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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SANDRINE COURTADE,
Plaintiff,
v.
ALBERT P. PAPPALARDO,
Defendant.

Case No. [14-cv-01594-JCS](#)

**ORDER GRANTING MOTION TO
DISMISS AND GRANTING LEAVE TO
AMEND COMPLAINT**

Re: Dkt. No. 14

I. INTRODUCTION

This case arises from the divorce of Plaintiff Sandrine Courtade and Defendant Albert Pappalardo, and their disputes regarding custody of their minor daughter S.C.P.¹ Plaintiff is a citizen of France. Plaintiff’s Complaint includes a number of claims based on state law, as well as a claim to “reinforce” Defendant’s obligations under the Form I-864 Affidavit of Support that Defendant filed in support of Plaintiff’s immigration to the United States. Defendant has filed a motion to dismiss (the “Motion”), arguing that the Complaint does not fall within this Court’s jurisdiction and seeks to impermissibly interfere with state court proceedings.

Although an immigrant may sue in federal court to enforce a sponsor’s Form I-864 obligations, Plaintiff’s Complaint here fails to state a claim that Defendant has breached such obligations. The Court lacks subject matter jurisdiction as to Plaintiff’s remaining claims. For the reasons discussed below, Plaintiff’s Complaint is therefore DISMISSED with leave to amend.

Any amendment must be consistent with this Order and filed no later than January 9, 2015.²

¹ In keeping with Rule 5.2(a) of the Federal Rules of Civil Procedure, the Court refers to S.C.P. by her initials. The parties are instructed to do the same, and to omit S.C.P.’s full name, in any future filings. *See* Order Sealing Documents and Requiring Redaction (dkt. 22).

² The parties have consented to the jurisdiction of the undersigned magistrate judge pursuant to 28 U.S.C. § 636(c).

1 **II. BACKGROUND**

2 **A. The Complaint**

3 The Court takes the factual allegations of Plaintiff’s Complaint as true for the limited
4 purpose of determining whether it states a claim on which relief may be granted. *See Parks Sch.*
5 *of Bus. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). Plaintiff and Defendant began an
6 intimate relationship in 2006, and Plaintiff later became pregnant with their child. Compl. (dkt. 1)
7 at 1. Plaintiff moved from France to the United States in July of 2007, but ended the relationship
8 and returned to France in November of that year because Defendant was unwilling to marry. *Id.* at
9 1–2. The parties’ daughter, S.C.P., was born in France in 2008. *Id.* at 2.

10 Defendant reached out to Plaintiff to persuade her to return to the United States. *Id.* The
11 parties were married in France on June 21, 2008. *Id.* Defendant signed a Form I-864 Affidavit of
12 Support in 2008, in which he agreed to “[p]rovide the intending immigrant [i.e., Plaintiff] any
13 support necessary to maintain him or her at an income that is at least 125 percent of the Federal
14 Poverty Guidelines for his or her household size.” *Id.* at 3 & Ex. A.³ Plaintiff and S.C.P. arrived
15 in the United States on March 4, 2009. *Id.* at 2.

16 Defendant filed for divorce in June of 2010. *Id.* Plaintiff alleges that Defendant never
17 intended to remain married to her, and instead used a “sham marriage” to entice her to bring
18 S.C.P. to the United States. *Id.* at 2–3.

19 The custody status of S.C.P. is not clear from Plaintiff’s Complaint. As of July 24, 2014,
20 Plaintiff stated that a decision had not yet been issued. Pl.’s Supp’l Decl. (dkt. 6) ¶ 1. Defendant
21 asserts in his Motion that he was granted sole custody on September 10, 2014. Mot. (dkt. 14) at 1.
22 Plaintiff’s Complaint includes allegations that she requested leave to return to France—
23 presumably with her daughter—in 2012, without success. Compl. at 3. Plaintiff also filed an
24 unsuccessful complaint in the family court regarding the evaluator assigned to her case. *Id.* at
25 3–4.

