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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
6

7 MICHAEL H FEDERIGHI,
8 Plaintiff,
9 v.
10 SUSAN FEDERIGHI,
11 Defendant.

Case No. [17-cv-03937-HSG](#)

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS**

Re: Dkt. No. 13

12
13 Pending before the Court is Defendant Susan Federighi's motion to dismiss Plaintiff
14 Michael H. Federighi's complaint under Federal Rule of Civil Procedure ("Rule") 12(b)(1) for
15 lack of subject matter jurisdiction. Dkt. No. 13 ("Mot."); see also Dkt. No. 1 ("Compl.").
16 Defendant filed the motion on September 1, 2017. On October 2, 2017, Plaintiff opposed the
17 motion. Dkt. No. 21 ("Opp."). Defendant replied on October 15, 2017. Dkt. No. 28 ("Reply").
18 On October 31, 2017, the Court took the matter under submission. See Civil L.R. 7-1(b). For the
19 reasons set forth below, the Court **GRANTS** Defendant's motion to dismiss.

20 **I. BACKGROUND**

21 Plaintiff is a resident of Florida and Defendant is a resident of California. Compl. ¶¶ 1-2.
22 The parties were married on August 7, 1986 and a judgment for dissolution of marriage issued on
23 December 28, 1990. Id. ¶¶ 6-7. On April 23, 1992, the parties entered into a written agreement
24 entitled "Marital Settlement Agreement," which governs issues incident to the parties' divorce
25 proceeding. Id. ¶ 8; see Dkt. No. 1-1 ("MSA" or "the Agreement"). The MSA states that the
26 parties' intent is to: (1) settle all property rights and interests, and all rights to maintenance and
27 support; and (2) adjust all claims of any kind between the parties. MSA ¶ 2. The Agreement sets
28 forth terms and obligations concerning spousal support, child custody, division of property

1 (including real property, personal property, and corporate property), debts and obligations, tax
2 liabilities, and fees and costs associated with the dissolution of the parties' marriage. *Id.* ¶¶ 3-10.

3 Plaintiff alleges that Defendant "failed and refused, and continues to fail and refuse to
4 perform" several obligations as stated in the MSA, including to pay or repay Plaintiff a share of
5 sales proceeds or monies owed for real estate and personal properties (for instance, a motor yacht
6 and air conditioner replacement unit), a share of real estate taxes, a share of insurance proceeds,
7 and her half of home repairs. *Compl.* ¶¶ 10-16. Plaintiff asserts the following six causes of
8 action, all of which arise from or pertain to the MSA: (1) breach of marital settlement agreement;
9 (2) breach of implied covenant of good faith and fair dealing under the marital settlement
10 agreement; (3) fraud and intentional misrepresentation; (4) negligent misrepresentation; (5)
11 accounting as per the marital settlement agreement; and (6) mandatory injunction.

12 **II. LEGAL STANDARD**

13 The party asserting jurisdiction bears the burden to show that jurisdiction in fact exists.
14 See *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994); *Stock West Inc. v.*
15 *Confederated Tribes*, 873 F.2d 1221, 1225 (9th Cir, 1989) ("A federal court is presumed to lack
16 jurisdiction in a particular case unless the contrary affirmatively appears."). A Rule 12(b)(1)
17 motion can present either a facial or factual attack on jurisdiction. *Wolfe v. Strankman*, 392 F.3d
18 358, 362 (9th Cir. 2004). In a facial attack, the defendant "asserts that the allegations contained in
19 a complaint are insufficient on their face to invoke federal jurisdiction." *Id.* (quoting *Safe Air for*
20 *Everyone v. Meyer*, 373 F.3d 1035 (9th Cir. 2004)). The Court accepts as true all of the
21 allegations in the complaint, and draws all reasonable inferences in the plaintiff's favor. *Id.* A
22 factual attack, on the other hand, "disputes the truth of the allegations that, by themselves, would
23 otherwise invoke federal jurisdiction." *Id.* In a factual attack, a party may introduce evidence
24 outside the pleadings, to which the party invoking federal jurisdiction must respond with
25 "competent proof" under the same evidentiary standard that applies on summary judgment. *Leite*
26 *v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014) (quoting *Hertz Corp. v. Friend*, 559 U.S. 77,
27 96-97 (2010)).
28

1 **III. DISCUSSION**

2 Defendant asserts a facial attack on jurisdiction. Defendant argues, in short, that the Court
3 is precluded from adjudicating this dispute under the domestic relations exception to federal
4 diversity jurisdiction. Mot. at 2-3. According to Defendant, all of Plaintiff’s claims arise from or
5 pertain to the MSA, and therefore necessarily concern issues relating to divorce, alimony, or child
6 custody. Id. at 3. There is no dispute that Plaintiff brings this action on the basis of federal
7 diversity jurisdiction under 28 U.S.C. §1332. See Compl. ¶ 4.

