  
15 and the court's orders. See, e.g., Yourish v. Cal. Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)  
16 (“The public's interest in expeditious resolution of litigation always favors dismissal.”).

17 Moreover, although plaintiff had notice of the continued hearing date and his potentially final  
18 opportunity to file a response to the Moving Defendants' motion on or before February 10, 2011,  
19 plaintiff failed to file a responsive opposition. Any further time spent by the court on the claims  
20 asserted against the Moving Defendants will consume scarce judicial resources and take away  
21 from other active cases. See Ferdik, 963 F.2d at 1261 (recognizing that district courts have  
22 inherent power to manage their dockets without being subject to noncompliant litigants).

23 In addition, the third factor, which considers prejudice to a defendant as a result of  
24 plaintiff's failure to timely oppose its motion to dismiss, should be given some weight. See  
25 Ferdik, 963 F.2d at 1262. This factor does not necessarily favor dismissal of the claims against  
26 the Moving Defendants because those defendants have already filed a motion to dismiss

1 plaintiff's First Amended Complaint, and the undersigned addresses that motion below. Thus,  
2 the Moving Defendants are only minimally prejudiced by plaintiff's repeated failure to file a  
3 written opposition that is responsive to the pending motion.

4           The fifth factor, which considers the availability of less drastic measures, also  
5 supports dismissal of this action. As noted above, the court has actually pursued remedies that  
6 are less drastic than a recommendation of dismissal. See Malone v. U.S. Postal Serv., 833 F.2d  
7 128, 132 (9th Cir. 1987) (“[E]xplicit discussion of alternatives is unnecessary if the district court  
8 actually tries alternatives before employing the ultimate sanction of dismissal.”). The court  
9 excused plaintiff's initial failure to oppose the Moving Defendants' motion, granted plaintiff  
10 substantial additional time to file an opposition or statement of non-opposition, and continued the  
11 hearing on the motion to dismiss. Moreover, the court advised plaintiff of the requirement of  
12 opposing a motion to dismiss and informed him of the requirements of the Local Rules.  
13 Furthermore, the court advised plaintiff that he was required to comply with the court's Local  
14 Rules and the Federal Rules of Civil Procedure even though he is proceeding without counsel. It  
15 also warned plaintiff in clear terms that failure to comply with the court's orders would result in a  
16 recommendation of dismissal. Warning a plaintiff that failure to take steps towards resolution of  
17 his or her action on the merits will result in dismissal satisfies the requirement that the court  
18 consider the alternatives. See, e.g., Ferdik, 963 F.2d at 1262 (“[O]ur decisions also suggest that a  
19 district court's warning to a party that his failure to obey the court's order will result in dismissal  
20 can satisfy the ‘consideration of alternatives’ requirement.”) (citing Malone, 833 F.2d at 132-33).  
21 At this juncture, the court finds that dismissal is a suitable course of action in light of plaintiff's  
22 disregard of the court's orders and Local Rules.

23           The court also recognizes the importance of giving due weight to the fourth factor,  
24 which addresses the public policy favoring disposition of cases on the merits. However, for the  
25 reasons set forth above, factors one, two, and five strongly support a recommendation for  
26 dismissal of this action, and factor four does not materially counsel otherwise. Dismissal is

1 proper “where at least four factors support dismissal or where at least three factors ‘strongly’  
2 support dismissal.” Hernandez v. City of El Monte, 138 F.3d 393, 399 (9th Cir. 1998) (citations  
3 and quotation marks omitted). Under the circumstances of this case, the other relevant factors  
4 outweigh the general public policy favoring disposition of actions on their merits. See Ferdik,  
5 963 F.2d at 1263.