26 The Complaint includes a number of other allegations on a range of subjects, some more

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28 ³ Plaintiff’s Complaint includes a number of supporting documents that are not labeled as exhibits. For convenience, this Order refers to the Form I-864 Affidavit of Support as Exhibit A to the Complaint.

1 specific than others. Plaintiff alleges that the state court disregarded section 2030 of the California
2 Family Code, which shifts attorneys’ fees in divorce cases to promote equal representation based
3 on need for counsel and ability to pay. *See id.* at 4; Cal. Fam. Code § 2030. According to
4 Plaintiff, the court’s disregard of that statute violated the Unruh Civil Rights Act’s prohibition of
5 discrimination. *See Compl.* at 4 (citing Cal. Civ. Code § 51(b)–(e)).

6 Plaintiff alleges that she and S.C.P. are victims of domestic violence by Defendant,
7 “through financial and emotional abusive behaviors.” *Id.* In support of this claim, Plaintiff states
8 that Defendant was aware that Plaintiff would be isolated in the United States, as a result of
9 factors including her limited proficiency in the English language. Plaintiff also states that
10 Defendant “was hiding his salary, bills, and financial means from [Plaintiff] and [Plaintiff] was
11 limited to an allowance which effected the support and basic needs of the family.” *Id.* at 4–5.

12 Since the death of Plaintiff’s father on September 6, 2013, Plaintiff alleges that her family
13 members in France have conspired with Defendant to ensure that Plaintiff is not able to return to
14 France and claim her inheritance. *Id.* at 5.

15 Plaintiff alleges that her civil rights were denied as a result of inadequate accommodation
16 of her limited English skills during the state court proceedings, lies and inconsistencies in the
17 court-appointed evaluator’s report, and Defendant’s refusal to provide Plaintiff with S.C.P.’s
18 passport so that it could be renewed before it expired in February of 2013. *Id.* at 5–6.

19 Plaintiff feels that she is and her daughter are prisoners in the United States. *Id.* at 7. She
20 requests an award of \$350,000 from Defendant, plus \$50,000 per year that litigation continues
21 beyond 2014. *Id.* She also requests that she be permitted to return to France with S.C.P. *Id.*

22 The Complaint attaches the following exhibits: Defendant’s Form I-864 Affidavit of
23 Support, three letters in support of Plaintiff, and minutes of a state court hearing setting dates for a
24 bench trial “regarding custody and timeshare.” *Compl.* at ECF page nos. 10–21.

25 The Complaint invokes federal question jurisdiction based on “[e]nforcement of [the]

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1 Affidavit of Support (Form I-864).” Compl. at ECF page no. 2.⁴

2 **B. Defendant’s Motion to Dismiss**

3 Moving to dismiss, Defendant argues that this Court lacks jurisdiction because “plaintiff’s
4 sole purported federal claim is a plea for private enforcement of Department of Homeland Security
5 immigration regulations,” for which Defendant contends “there is no private right of action.” Mot.
6 at 2. He also argues that aside from the immigration-related claim, Plaintiff’s remaining claims
7 are duplicative of an “identical” lawsuit that Plaintiff filed in state court and seek to improperly
8 attack the results of proceedings in the state family court. *Id.* at 2–4. Accordingly, so Defendant
9 argues, the claims are barred by the *Younger* and *Rooker-Feldman* doctrines.

10 In her Opposition, Plaintiff argues that jurisdiction is proper because federal courts have
11 jurisdiction to enforce a sponsor’s obligations created by Form I-864, because “Form I-864 is a
12 legally enforceable contract between the sponsor and both the United States Government and the
13 sponsored immigrant.” Opp’n (dkt. 17) at 4 (quoting *Shumye v. Felleke*, 555 F. Supp. 2d 1020,
14 1023 (N.D. Cal. 2008)). She states that she is “not here arguing that her due process rights were
15 violated in the state court proceedings,” nor seeking to relitigate the custody determination, but
16 rather seeks “enforcement of her contractual rights under Form I-864.” *Id.* at 4–5.

17 **III. ANALYSIS**

18 **A. Legal Standard**

19 **1. Subject Matter Jurisdiction**

20 Defendant has moved to dismiss for lack of federal subject matter jurisdiction. Because
21 federal courts are courts of limited jurisdiction, Plaintiff’s Complaint must establish the existence
22 of subject matter jurisdiction in order to proceed in federal court. The Complaint asserts federal
23 question jurisdiction under 28 U.S.C. § 1331. *See* Compl. at ECF page no. 2.

24 Federal question jurisdiction under § 1331 encompasses civil actions that arise under the
25 Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 1331. “A case ‘arises under’
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27 ⁴ Much of the Complaint uses continuous page numbers, which this Order cites when available.
28 For the portions that do not—specifically, the first two pages and the documents attached—this
Order cites page numbers as applied by the Court’s Electronic Case Filing (“ECF”) system.

1 federal law either where federal law creates the cause of action or ‘where the vindication of a right
2 under state law necessarily turns on some construction of federal law.’” *Republican Party of*
3 *Guam v. Gutierrez*, 277 F.3d 1086, 1088 (9th Cir. 2002) (citations omitted). “The presence or
4 absence of federal-question jurisdiction is governed by the ‘well-pleaded complaint rule,’ which
5 provides that federal jurisdiction exists only when a federal question is presented on the face of the
6 plaintiff’s properly pleaded complaint.” *Wayne v. DHL Worldwide Express*, 294 F.3d 1179, 1183
7 (9th Cir. 2002) (quoting *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987)).

8 **2. Failure to State a Claim**

9 The Court found Plaintiff to be indigent and granted her application to proceed in forma
10 pauperis on May 28, 2014. *See* Dkt. 5. In cases where a plaintiff is permitted to proceed in forma
11 pauperis, a court has an ongoing obligation to “dismiss the case at any time if the court determines
12 that . . . the action . . . fails to state a claim on which relief may be granted.” 28 U.S.C.
13 § 1915(e)(2).

14 Rule 8(a)(2) of the Federal Rules of Civil Procedure provides that a pleading must contain
15 a “short and plain statement of the claim showing that the pleader is entitled to relief.” Pleadings
16 that lack such statement fail to state a claim. In determining whether a complaint meets this
17 standard, the court assumes that all factual allegations in the complaint are true. *Parks Sch. of*
18 *Bus. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). However, “the tenet that a court must
19 accept a complaint’s allegations as true is inapplicable to legal conclusions [and] mere conclusory
20 statements.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550
21 U.S. 544, 555 (2007)). The pertinent question is whether the factual allegations, assumed to be
22 true, “state a claim to relief that is plausible on its face.” *Id.* (citing *Twombly*, 550 U.S. at 570).
23 Thus, to meet this requirement, the complaint must be supported by factual allegations.

24 **3. Standard for a Pro Se Plaintiff**

25 Where the complaint has been filed by a pro se plaintiff, as is the case here, courts must
26 “construe the pleadings liberally . . . to afford the petitioner the benefit of any doubt.” *Hebbe v.*
27 *Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (citations omitted). “A district court should not dismiss a
28 pro se complaint without leave to amend unless ‘it is absolutely clear that the deficiencies of the

1 complaint could not be cured by amendment.” *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir.
2 2012) (quoting *Schucker v. Rockwood*, 846 F.2d 1202, 1203–04 (9th Cir. 1988) (per curiam)).
3 Further, when it dismisses the complaint of a pro se litigant with leave to amend, “the district court
4 must provide the litigant with notice of the deficiencies in his complaint in order to ensure that the
5 litigant uses the opportunity to amend effectively.” *Id.* (quoting *Ferdik v. Bonzelet*, 963 F.2d
6 1258, 1261 (9th Cir. 1992)). “Without the benefit of a statement of deficiencies, the pro se litigant
7 will likely repeat previous errors.” *Karim-Panahi v. L.A. Police Dep’t*, 839 F.2d 621, 624 (9th
8 Cir. 1988) (quoting *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987)).

9 **B. Claim Regarding Form I-864**

10 Plaintiff purports to bring this action to “[e]nforce[the] Affidavit of Support (Form
11 I-864).” Compl. at ECF page no. 2. Plaintiff’s Opposition confirms that the action is based
12 primarily on enforcement of Defendant’s support obligations under the Form I-864 affidavit. *See*
13 *generally Opp’n*.

14 A court of this district has summarized Form I-864 as follows:

15 Certain classes of immigrants may be deemed inadmissible
16 including but not limited to, those that may be likely to become a
17 public charge. *See* 8 U.S.C. § 1182(a)(4). Family-sponsored
18 immigrants seeking admission are admissible only if the person
19 petitioning for the immigrants’ admission signs an Affidavit of
20 Support Form I-864. A Form I-864 is a legally enforceable contract
21 between the sponsor and both the United States Government and the
22 sponsored immigrant. *See Schwartz v. Schwartz*, 2005 WL
1242171, at *1, 2005 U.S. Dist. LEXIS 43936 at *1-2 (W.D. Okla.
May 10, 2005). The signing sponsor submits himself to the personal
jurisdiction of any court of the United States or of any State,
territory, or possession of the United States if the court has subject
matter jurisdiction of a civil lawsuit to enforce the Form I-864. *See*
8 U.S.C. § [1182a(a)(1)(C)].

23 *Shumye v. Felleke*, 555 F. Supp. 2d 1020, 1023–24 (N.D. Cal. 2008). Defendant’s argument that
24 Plaintiff has no private cause of action is incorrect: the statute specifically authorizes a sponsored
25 immigrant to bring an “action to enforce an affidavit of support . . . against the sponsor.” 8 U.S.C.
26 § 1183a(e). This Court therefore has jurisdiction to hear such a claim because it arises under the
27 laws of the United States. *See* 28 U.S.C. § 1331.

28 The Complaint, however, does not include any allegation that that Defendant failed to

1 perform his obligations under Form I-864. In signing the Form, Defendant agreed to “provide
2 [Plaintiff] any support necessary to maintain . . . her at an income that is at least 125 percent of the
3 Federal Poverty Guidelines.” Compl. Ex. A; *see also* 8 U.S.C. § 1183a(a)(1)(A).⁵ It does not, as
4 Plaintiff suggests, make Defendant broadly “responsible for [Plaintiff] in the United States.” *See*
5 Compl. at 4. The Complaint alleges that Defendant failed to pay for Plaintiff’s representation
6 during the state court proceedings, *id.*, and that he “hid[] his salary, bills, and financial means from
7 [Plaintiff],” *id.* at 5, but neither of those allegations constitutes a breach of Defendant’s Form
8 I-864 obligations so long as he provided sufficient financial support to maintain her income at the
9 specified threshold.

10 The Complaint includes no allegation that he failed to do so. In fact, Plaintiff alleges she
11 “was limited to an allowance which effected the support and basic needs of the family,” which is
12 consistent with Defendant fulfilling his obligation. *Id.* at 5. Plaintiff’s Complaint therefore fails
13 to state a claim that Defendant breached his obligations under Form I-864.

14 It is not, however, “absolutely clear that the deficiencies of the complaint could not be
15 cured by amendment.” *See Akhtar*, 698 F.3d at 1212. Although a plaintiff may not save a
16 complaint by amending to contradict earlier allegations, *see United States v. Corinthian Colleges*,
17 655 F.3d 984, 995 (2011), the allegations of Plaintiff’s Complaint do not establish that Defendant
18 fulfilled his obligations and that amendment would be futile. Plaintiff has not alleged that the
19 “allowance” caused her income to meet or exceed 125 percent of the Federal Poverty Guidelines.
20 If Defendant has in fact failed to perform his obligations under Form I-864, Plaintiff may amend
21 her Complaint to allege specific facts demonstrating that Defendant has breached that agreement.

22 At the hearing held on November 14, 2014, Plaintiff conceded that Defendant has paid
23 monthly spousal support in the amount of \$2500 per month through 2012 and \$1900 per month
24 through the present year. Such payments likely satisfy Defendant’s present obligations under
25 Form I-864. The parties indicated that these payments have been made pursuant to a family court
26 stipulation, which provides that payments shall cease in January of 2015. Defendant conceded

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28 ⁵ Defendant also agreed to notify the United States Citizenship and Immigration Services of any
change of his address. Compl. Ex. A. Plaintiff has not alleged any violation of this clause.

1 that Plaintiff reserved her rights under Form I-864 in the family court stipulation. Because the
2 parties appear to disagree on the nature of Defendant’s obligations going forward, declaratory
3 judgment may be appropriate to determine the parties’ rights and obligations with respect to Form
4 I-864. Plaintiff’s present Complaint, however, includes no request for declaratory relief.

5 **C. Claim Regarding Civil Rights**

6 One section of Plaintiff’s Complaint is captioned “Civil Rights,” and appears to relate
7 primarily to the conduct of the Superior Court. *See* Compl. at 5–6. Plaintiff alleges that the
8 Superior Court did not sufficiently accommodate her limited English language proficiency and,
9 after Plaintiff filed a complaint regarding the evaluator, ordered an update by the same evaluator.
10 *Id.* at 6. The Superior Court is not a defendant in this action, and these allegations do not support
11 any claim against Defendant Pappalardo.

12 Although Plaintiff could perhaps amend her Complaint to name the Superior Court as a
13 defendant, claims against the state court would raise issues of state immunity under the Eleventh
14 Amendment to the United States Constitution, as well issues related to the *Rooker-Feldman*
15 doctrine, under which federal courts generally lack jurisdiction to review claims that explicitly or
16 implicitly challenge a state court decision. *See Muhammad v. Berreth*, No. C 12-02407 CRB,
17 2013 WL 684918, at *3–4 (N.D. Cal. Feb. 25, 2013) (dismissing claims against a California
18 Superior Court based on both of these doctrines). In particular, as Plaintiff appears to
19 acknowledge in her Opposition, this Court may not consider claims that the state court
20 proceedings violated Plaintiff’s due process rights. Any injury related to such violations would
21 necessarily “result[] from the state court judgment itself,” and “the *Rooker-Feldman* doctrine . . .
22 precludes review of all state court decisions in particular cases arising out of judicial proceedings
23 even if those challenges allege that the state court’s action was unconstitutional.” *Bianchi v.*
24 *Rylaarsdam*, 334 F.3d 895, 900–901 (9th Cir. 2003) (citations and internal quotation marks
25 omitted). If such violations occurred, Plaintiff’s sole remedy is through the state appellate
26 process. Plaintiff may not amend her Complaint in this Court to add claims barred by the
27 Eleventh Amendment or by the *Rooker-Feldman* doctrine.

28 The same section of Plaintiff’s Complaint alleges that Defendant refused to provide

1 S.C.P.’s French passport to Plaintiff so that it could be renewed before it expired in February of
2 2013. Compl. at 6. This allegation does not present a claim within this Court’s jurisdiction,
3 because Plaintiff does not allege facts or cite authority supporting a conclusion that Defendant had
4 any legal obligation, much less an obligation under federal law, to provide S.C.P.’s passport to
5 Plaintiff at that time.

6 **D. This Court Lacks Jurisdiction as to Plaintiff’s Remaining Claims**

7 **1. Federal Question Jurisdiction**

8 Two of the remaining claims in the Complaint explicitly rely on state law. The defamation
9 claim cites California Civil Code section 44. Compl. at 3. The discrimination claim cites
10 California Civil Code section 51, and California Family Code section 2030. *Id.* at 4. Because
11 these claims arise under state law, and Plaintiff has not alleged that they “necessarily turn[] on
12 some construction of federal law,” they do not raise a federal question. *See Republican Party of*
13 *Guam*, 277 F.3d at 1088.

14 The Complaint includes a claim for domestic violence, based on “financial and emotional
15 abusive behavior.” Compl. at 4–5. Federal law, as opposed to state law, does not generally
16 provide a civil remedy for domestic violence. In *United States v. Morrison*, the Supreme Court
17 held that Congress’s attempt to provide such a remedy through the Violence Against Women Act
18 exceeded the federal legislative authority, and that although “no civilized system of justice could
19 fail to provide [victims of domestic violence] a remedy . . . under our federal system that remedy
20 must be provided by the [individual states], and not by the United States.” 529 U.S. 598, 627
21 (2000). Plaintiff has not alleged any special circumstances or cited any authority that would bring
22 her alleged abuse within the realm of federal law. Thus, any claim that that Plaintiff may have
23 based on domestic violence would arise under state law, and does not raise a federal question.

24 The Complaint also includes a claim for “conspiracy.” Compl. at 5. As Judge Illston
25 explained in a 2013 decision, conspiracy is not an independent cause of action under either
26 California law or federal law:

27 Under state law, a conspiracy is not a separate cause of action and
28 instead is a way to hold additional persons liable for torts committed
by others. *See Wyatt v. Union Mortgage Co.*, 24 Cal. 3d 773, 784,

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157 Cal. Rptr. 392, 598 P.2d 45 (Cal. 1979). Similarly, a conspiracy is not itself a constitutional tort under 42 U.S.C. § 1983, but “may enlarge the pool of responsible defendants by demonstrating their causal connections to the violation.” *Lacey v. Maricopa County*, 693 F.3d 896, 935 (9th Cir. 2012) (en banc).

Pagtakhan v. Doe, No. C 08-2188 SI (pr), 2013 WL 3052856, at *4 (N.D. Cal. June 17, 2013).

Thus, given that Plaintiff has not stated any other claim arising from federal law, her allegations of conspiracy cannot create federal question jurisdiction.

2. Other Grounds for Jurisdiction

Other than federal question jurisdiction under 28 U.S.C. § 1331, two of the most common grounds for federal subject matter jurisdiction are diversity jurisdiction pursuant to 28 U.S.C. § 1332 and supplemental jurisdiction pursuant to 28 U.S.C. § 1367. Plaintiff has not invoked either basis for jurisdiction, and neither applies to this case.

28 U.S.C. § 1332(a) provides for jurisdiction encompassing “civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . . . citizens of different States [or between] citizens of a State and citizens or subjects of a foreign state.” When diversity jurisdiction arises from the involvement of foreign citizens, however, it does not extend to “an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State.” *Id.* § 1332(a)(2). Here, Plaintiff has not asserted diversity jurisdiction and there is insufficient evidence in the record to conclusively determine Plaintiff’s immigration status. It appears, however, that Plaintiff is admitted for permanent residence and domiciled in California, and that Defendant is a citizen of California. If that is so, diversity jurisdiction is not available. If not, it is conceivable that Plaintiff could amend her Complaint to assert diversity jurisdiction.

28 U.S.C. § 1367 provides that where a district court has subject matter jurisdiction over some claims in an action, the court also has jurisdiction over “all other claims that are so related . . . that they form part of the same case or controversy under Article III of the United States Constitution.” The test for whether claims form part of the same or controversy is whether they share a “common nucleus of operative facts.” *See Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1288 (9th Cir. 2013). Here, Plaintiff cannot assert jurisdiction under § 1367 because

1 her only putative federal claim relates to Defendant’s alleged failure to provide support pursuant to
2 Form I-864, and none of her other putative claims arise from the facts of Defendant’s payment or
3 failure to pay monetary support.⁶

4 The Court therefore finds no basis for subject matter jurisdiction over Plaintiff’s state law
5 claims. Without jurisdiction, the Court need not further address Defendant’s arguments regarding
6 *Younger* abstention and the *Rooker-Feldman* doctrine, or whether the Complaint adequately
7 pleads its state-law claims.

8 **E. Hague Convention**

9 The Court addresses one other potential claim that is not expressly raised in Plaintiff’s
10 Complaint. The Hague Convention on the Civil Aspects of International Child Abduction (the
11 “Convention”) is an international treaty that has been implemented in the United States through
12 the International Child Abduction Remedies Act (“ICARA”). *See Chafin v. Chafin*, 133 S. Ct.
13 1017, 1021 (2013) (citing 42 U.S.C. § 11601 *et seq.*, subsequently renumbered as 22 U.S.C.
14 §§ 9001–11). The Convention “seeks ‘to secure the prompt return of children wrongfully
15 removed to or retained in any Contracting State’ and ‘to ensure that rights of custody and of access
16 under the law of one Contracting State are effectively respected in the other Contracting States.’”
17 *Id.* (quoting Convention, art. 1). “Article 3 of the Convention provides that the ‘removal or the
18 retention of a child is to be considered wrongful’ when ‘it is in breach of rights of custody
19 attributed to a person . . . under the law of the State in which the child was habitually resident
20 immediately before the removal or retention’” *Id.* (quoting Convention, art. 3).

21 The Convention, as implemented by ICARA, is the only authority that the Court is aware
22 of that permits a district court to vacate a state court’s custody order in certain circumstances. *See*
23 *Holder v. Holder*, 305 F.3d 854, 866 (9th Cir. 2002) (stating that “federal courts . . . have the

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25 ⁶ Because the claims do not arise from the same common nucleus of facts, the Court need not
26 determine whether it would retain jurisdiction over state law claims after dismissing Plaintiff’s
27 federal cause of action, as discussed above, for failure to state a claim on which relief can be
28 granted. The Court notes, however, that “[t]he Supreme Court has stated, and [the Ninth Circuit]
has often repeated, that ‘in the usual case in which all federal-law claims are eliminated before
trial, the balance of factors . . . will point toward declining to exercise jurisdiction over the
remaining state-law claims.’” *Acri v. Varian Assocs., Inc.*, 114 F.3d 999, 1001 (9th Cir. 1997)
(quoting *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7 (1988)) (ellipsis in original).

1 power to vacate state custody determinations and other state court orders that contravene the
2 treaty” (citation omitted)). Even affording Plaintiff “the benefit of any doubt,” however, *see*
3 *Hebbe*, 627 F.3d at 342, the Court cannot construe Plaintiff’s present Complaint as stating a claim
4 under ICARA and the Convention. Plaintiff has not alleged facts supporting a plausible
5 conclusion that any “removal or retention” of S.C.P. breached any lawful custodial right.

6 **IV. CONCLUSION**

7 For the reasons stated above, Defendant’s Motion to Dismiss is GRANTED. Plaintiff’s
8 Complaint is DISMISSED WITH LEAVE TO AMEND.

9 If Plaintiff wishes to file an amended complaint, she may do so **no later than January 9,**
10 **2015.** The first amended complaint must include the caption and civil case number used in this
11 Order (14-cv-01594-JCS) and the words FIRST AMENDED COMPLAINT on the first page.
12 Because an amended complaint completely replaces the previous complaint, any amended
13 complaint must include all the claims Plaintiff wishes to present and all of the defendants she
14 wishes to sue. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). An amended
15 complaint may not incorporate material from the prior complaint by reference; it must stand on its
16 own. Any amended complaint in this case must address the deficiencies discussed above.

17 The Court recommends that the parties obtain representation if possible. If Plaintiff
18 chooses to amend her Complaint, she is encouraged to consult with the Federal Pro Bono Project’s
19 Legal Help Center in either of the Oakland or San Francisco federal courthouses for assistance if
20 she is unable to secure representation. The San Francisco Legal Help Center office is located in
21 Room 2796 on the 15th floor at 450 Golden Gate Avenue, San Francisco, CA 94102. The
22 Oakland office is located in Room 470-S on the 4th floor at 1301 Clay Street, Oakland, CA 94612.
23 Appointments can be made by calling (415) 782-8982 or signing up in the appointment book
24 located outside either office. Lawyers at the Legal Help Center can provide basic assistance to
25 parties representing themselves but cannot provide legal representation.

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The Court understands that Defendant has been advised that the Legal Help Center cannot assist him due to a conflict of interest. If Defendant is unable to obtain representation, he is encouraged to inquire with the San Francisco Bar Association or the Alameda County Bar Association regarding the possibility of obtaining assistance.

IT IS SO ORDERED.

Dated: November 14, 2014



JOSEPH C. SPERO
United States Magistrate Judge