8 The Ninth Circuit has repeatedly recognized a “historic domestic relations exception to
9 diversity jurisdiction.” *Csibi v. Fustos*, 670 F.2d 134, 135 (9th Cir. 1982); see *Atwood v. Fort*
10 *Peck Tribal Court Assiniboine*, 513 F.3d 943, 946–47 (9th Cir. 2008) (“The Supreme Court has
11 long recognized that, when the relief sought relates primarily to domestic relations, a doctrine
12 referred to as the domestic relations exception divests federal courts of jurisdiction.”). Two kinds
13 of cases fall within this exception: those suits “most closely resembling historically ecclesiastical
14 actions,” and those “where domestic relations problems are involved tangentially to other issues
15 determinative of the case.” *Csibi*, 670 F.2d at 137. Cases in the former category are “considered
16 absolutely outside federal court jurisdiction.” Id. To discern whether a case falls into this first
17 category, courts ask whether the “primary issue concerns the status of parent and child or husband
18 and wife.” Id. (citing *Buechold v. Ortiz*, 401 F.2d 371 (9th Cir. 1968)). If the parties’ family or
19 marital relationship comprises the “primary issue,” then the Court lacks jurisdiction. See id. In
20 contrast, “federal courts may exercise their discretion to abstain from deciding” cases in the
21 second category. Id. The second category includes cases “award[ing] damages . . . in a suit
22 between two spouses for breach of contract. . . .” Id.

23 This case falls squarely within the first category of domestic relations actions. Plaintiff, by
24 his own admission, requests that the Court enforce the MSA and award damages pursuant to that
25 agreement. The MSA, in turn, contains obligations made part of an order of the California family
26 law court. Compl. at 11-12; Opp. at 2-3; see MSA at 22-23. The MSA arises directly from the
27 parties’ divorce proceeding, expressly refers to that proceeding, and sets forth the parties’
28 agreement on issues incident to that proceeding, including spousal support, division of property,

1 debts, and income taxes. MSA ¶¶ 2-10. Plaintiff represents that the California family law court
2 “approved the MSA,” which “settled” and “adjudicated the [parties’] dissolution proceedings.”
3 Dkt. No. 30 at 3-4. Plaintiff does not dispute, and the complaint on its face states, that every cause
4 of action arises from or relates to the MSA. See, e.g., Opp. at 4 (“Plaintiff alleges six causes of
5 action against Defendant stemming from Defendant’s breach of the written settlement agreement
6 and related tortious conduct.”). Accordingly, the primary issue in this case is the parties’
7 obligations under the MSA as former spouses, and the Court lacks jurisdiction. See *Ankenbrandt*
8 *v. Richards*, 504 U.S. 689, 703 (1992) (reaffirming the validity of the domestic relations exception
9 “as it pertains to divorce and alimony decrees and child custody orders”); *Csibi*, 670 F.2d 134
10 (finding that the court lacked jurisdiction because the case “turn[ed] on” a determination of the
11 parties’ marital status).

12 Even the authorities that Plaintiff cites find that jurisdiction is lacking in cases, such as this
13 one, where a court is required to interpret or enforce the parties’ divorce decree. See Opp. at 1.
14 For instance, in *Chevalier v. Estate of Barnhart*, the Sixth Circuit found that the plaintiff’s claims
15 were not subject to the domestic relations exception because they did not require the Court to
16 “dissolve the marriage, award alimony, monitor [the plaintiff’s] need for maintenance and support,
17 or enforce [the defendant’s] compliance with a related court order. . . .” 803 F.3d 789, 798 (6th
18 Cir. 2015) (emphasis added). Not so here: Plaintiff expressly requests that the Court enforce a
19 court-approved agreement that settles all claims arising from the parties’ dissolution of marriage.
20 Furthermore, the Sixth Circuit in *Chevalier* distinguished the court’s prior holding in *McLaughlin*
21 *v. Cotner* as “stand[ing] for the uncontroversial proposition that a plaintiff may not artfully cast a
22 suit seeking to modify or interpret the terms of a divorce, alimony, or child-custody decree as a
23 state-law contract or tort claim in order to access the federal courts.” *Id.* (citing 193 F.3d 410, 414
24 (6th Cir. 1999)). That finding contravenes Plaintiff’s suggestion that framing his suit as a contract
25 or tort action gives the Court jurisdiction. See Opp. at 1, 3. The Ninth Circuit in *Cisbi* similarly
26 rejected Plaintiff’s reasoning:

27 [I]f litigants were allowed to invoke diversity jurisdiction over
28 domestic relations cases by pleading an independent tort, the
longstanding domestic relations exception to federal subject-matter

1 jurisdiction would be completely swallowed up. For example, child
2 and spousal support matters could come into federal court if a clever
3 pleader alleged a claim for wrongful interference with economic
4 advantage. An area of law formerly the ‘virtually exclusive
5 province of the states’ would be federalized. In sum, tort allegations
6 shall not provide a means for circumventing this important
7 exception to federal court jurisdiction.

8 670 F.2d at 138 (citation removed).

9 But even if the Court is not required to abstain from exercising jurisdiction, the Court may
10 do so in its discretion. A court has discretionary authority to decline jurisdiction over the second
11 category of domestic relations cases, including those where “a plaintiff has commenced a federal
12 action to enforce a state court status decree.” *McIntyre v. McIntyre*, 771 F.2d 1316, 1318 (9th Cir.
13 1985) (citing *Bennett v. Bennett*, 682 F.2d 1039, 1042–44 (D.C. Cir. 1982)). As discussed,
14 Plaintiff’s complaint seeks enforcement of an agreement settling all claims as between ex-husband
15 and wife, pursuant to their divorce decree. Cf. *id.* (reversing the district court’s dismissal for lack
16 of jurisdiction because the plaintiff did not “seek to determine status or to enforce a domestic
17 relations decree in the guise of some other action”). That is sufficient to bring the case within this
18 second category.

19 In arguing that the Court must adjudicate this dispute, Plaintiff fails to cite cases
20 recognizing the Court’s discretionary authority to abstain from actions in this broader category.
21 See *Opp.* at 14 (citing *Peterson v. Babbitt*, 708 F.2d 465, 466 (9th Cir. 1983)); *Kinney v. City of*
22 *Simi Valley*, Case No. 89-56241, 1991 WL 92332 at *1 (9th Cir. 1991)¹ (“It is true that the
23 ‘domestic relations’ exception to federal jurisdiction is a narrow one. . . [t]here is, however, a
24 broader class of cases involving domestic relations where the federal court has jurisdiction but
25 may choose to abstain from exercising it.”). And though Plaintiff argues that the California family
26 law court’s jurisdiction is not exclusive or continuing, *Opp.* at 2, that would not divest the Court of
27 its discretionary authority to decline jurisdiction here.² Plaintiff fails to present a compelling

28 ¹ Though not binding on the Court, the Court considers *Kinney* for its persuasive value.

² The parties disagree on whether the California family law court has retained jurisdiction over this matter. The Court does not need to decide this dispute, as Plaintiff has failed to carry his burden to show jurisdiction. Thus, the Court **DENIES AS MOOT** Defendant and Plaintiff’s requests for judicial notice, Dkt. Nos. 29, 31, and Plaintiff’s administrative motion to strike Defendant’s reply or to file a sur-reply, which is predicated on the allegation that Defendant raises this argument for

1 reason why, “in the interests of justice,” this case should remain in federal court. See Kinney,
2 1991 WL 92332 at *1 (holding that the district court did not abuse its discretion in declining
3 jurisdiction over a dispute that was “at its core” a custody disagreement) (citing Colorado River
4 Water Conservation Dist. v. United States, 424 U.S. 800, 814 (1975)). Rather, the state court,
5 having previously adjudicated the parties’ divorce proceeding, is the appropriate forum to decide
6 whether Defendant in fact breached an agreement arising directly from that prior proceeding. See
7 id. (finding that there is a “strong state interest in domestic relation matters,” and that state courts
8 can have “superior competency. . . in settling family disputes because regulation and supervision
9 of domestic relations within their borders is entrusted to the states” (citing Coats v. Woods, 819
10 F.2d 236, 237 (9th Cir. 1987))).


11 In this regard, allowing Plaintiff to further amend his complaint would be futile: all of
12 Plaintiff’s allegations arise from the MSA and conduct alleged in relation to the MSA. See Zucco
13 Partners, LLC v. Digimarc Corp., 552 F.3d 981, 1007 (9th Cir. 2009) (holding that “the district
14 court did not err when it dismissed the [second amended complaint] with prejudice, since it was
15 clear that the plaintiffs had made their best case and had been found wanting.”). The Court
16 therefore **DISMISSES WITHOUT LEAVE TO AMEND** Plaintiff’s claims.

17 **IV. CONCLUSION**

18 For these reasons, the Court **GRANTS** Defendant’s motion to dismiss, and **DISMISSES**
19 **WITHOUT LEAVE TO AMEND** Plaintiff’s claims. The clerk is directed to enter judgment in
20 accordance with this order in favor of Defendant and to close the case.

21
22 **IT IS SO ORDERED.**

23 Dated: 5/15/2018

24 
25 HAYWOOD S. GILLIAM, JR.
26 United States District Judge
27

28 the first time in her reply, Dkt. No. 30.