6           Additionally, the undersigned notes that plaintiff has continually ignored the  
7 Federal Rules of Civil Procedure and this court’s Local Rules. Although the violations are too  
8 lengthy to list here, two examples are illustrative. First, although no matter was on for hearing  
9 on March 17, 2011, plaintiff appeared in court during the undersigned’s law and motion calendar  
10 for a “trial,” which was unilaterally scheduled by plaintiff. (See Minutes, Mar. 17, 2011, Dkt.  
11 No. 35.) Second, also on March 17, 2011, plaintiff filed with the court a “Writ of Replevin and  
12 Court Orders - In Admiralty,” with a caption that contains the name of this court. (Dkt. No. 37.)  
13 Plaintiff signed this purported writ and order as “Judge, Bank, Banker and Postmaster.” The  
14 United States Marshal’s office also contacted the Clerk’s Office and the undersigned’s chambers  
15 because plaintiff had reportedly presented his purported order to the United States Marshal’s  
16 office for execution by that office. These types of egregious behavior by plaintiff is  
17 commonplace in this action. Plaintiff’s mischief additionally supports involuntary dismissal.

18           Based on the applicable factors, the undersigned recommends that plaintiff’s  
19 claims against the Moving Defendants be dismissed under Rule 41(b). Out of an abundance of  
20 caution, however, the undersigned briefly addresses below the merits of the Moving Defendants’  
21 motion, which provide additional grounds for dismissal of the claims asserted against the Moving  
22 Defendants.

23           B.     Plaintiff Did Not Properly Serve the Moving Defendants With Process

24           Setting aside the recommendation that plaintiff’s claims against the Moving  
25 Defendants be dismissed pursuant to Rule 41(b), the undersigned agrees with the Moving  
26 Defendants that plaintiff’s claims against them are subject to dismissal pursuant to Federal Rule

1 of Civil Procedure 12(b)(5) for insufficient service of process. For the sake of brevity, however,  
2 the undersigned does not discuss this grounds for dismissal in great length here. That is because  
3 the undersigned previously analyzed whether plaintiff had properly served the Moving  
4 Defendants with process in an order denying plaintiff's motion for default judgment. (See Order,  
5 Jan. 28, 2011.) In that order, the undersigned concluded that whether analyzed under Federal  
6 Rules of Civil Procedure 4 or 5, plaintiff failed to properly serve the same 18 defendants who  
7 constitute the Moving Defendants here. (See *id.* at 7-10.) That order is incorporated here by  
8 reference.<sup>9</sup> Accordingly, the undersigned recommends that plaintiff's First Amended Complaint  
9 be dismissed as to the Moving Defendants pursuant to Federal Rules of Civil Procedure 12(b)(5).

10 C. This Court Lacks Jurisdiction Over Plaintiff's Claims Against the Moving  
11 Defendants Based On Application of the Rooker-Feldman Doctrine

12 Even assuming that plaintiff's claims asserted against the Moving Defendants are  
13 not subject to dismissal pursuant to Federal Rules of Civil Procedure 41(b) or 12(b)(5), those  
14 claims are subject to dismissal for lack of jurisdiction. Plaintiff's claims against the Moving  
15 Defendants constitute an appeal or de facto appeal of 18 state court judgments made to a federal  
16 court and, as a result, fall within the Rooker-Feldman doctrine. Accordingly, the undersigned  
17 recommends dismissal, in the alternative, on the grounds that this court lacks jurisdiction to  
18 exercise appellate review of final state court judgments.

19 The Rooker-Feldman doctrine occupies "narrow ground." Skinner v. Switzer,  
20 131 S. Ct. 1289, 1297 (2011). "The *Rooker-Feldman* doctrine provides that federal district  
21 courts lack jurisdiction to exercise appellate review over final state court judgments."

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22  
23 <sup>9</sup> Additionally, as noted in the undersigned's previously entered orders, plaintiff essentially  
24 conceded at the hearing on the motion for default judgment that he did not properly serve his  
25 complaint or First Amended Complaint on the Moving Defendants. (See Order, Jan. 28, 2011, at  
26 1 & n.3; Order, Feb. 1, 2011, at 3.) Moreover, in the undersigned's February 1, 2011 order, the  
undersigned advised plaintiff that if plaintiff did not remedy the failed service on the Moving  
Defendants, such a failure "may still provide additional grounds upon which to grant the Moving  
Defendants' motion." (Order, Feb. 1, 2011, at 3 & n.3.) Plaintiff has provided no indication that  
he ever remedied the insufficient service of process.

1 AmerisourceBergen Corp. v. Roden, 495 F.3d 1143, 1153 (9th Cir. 2007) (quoting Henrichs v.  
2 Valley View Dev., 474 F.3d 609, 613 (9th Cir. 2007)). “Essentially, the doctrine bars  
3 ‘state-court losers complaining of injuries caused by state-court judgments rendered before the  
4 district court proceedings commenced’ from asking district courts to review and reject those  
5 judgments.”<sup>10</sup> Henrichs, 474 F.3d at 613 (quoting Exxon Mobile Corp. v. Saudi Basic Indus.  
6 Corp., 544 U.S. 280, 284 (2005)); accord Reusser v. Wachovia Bank, N.A., 525 F.3d 855, 859  
7 (9th Cir. 2008). The Rooker-Feldman doctrine may also apply, however, where the parties do  
8 not directly contest the merits of a state court decision, but file an action that constitutes a “de  
9 facto” appeal from a state court judgment. Reusser, 525 F.3d at 859. Such a de facto appeal  
10 exists where “claims raised in the federal court action are ‘inextricably intertwined’ with the state  
11 court’s decision such that the adjudication of the federal claims would undercut the state ruling  
12 or require the district court to interpret the application of state laws or procedural rules.” Id.  
13 (citation and quotation marks omitted). “Once a federal plaintiff seeks to bring a forbidden de  
14 facto appeal . . . , that federal plaintiff may not seek to litigate an issue that is ‘inextricably  
15 intertwined’ with the state court judicial decision from which the forbidden de facto appeal is  
16 brought.” Noel, 341 F.3d at 1158; see also Bianchi v. Rylaarsdam, 334 F.3d 895, 900 n.4 (9th  
17 Cir. 2003) (“The *Rooker-Feldman* doctrine prevents lower federal courts from exercising

18  
19 <sup>10</sup> In Noel v. Hall, the Ninth Circuit Court of Appeals provided the following “general  
formulation” of Rooker-Feldman:

20 If a federal plaintiff asserts as a legal wrong an allegedly erroneous decision  
21 by a state court, and seeks relief from a state court judgment based on that  
22 decision, *Rooker-Feldman* bars subject matter jurisdiction in federal district  
23 court. If, on the other hand, a federal plaintiff asserts as a legal wrong an  
24 allegedly illegal act or omission by an adverse party, *Rooker-Feldman* does  
25 not bar jurisdiction. If there is simultaneously pending federal and state court  
litigation between the two parties dealing with the same or related issues, the  
federal district court in some circumstances may abstain or stay proceedings;  
or if there has been state court litigation that has already gone to judgment,  
the federal suit may be claim-precluded under § 1738. But in neither of these  
circumstances does *Rooker-Feldman* bar jurisdiction.

26 341 F.3d 1148, 1164 (9th Cir. 2003).

1 jurisdiction over any claim that is ‘inextricably intertwined’ with the decision of a state court,  
2 even where the party does not directly challenge the merits of the state court’s decision but rather  
3 brings an indirect challenge based on constitutional principles.”).

4           Here, plaintiff asks this court to review the 18 final judgments entered by the state  
5 court and vacate those final judgments.<sup>11</sup> For example, the document deemed to constitute  
6 plaintiff’s First Amended Complaint is entitled “Amended Motion For Orders To Void and  
7 Vacate: Judgments and Orders To Strike Liens of El Dorado County Superior Court.” Plaintiff’s  
8 caption, which lists all of the state court case numbers that correspond to state court cases in  
9 which the 18 final judgments were entered, forecasts that plaintiff is seeking relief from the final  
10 judgments. Moreover, in the section of the First Amended Complaint entitled “Causes of Action  
11 to Void Judgment and Orders,” plaintiff directly challenges the state court judges’ orders and the  
12 state court’s judgments. (First Am. Compl. at 6-29.) Among other arguments, plaintiff asserts  
13 that: (1) the state court lacked subject matter jurisdiction and personal jurisdiction; (2) state court  
14 judges deprived plaintiff of his “constitutional and due process rights” during the hearings related  
15 to the judgments at issue; and (3) the defendants failed to provide sufficient evidence to prove  
16 their claims in state court. Furthermore, plaintiff expressly asks this court to “nullify, void, and  
17 vacate” the orders and final judgments entered in the state court. (*Id.* at 30-31.) In short,  
18 plaintiff’s First Amended Complaint constitutes an appeal or a de facto appeal of 18 state court  
19 judgments, and, accordingly, this court lacks subject matter jurisdiction over plaintiff’s claims  
20

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21           <sup>11</sup> The Moving Defendants filed a request for judicial notice that asks this court to take notice  
22 of several documents of the Superior Court of El Dorado County, including numerous orders and  
23 18 final judgments, all of which underlie plaintiff’s claims here. (See Req. For Judicial Notice, Dkt.  
24 No. 19, Doc. No. 19-5.) The undersigned grants the Moving Defendants’ request for judicial notice.  
25 The district court may take judicial notice of documents filed in a state court action where, as here,  
26 the state court proceedings have a direct relation to the matters at issue. See, e.g., *Betker v. U.S.*  
*Trust Corp. (In re Heritage Bond Litig.)*, 546 F.3d 667, 670 n.1, 673 n.8 (9th Cir. 2008) (citing *U.S.*  
*ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992));  
*Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007); *Holder v. Holder*, 305 F.3d 854, 866 (9th  
Cir. 2002); *Cactus Corner, LLC v. U.S. Dep’t of Agric.*, 346 F. Supp. 2d 1075, 1092 (E.D. Cal.  
2004).

1 against the Moving Defendants.<sup>12</sup>

2 D. Order To Show Cause: Failure to Serve Summons and Complaint

3 Finally, the undersigned orders, *sua sponte*, plaintiff to show good cause in  
4 writing why his claims against the remaining defendants in this action, who have not appeared,  
5 should not be dismissed with prejudice pursuant to Federal Rules of Civil Procedure 4(m)  
6 and 41(b).

7 As noted above, plaintiff filed what the court deemed to be a First Amended  
8 Complaint on October 6, 2010. (See Dkt. Nos. 11, 12.) The court issued a summons in regards  
9 to the First Amended Complaint on October 14, 2010. (Summons In A Civ. Case, Oct. 14, 2010,  
10 Dkt. No. 13.) This summons included as defendants the following individuals: Kelly Bently,  
11 “Sargent Foxworthy,” Jeff Neves, Barbara Newman, Carol Stowell, and Tania Urgin. The  
12 court’s docket does not reflect with any certainty that plaintiff ever served these remaining  
13 defendants with the original summons and the original complaint, or the First Amended  
14 Complaint and related summons.

15 As a result, the undersigned is inclined to recommend, on the court’s own motion,  
16 that the claims against defendants Bently, Foxworthy, Neves, Newman, Stowell, and Urgin be  
17 dismissed because the time to serve these defendants has expired. In relevant part, Federal Rule  
18 of Civil Procedure 4(m) provides:

19 **(m) Time Limit for Service.** If a defendant is not served within 120 days  
20 after the complaint is filed, the court--on motion or on its own after notice  
21 to the plaintiff--must dismiss the action without prejudice against that  
22 defendant or order that service be made within a specified time. But if the  
23 plaintiff shows good cause for the failure, the court must extend the time  
24 for service for an appropriate period.

25 Over 120 days have passed since plaintiff filed the First Amended Complaint and since the court

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26 <sup>12</sup> The undersigned agrees with the Moving Defendants that, under the peculiar facts of this case, the timing of the entry of the state court judgments relative to the commencement of the federal proceedings does not bar application of the Rooker-Feldman doctrine.

1 issued the summons pertaining to the First Amended Complaint. Absent good cause shown by  
2 plaintiff, the court must dismiss plaintiff’s claims against defendants Bently, Foxworthy, Neves,  
3 Newman, Stowell, and Urgin pursuant to Rule 4(m). However, Rule 4(m) requires that the court  
4 provide notice to plaintiff prior to effectuating such a dismissal, and this order constitutes such  
5 notice.

6           Additionally, the court is inclined to recommend, on its own motion, the dismissal  
7 of plaintiff’s action with prejudice pursuant to Federal Rule of Civil Procedure 41(b) for failure  
8 to prosecute, comply with the Federal Rules of Civil Procedure, and the court’s Order Setting  
9 Status Conference.<sup>13</sup> See, e.g., Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991) (recognizing  
10 that a court “may act *sua sponte* to dismiss a suit for failure to prosecute”); Hells Canyon  
11 Preservation Council v. U.S. Forest Serv., 403 F.3d 683, 689 (9th Cir. 2005) (recognizing that  
12 courts may dismiss an action pursuant to Federal Rule of Civil Procedure 41(b) *sua sponte* for a  
13 plaintiff’s failure to prosecute or comply with the rules of civil procedure or the court’s orders);  
14 Pagtalunan v. Galaza, 291 F.3d 639, 642-43 (9th Cir. 2002) (affirming district court’s dismissal  
15 of case for failure to prosecute when habeas petitioner failed to file a first amended petition);  
16 Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992) (“Pursuant to Federal Rule of Civil  
17 Procedure 41(b), the district court may dismiss an action for failure to comply with any order of  
18 the court.”); Thompson v. Housing Auth. of City of L.A., 782 F.2d 829, 831 (9th Cir. 1986) (per  
19 curiam) (stating that district courts have inherent power to control their dockets and may impose  
20 sanctions including dismissal). The court previously warned plaintiff that such failures would  
21 result in a recommendation that his case be dismissed. (See Order, Feb. 1, 2011.) Accordingly,  
22 plaintiff should also address why his claims against defendants Bently, Foxworthy, Neves,  
23 Newman, Stowell, and Urgin should not be involuntarily dismissed with prejudice.

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24  
25 <sup>13</sup> Pursuant Federal Rule of Civil Procedure 4(m) and this court’s Order Setting Status  
26 Conference, plaintiff was obligated to serve all defendants with process within 120 days from the  
date the complaint was filed. (See Order Setting Status Conference ¶ 1, Dkt. No. 5.)



1 III. CONCLUSION

2 For the reasons stated above, IT IS HEREBY ORDERED that:

3 1. The Moving Defendants' request for judicial notice (Dkt. No. 19, Doc.  
4 No. 19-5) is granted.

5 2. Plaintiff shall show cause, in writing, no later than April 15, 2011, why his  
6 claims against defendants Kelly Bently, "Sargent Foxworthy," Jeff Neves, Barbara Newman,  
7 Carol Stowell, and Tania Urgan should not be dismissed with prejudice pursuant to Federal Rules  
8 of Civil Procedure 4(m) and 41(b).

9 IT IS FURTHER RECOMMENDED that:

10 1. Plaintiff's claims against the Moving Defendants be dismissed with  
11 prejudice pursuant to Federal Rule of Civil Procedure 41(b).

12 2. In the alternative, the Moving Defendants' motion to dismiss (Dkt. No. 19)  
13 be granted.

14 3. All of plaintiff's claims alleged against the following defendants be  
15 dismissed with prejudice: Joan Barbee, Robert J. Barbot, Ron Briggs, Janet Walker Conroy,  
16 Mark Contois (erroneously sued as "Mark Tontois"), Worth Dikeman, Louis B. Green, Melinda  
17 Iremonger, Edward L. Knapp, John R. Knight, Beth McCourt, Becky Nelson, Ray Nutting, Vern  
18 R. Pierson, Norman Santiago, James R. Sweeney, Tim William, and Angela Wilson.

19 4. The Moving Defendants' request for sanctions be denied.


20 These findings and recommendations are submitted to the United States District  
21 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen  
22 days after being served with these findings and recommendations, any party may file written  
23 objections with the court and serve a copy on all parties. Id.; see also E. Dist. Local Rule 304(b).  
24 Such a document should be captioned "Objections to Magistrate Judge's Findings and  
25 Recommendations." Any response to the objections shall be filed with the court and served on  
26 all parties within fourteen days after service of the objections. E. Dist. Local Rule 304(d).

1 Failure to file objections within the specified time may waive the right to appeal the District  
2 Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d  
3 1153, 1156-57 (9th Cir. 1991).

4 IT IS SO ORDERED and RECOMMENDED.

5 DATED: April 5, 2011

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KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE