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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARK MAKOWIECKI,

 Plaintiff,

 v.

PG&E CORPORATION, a
California corporation, and
PACIFIC GAS AND ELECTRIC
COMPANY, a California
corporation,

 Defendants.

No. 2:17-cv-01630-JAM-CMK

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS**

Plaintiff Mark Makowiecki ("Plaintiff") alleges his employment with Defendants PG&E Corporation and Pacific Gas and Electric Company (collectively, "Defendants" or "PG&E") was wrongfully terminated in 2015. Plaintiff claims that, since then, Defendants have interfered with Plaintiff's ability to work with third parties and threatened him when he tried to come onto Defendants' premises to conduct work for third parties. See Compl., ECF No. 1. In August 2017, Plaintiff filed suit against Defendants alleging fourteen causes of action under state law and one cause of action under federal law. Id. Defendants move to

1 dismiss all claims for failure to state a claim. See Mem., ECF
2 No. 6. Plaintiff opposes. Opp'n, ECF No. 9. For the reasons
3 below, the Court dismisses the federal law cause of action with
4 prejudice and dismisses the other causes of action without
5 prejudice for lack of subject matter jurisdiction.¹

6
7 I. FACTUAL AND PROCEDURAL BACKGROUND

8 Plaintiff worked for Defendants from August 2011 to August
9 2015 as an electrical inspector in Northern California. See
10 Compl. ¶ 4(a)(2). After Plaintiff complained to one his
11 superiors, Mr. Mike Novello, about compensation disparities
12 between current employees and new hires, Defendants moved him to
13 another PG&E location, put him on administrative leave, and then
14 terminated him on August 4, 2015. See Compl. ¶ 4(b)(4)-(10). In
15 July 2016, while working for a third party, Plaintiff had to
16 visit one of Defendants' locations for work and was intimidated
17 and threatened by Defendants' security personnel. See Compl.
18 ¶ 4(e)(1). Plaintiff claims that Defendants used wire and
19 wireless communications to cause the forcible removal of
20 Plaintiff from their property. See Compl. ¶ 4(m)(2).

21 Defendants also used wire and wireless communications to
22 contact third parties to have Plaintiff's employment or contracts
23 terminated with those third parties. See Compl. ¶ 4(m)(2).
24 Plaintiff claims that Defendants blackballed or blacklisted him.
25 Compl. ¶ 4(m)(4).

26
27 ¹ This motion was determined to be suitable for decision without
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was
scheduled for Nov. 21, 2017. In deciding this motion, the Court
takes as true all well-pleaded facts in the operative complaint.

1 Plaintiff filed the operative complaint on August 6, 2017.
2 See Compl. The Complaint contains fourteen state law causes of
3 action and one cause of action under the Racketeer Influenced and
4 Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-68.
5 Defendants have moved to dismiss all causes of action for failure
6 to state a claim and Plaintiff opposes. Mem.; Opp'n.

7
8 II. OPINION

9 Plaintiff alleges that this Court has subject matter
10 jurisdiction over this lawsuit based on his RICO claim. Compl.
11 ¶ 1. But, for the reasons below, the Court finds that Plaintiff
12 has not plausibly alleged that claim and the Court dismisses it
13 with prejudice. The Court also declines to exercise
14 supplemental jurisdiction over Plaintiff's remaining fourteen
15 causes of action under state law.

16 A. Subject Matter Jurisdiction

17 A federal district court may decline to exercise
18 supplemental jurisdiction if it has dismissed all claims over
19 which it has original jurisdiction. Sanford v. MemberWorks,
20 Inc., 625 F.3d 550, 561 (9th Cir. 2010) (internal citations and
21 quotation marks omitted). "In the usual case in which all
22 federal-law claims are eliminated before trial, the balance of
23 facts to be considered under the pendent jurisdiction doctrine—
24 judicial economy, convenience, fairness, and comity—will point
25 toward declining to exercise jurisdiction over the remaining
26 state-law claims." Id. (internal citation and quotation marks
27 omitted).

28 Here, Plaintiff concedes that the Court's jurisdiction over

1 the subject matter of this action is based on the RICO claim and
2 then supplemental jurisdiction over the other fourteen causes of
3 action under state law. See Compl. ¶ 1.

4 B. Plaintiff's RICO Claim

5 RICO imposes criminal and civil liability on those who
6 engage in specified "prohibited activities." H.J. Inc. v. Nw.
7 Bell Tel., Co., 492 U.S. 229, 232 (1989). The prohibited
8 activities are defined in 18 U.S.C. § 1962(a)-(d). In addition
9 to alleging "prohibited activity", the plaintiff must allege
10 "(1) conduct (2) of an enterprise (3) through a pattern (4) of
11 racketeering activity (known as 'predicate acts') (5) causing
12 injury to plaintiff's 'business or property'." Living Designs,
13 Inc. v. E.I. Dupont de Numours and Co., 431 F.3d 353, 361 (9th
14 Cir. 2005) (internal citations and quotation marks omitted). The
15 "predicate acts" that constitute "racketeering activity" are
16 defined under 18 U.S.C. § 1961(1) and include "any act or threat
17 involving murder, kidnapping, gambling, arson, robbery, bribery,
18 extortion, dealing in obscene matter, or dealing in a controlled
19 substance . . . which is chargeable under State law[.]"

20 To plausibly allege a RICO violation, Plaintiff must also
21 allege a pattern of predicate acts. See H.J. Inc., 492 U.S. at
22 236. A pattern requires at least two acts of racketeering
23 activity within a 10-year period that suggest they are ordered or
24 arranged in a pattern. H.J. Inc., 492 U.S. at 232. A pattern
25 also requires continuity over a significant period of time. H.J.
26 Inc., 492 U.S. at 242 ("A party alleging a RICO violation may
27 demonstrate continuity over a closed period by proving a series
28 of related predicates extending over a substantial period of

1 time.”).

2 Continuity does not require a showing that the defendants
3 engaged in more than one scheme or criminal episode. Medallion
4 Television Enter., Inc. v. SelectTV of Cal., Inc., 833 F.2d 1360,
5 1363 (9th Cir. 1987) (internal citation and quotation marks
6 omitted). But the case-specific circumstances must suggest that
7 the predicate acts indicate a threat of continuing activity. Id.
8 (internal citation omitted). A threat of continuing activity is
9 absent where there is only a single alleged predicate act with a
10 single victim. See id. at 1363-64.

11 Here, Plaintiff alleges that the predicate acts are false
12 arrest and mail and wire fraud. See Opp’n at 9-10. And the
13 alleged pattern of these predicate acts is based on “the
14 manifestations of Mr. Novello’s plan and scheme to punish
15 plaintiff and hold him out as an example to others.” Opp’n at 9;
16 see also Compl. ¶ 4(m)(2). Plaintiff has provided no legal
17 authority to support his RICO claim. See Opp’n at 9-10.

18 Even if Plaintiff had sufficiently alleged claims for false
19 imprisonment or mail and wire fraud and the Court found both of
20 these to be predicate acts, Plaintiff has not plausibly alleged a
21 pattern of racketeering activity. Plaintiff has only alleged
22 that Defendants’ plan was to punish him and make an example of
23 him. See Opp’n at 9; Compl. ¶ 4(m).

24 Plaintiff has not alleged (1) any other victims of the
25 alleged mail or wire fraud and false imprisonment or (2) that
26 Defendants are continuing to engage in the alleged mail or wire
27 fraud and false imprisonment. See Compl. ¶ 4(m). Plaintiff does
28 not plead the type of pattern under RICO that he needs to allege-

1 i.e. a threat of continuing activity involving multiple schemes
2 or multiple victims. See Medallion Television Enter., Inc., 833
3 F.2d at 1364 ("Here, that [continuing] threat is absent. This
4 case involved but a single alleged fraud with a single victim.");
5 see also Durning v. Citibank, Int'l, 990 F.2d 1133, 1139 (9th
6 Cir. 1993) (even where there was more than one victim of alleged
7 fraud, the Court found no RICO violation since there was no
8 threat of continued or ongoing criminal activity); see also
9 Obeng-Amponsah v. Chase Home Fin., LLC, 624 F. App'x 459, 462
10 (9th Cir. 2015), cert. denied, 137 S. Ct. 163 (2016) ("Obeng only
11 alleged underlying fraud and forgery as to a single victim
12 (himself), which is insufficient for RICO."). The Court finds
13 Plaintiff has failed to state a plausible RICO claim and
14 dismisses it.

15 Having dismissed the only federal law claim in the
16 Complaint, the Court exercises its discretion and dismisses all
17 of Plaintiff's state-law claims without prejudice so that
18 Plaintiff may refile these claims in the proper state court if he
19 so chooses. See Sanford, 625 F.3d at 561.²

20 Finally, Plaintiff requested the Court to dismiss without
21 prejudice if it rejected any claims in the complaint. See Opp'n
22 at 15. But the Court need not grant leave to amend where
23 amendment would be futile. Deveraturda v. Globe Aviation Sec.
24 Servs., 454 F.3d 1043, 1049 (9th Cir. 2006). As explained above,
25 Plaintiff has pleaded no facts nor cited any legal authority

26 ² Both parties' requests for judicial notice are also denied
27 since the documents referenced therein are unnecessary for the
28 disposition of Defendants' motion.

1 supporting his RICO claim. And Plaintiff has pointed to no facts
2 that suggest amendment could rectify this problem. The Court
3 denies Plaintiff's request.

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III. ORDER

For the reasons set forth above, the Court GRANTS
Defendants' Motion to Dismiss Plaintiff's RICO claim with
prejudice and the remaining state-law claims without prejudice.

IT IS SO ORDERED.

Dated: December 6, 2017



JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE