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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

WILLIAM RUPERT,)	Case No.: 12-CV-05292-LHK
)	
Plaintiff,)	ORDER GRANTING MOTIONS TO
v.)	DISMISS
)	
SUSAN BOND, et al.,)	
)	
Defendants.)	
)	

Plaintiff William Rupert (“Plaintiff”) brings this racketeering action against his siblings, as well as several attorneys who allegedly represented and/or advised Plaintiff’s family members. Specifically, Plaintiff brings this action against: (1) his sister, Susan Bond (“Susan”); (2) his brother, James Rupert (“James”); (3) attorney Gile R. Downes (“Downes”); and (4) the law firm of Schulte, Anderson, Downes, Aronson & Bitner, P.C. (“Schulte”). In addition, Plaintiff brings this action against: (5) attorney Edward S. Zusman (“Zusman”); and (6) the law firm of Markun Zusman & Compton, LLP (“MZC”) (collectively the “MZC Defendants”). Further, Plaintiff brings this action against: (7) attorney Matthew Whitman (“Whitman”); (8) attorney Michelle Johansson (“Johansson”); and (9) the law firm of Cartwright Whitman Baer, PC (“Cartwright”) (collectively

1 the “Cartwright Defendants”). The Court refers to all Defendants collectively as “Defendants.”¹
2 Plaintiff alleges that Defendants conspired to deprive him of his inheritance.

3 Before the Court are three Motions to Dismiss for lack of personal jurisdiction. *See* ECF
4 No. 18 (filed by Defendants Downes and Schulte); ECF No. 33 (filed by siblings Susan and
5 James); ECF No. 36 (filed by the Cartwright Defendants). In addition, the MZC Defendants move
6 to dismiss for failure to state a claim upon which relief can be granted. *See* ECF No. 50.² Pursuant
7 to Civil Local Rule 7-1(b), the Court found this matter appropriate for resolution without oral
8 argument. Having considered the submissions of the parties and the relevant law, and for good
9 cause shown, the Court hereby GRANTS Defendants’ Motions to Dismiss without prejudice.

10 **I. BACKGROUND**

11 This case arises out of a dispute between two siblings, Plaintiff William Rupert and
12 Defendant Susan Bond, over the management of their parents’ trusts. Plaintiff essentially alleges
13 that, through a series of conspiracies involving his sister, Susan; his brother, James; and several
14 Oregon and California attorneys, he was deprived of several hundred thousand dollars which
15 rightfully belonged to him as part of his inheritance. According to Plaintiff, the facts of the alleged
16 conspiracy are as follows:

17 **A. Creation of the Samuel and Irene Rupert Trusts in Michigan**

18 Samuel Rupert (“Samuel”) and Irene Rupert (“Irene”) (both now deceased) lived their adult
19 lives in Ann Arbor, Michigan. First Amended Complaint (“FAC”) ¶ 23. On November 1, 1995,
20 they had estate plans prepared by Alan Price (“Price”), a Michigan attorney. FAC ¶ 24. As part of
21 these estate plans, their assets were placed into revocable trusts: the Samuel J. Rupert Trust
22 (“Samuel’s Trust”) and the Irene E. Rupert Trust (“Irene’s Trust”). FAC ¶ 24. Under the terms of
23 these trusts, Samuel and Irene were to serve as trustee of their own respective trusts, and as
24 successor trustees for each other’s trust. *Id.* The terms of Samuel’s trust included a provision that,
25

26 ¹ In Plaintiff’s Complaint, Plaintiff refers to his sister, Susan Bond, Oregon attorney Downes,
27 California attorney Zusman, Oregon attorney Whitman, and Oregon attorney Johansson as the
28 “RICO Defendants.” *See* FAC ¶¶ 5-10.

² Defendants Downes and Schulte have also moved for sanctions pursuant to Federal Rule of Civil
Procedure 11. *See* ECF No. 65. The Court will address the Motion for Sanctions separately.

1 if he died first, the assets of the trust would be transferred to a Family Trust for the benefit of Irene
2 and their three children (Susan, William, and James). FAC ¶ 25. On January 26, 2004, Samuel
3 and Irene had Price amend the estate plans to designate Plaintiff as the first nominated, sole
4 successor trustee of both of their trusts and as their sole personal representative. FAC ¶ 27.

5 **B. Susan’s Management of the Trusts in Oregon**

6 In 2006, Samuel and Irene relocated to Oregon. FAC ¶ 29. On October 12, 2008, Samuel
7 died as a result of a head injury he sustained from falling in the shower. FAC ¶¶ 30-31. Following
8 the death of Samuel, Susan and Plaintiff had a number of discussions concerning who was
9 designated by their parent’s estate plans to manage the estate. FAC ¶¶ 34-35, 40-46. During these
10 conversations, Susan allegedly misrepresented that she possessed updated documents naming her
11 as the sole trustee and permitting her to unilaterally amend the trust. FAC ¶¶ 40-41. In this
12 position, as sole trustee, Plaintiff claims that Susan directed funds from the Family Trust to Irene’s
13 Trust and sold certain assets, the proceeds of which she retained for herself. FAC ¶ 101.

14 Around April of 2009, Plaintiff became concerned about how his parents’ estate was being
15 managed. FAC ¶ 48. Over the next few months, he repeatedly asked Susan for an accounting of
16 the assets in the estate and began questioning the legitimacy of the documents placing her in charge
17 of the estate. FAC ¶¶ 48-49. Finally, in May of 2009, Plaintiff demanded that Susan relinquish
18 control of the estate and turn over all financial records and estate planning documents. FAC ¶ 50.

19 Susan retained the services of Defendant Downes of Schulte, Anderson, Downes, Aronson
20 & Bittner, PC (“Schulte”), an Oregon law firm also named as a defendant in this action, to respond
21 to Plaintiff’s numerous letters and requests. FAC ¶ 51-52. On June 10, 2009, Downes sent a letter
22 to Plaintiff informing him that his prospective inheritance rights had been reduced to pay for the
23 legal fees charged by Downes, and that if he continued to make requests of Susan, his inheritance
24 would be further reduced to account for future legal fees. FAC ¶¶ 59-60. Plaintiff was further
25 instructed that he was required to sign an enclosed modification of trust agreement by June 19,
26 2009, and that failure to sign this agreement could potentially result in his being disinherited by
27 Irene. FAC ¶ 60.

28 **C. Plaintiff’s First Lawsuit in the Northern District of California**

1 On June 20, 2009, Plaintiff filed a lawsuit in the Northern District of California against
2 Defendants Susan, Downes, and Schulte alleging interference with economic relations and
3 conspiracy to deprive him of his rights with respect to his parent’s estate. FAC ¶ 66. The action
4 was amended on June 23, 2009, to add Irene as a defendant. *Id.* Defendants Markun, Zusman, and
5 their law firm Markun Zusman & Compton, LLP (“MZC”), a California law firm also named as a
6 defendant in this action, represented Susan, Downes, and Schulte in this action. *See* FAC ¶ 75.
7 The case was dismissed by Judge Fogel on September 9, 2010, for lack of personal jurisdiction.
8 FAC ¶ 73. As the events alleged concerned the planning of an estate in Oregon, Judge Fogel ruled
9 that “none of the Defendants’ alleged conduct has any nexus with California other than the fact that
10 [Plaintiff] happens to reside in California.” *See Rupert v. Bond*, 2010 WL 3618662, at *4 (N.D.
11 Cal. Sept. 9, 2010) (“Rupert I”). Plaintiff alleges that the Defendants in *Rupert I*, through their
12 attorneys, the MZC defendants, falsely represented to Judge Fogel that none of the disputed assets
13 were located in California. FAC ¶¶ 73-74. In fact, Plaintiff contends, Susan transferred over
14 \$400,000 worth of assets to brokerage accounts held by Charles Schwab & Co., Inc. in their San
15 Francisco headquarters. *Id.* But for this misrepresentation, Plaintiff claims, Judge Fogel would not
16 have granted Defendants’ motion to dismiss for lack of personal jurisdiction. FAC ¶ 74.

17 **D. Susan and the Cartwright Defendants Commence Probate Proceedings**
18 **in Oregon**

19 On March 12, 2010, Irene died. FAC ¶ 76. On March 15, 2010, Susan—along with
20 defendants Whitman and Johansson of Cartwright, Whitman, Baer PC (“Cartwright”), an Oregon
21 law firm also named as a defendant in this action—commenced probate proceedings in Oregon (the
22 “Oregon Proceedings”) for declaratory judgment concerning management and disbursement of Samuel
23 and Irene’s Trusts. FAC ¶ 77. Plaintiff claims that, during these proceedings, Defendants made
24 fraudulent representations to the Oregon courts and that the court proceedings unfolded as a
25 “Bum’s Rush Ambush” in which he was provided only minimal notice of the relevant trial dates.
26 FAC ¶¶ 77-79.

27 As a result of these alleged activities, Defendants were successful in obtaining a general
28 judgment disinherit Plaintiff, as well as attorney’s fees and costs for the Oregon proceedings.

1 FAC ¶¶ 79-85. During the course of this litigation, numerous filings were mailed between
2 Defendants in Oregon and Plaintiff in California. FAC ¶ 82. Plaintiff timely appealed the
3 judgment, and the appeal is currently pending before the Oregon Court of Appeals. FAC ¶ 81.

4 Following this judgment, Plaintiff claims that the Cartwright Defendants improperly issued
5 writs of garnishment to JP Morgan Chase Bank attempting to collect on the judgment from the
6 Oregon Proceedings. FAC ¶¶ 86-87. As a result of these improperly issued writs, Plaintiff claims
7 \$7,000 was wrongfully removed from his California checking account, and \$6,000 was wrongfully
8 removed from his T.D. Ameritrade Brokerage account located in Nebraska. FAC ¶¶ 87-88.
9 Plaintiff also claims that Susan, possibly with the aid of the Cartwright Defendants, filed the
10 judgment from the Oregon Proceedings with the Santa Cruz Superior Court and that this resulted in
11 “wrongful collection activities.” FAC ¶¶ 87-89.

12 **E. The Instant Proceedings**

13 Plaintiff filed the instant lawsuit on October 12, 2012, *see* Compl., ECF No. 1, and filed
14 the operative FAC on October 26, 2012, *see* FAC, ECF No. 3. Plaintiff alleges that Defendants
15 Susan, Downes, Zusman, Whitman, and Johansson have violated the Racketeer Influenced and
16 Corrupt Organizations Act (“RICO”) through numerous acts of wire, bank, and mail fraud,
17 interstate transportation of stolen property, attempted extortion, and obstruction of justice. FAC
18 ¶ 95. Plaintiff also alleges that all Defendants, except James, have conspired to violate RICO.
19 FAC ¶¶ 112-13. In addition, Plaintiff alleges several state law claims against Defendants for
20 conversion of trust assets, intentional interference with expected inheritance (“IIEI”), violations of
21 the Oregon Racketeer Influenced and Corrupt Organizations Act (“ORICO”), and conspiracy.
22 FAC ¶¶ 114-133.

23 On November 21, 2012 Defendants Downes and Schulte filed a Motion to Dismiss for lack
24 of personal jurisdiction. *See* Mot. to Dismiss FAC as against Downes and Schulte (“Downes
25 Mot.”), ECF No. 18. On November 30, 2012 Defendants Susan and James filed a Motion to
26 Dismiss for lack of personal jurisdiction, *see* Motion to Dismiss FAC as against Susan and James
27 (“Susan Motion”), ECF No. 23, which they subsequently amended, *see* Amended Motion to
28 Dismiss FAC as against Susan and James (“Susan Amended Motion”), ECF No. 33. On December

1 17, 2012, the Cartwright Defendants filed a Motion to Dismiss for lack of personal jurisdiction.
2 *See* Mot. to Dismiss FAC as against Cartwright Defendants (“Cartwright Mot.”), ECF No. 36. On
3 January 7, 2013, the MZC Defendants filed a Motion to Dismiss for failure to state a claim upon
4 which relief can be granted. *See* Mot. to Dismiss as against MZC Defendants (“MZC Mot.”), ECF
5 No. 50.

6 Plaintiff filed an opposition to each of these respective motions. *See* Opp’n to Downes
7 Mot. (“Opp’n to Downes Mot.”), ECF No. 29; Opp’n to Susan Am. Mot. (“Opp’n to Susan Am.
8 Mot.”), ECF No. 42; Opp’n to Cartwright Mot. (“Opp’n to Cartwright Mot.”), ECF No. 46; Opp’n
9 to MZC Mot. (“Opp’n to MZC Mot.”), ECF No. 56.

10 Defendants filed replies in regard to each of their respective motions. *See* Reply Supp.
11 Downes Mot. (“Downes Reply”), ECF No. 39; Reply Supp. Susan Am. Mot. (“Susan Reply”),
12 ECF No. 41; Reply Supp. Cartwright Mot. (“Cartwright Reply”), ECF No. 55; Reply Supp. MZC
13 Mot. (“MZC Reply”), ECF No. 61.

14 In addition, on February 2, 2013, Defendants Downes and Schulte moved for sanctions
15 pursuant to Federal Rule of Civil Procedure 11. *See* Mot. for Sanctions (“Mot. for Sanctions”),
16 ECF No. 65. Plaintiff also filed a Motion for Leave to File a Second Amended & Supplemental
17 Complaint on June 11, 2013. *See* Mot. for Leave to File SA&SC (“Mot. to Amend”), ECF No. 78.

18 **II. LEGAL STANDARDS**

19 **A. Motion to Dismiss Under Rule 12(b)(6)**

20 Pursuant to Federal Rule of Civil Procedure 12(b)(6), a defendant may move to dismiss an
21 action for failure to allege “enough facts to state a claim to relief that is plausible on its face.” *Bell*
22 *Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the
23 plaintiff pleads factual content that allows the court to draw the reasonable inference that the
24 defendant is liable for the misconduct alleged. The plausibility standard is not akin to a
25 ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted
26 unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1949 (2009) (internal citations
27 omitted). For purposes of ruling on a Rule 12(b)(6) motion, the Court “accept[s] factual
28 allegations in the complaint as true and construe[s] the pleadings in the light most favorable to the

1 non-moving party.” *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir.
2 2008). Moreover, pro se pleadings are to be construed liberally. *Haines v. Kerner*, 404 U.S. 519,
3 520 (1972) (per curiam); *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000).

4 Nonetheless, the Court need not accept as true allegations contradicted by judicially
5 noticeable facts, and the “[C]ourt may look beyond the plaintiff’s complaint to matters of public
6 record” without converting the Rule 12(b)(6) motion into one for summary judgment. *Shaw v.*
7 *Hahn*, 56 F.3d 1128, 1129 n.1 (9th Cir.), *cert. denied*, 516 U.S. 964 (1995); *see Van Buskirk v.*
8 *Cable News Network, Inc.*, 284 F.3d 977, 980 (9th Cir. 2002); *Schwarz v. United States*, 234 F.3d
9 428, 435 (9th Cir. 2000). Nor is the Court required to “assume the truth of legal conclusions
10 merely because they are cast in the form of factual allegations.” *Fayer v. Vaughn*, 649 F.3d 1061,
11 1064 (9th Cir. 2011) (quoting *W. Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981)).
12 Mere “conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion
13 to dismiss.” *Adams v. Johnson*, 355 F.3d 1179, 1183 (9th Cir. 2004) (internal quotation marks and
14 citations omitted); *accord Iqbal*, 129 S. Ct. at 1950.

15 **B. Rule 12(b)(2) Motion to Dismiss for Lack of Personal Jurisdiction**

16 In a motion challenging personal jurisdiction pursuant to Rule 12(b)(2) of the Federal Rules
17 of Civil Procedure, the plaintiff, as the party seeking to invoke the jurisdiction of the federal court,
18 has the burden of establishing that jurisdiction exists. *See Schwarzenegger v. Fred Martin Motor*
19 *Co.*, 374 F.3d 797, 800 (9th Cir. 2004). When the motion to dismiss constitutes a defendant’s
20 initial response to the complaint, the plaintiff need only make a prima facie showing that personal
21 jurisdiction exists. *See Data Disc, Inc. v. Systems Tech Assocs., Inc.*, 557 F.2d 1280, 1285 (9th Cir.
22 1977). While a plaintiff cannot “simply rest on the bare allegations of its complaint,’
23 uncontroverted allegations in the complaint must be taken as true [and] [c]onflicts between parties
24 over statements contained in affidavits must be resolved in the plaintiff’s favor.” *Schwarzenegger*,
25 374 F.3d at 800 (quoting *Amba Marketing Systems, Inc. v. Jobar International, Inc.*, 551 F.2d 784,
26 787 (9th Cir. 1977), and citing *AT & T v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir.
27 1996)).

28 **C. Leave to Amend**

1 If the Court determines that the complaint should be dismissed, it must then decide whether
2 to grant leave to amend. Under Rule 15(a) of the Federal Rules of Civil Procedure, leave to amend
3 “shall be freely given when justice so requires,” bearing in mind “the underlying purpose of Rule
4 15 to facilitate decisions on the merits, rather than on the pleadings or technicalities.” *Lopez v.*
5 *Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (internal quotation marks and alterations
6 omitted). When dismissing a complaint for failure to state a claim, “a district court should grant
7 leave to amend even if no request to amend the pleading was made, unless it determines that the
8 pleading could not possibly be cured by the allegation of other facts.” *Id.* at 1130 (quoting *Doe v.*
9 *United States*, 58 F.3d 494, 497 (9th Cir. 1995) (internal quotation marks omitted)). Furthermore,
10 the Court “has a duty to ensure that pro se litigants do not lose their right to a hearing on the merits
11 of their claim due to ignorance of technical procedural requirements.” *Balistreri v. Pacifica Police*
12 *Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). Accordingly, leave to amend generally shall be denied
13 only if allowing amendment would unduly prejudice the opposing party, cause undue delay, or be
14 futile, or if the moving party has acted in bad faith. *Leadsinger, Inc. v. BMG Music Publ’g*, 512
15 F.3d 522, 532 (9th Cir. 2008).

16 **III. DISCUSSION**

17 Before the Court is a Motion to Dismiss for failure to state a claim upon which relief can be
18 granted, filed by the MZC Defendants, and three Motions to Dismiss for lack of personal
19 jurisdiction, filed by the remaining Defendants. The Court will first address the MZC Defendants’
20 Motion to Dismiss for failure to state a claim upon which relief can be granted, and then will
21 discuss all of the Motions to Dismiss for lack of personal jurisdiction collectively.³

22
23 ³ In his Opposition to Susan’s Amended Motion, which Defendants bring pursuant to Federal Rule
24 of Civil Procedure 12(b)(2), Plaintiff states that “the dishonest *res judicata* contentions (by
25 defendants Susan, James, Downes and Schulte), arise under FRCP 12(b)(6), and are based upon
26 matters beyond the FAC, so they should be treated as a FRCP 56 motion, and denied. (See FRCP
27 12(d)).” Opp’n to Susan Am. Mot. at 9 (emphasis in original). In addition, Plaintiff states that
28 “[t]he defendants’ stealth summary judgment motion, based upon *res judicata* principles and
supported by voluminous documentary evidence, should be viewed as a voluntary submission to
the Court’s jurisdiction, because such relief cannot properly be granted by a Court unless it has
fundamental jurisdiction, both subject matter and personal jurisdiction.” Opp’n to Susan Am. Mot.
at 9 n.8. From these statements the Court gathers that Plaintiff is contending that the Motions to
Dismiss have been effectively converted into a motion for summary judgment and should be
treated by the Court as such. Plaintiff appears to present two bases in support of this argument.
First, Plaintiff contends that Defendants James, Susan, Downes, and Schulte, by raising principles

1 **A. Requests for Judicial Notice**

2 In connection with their Motion to Dismiss, Defendants Downes and Schulte have attached
3 the following exhibits of which they assert the Court may properly take judicial notice: (1)
4 Plaintiff's First Amended Complaint, filed in *Rupert I* (Downes Mot., Ex. 1); (2) Judge Fogel's
5 Order Granting Motion to Dismiss for Lack of Personal Jurisdiction in *Rupert I* (Downes Mot., Ex.
6 2); (3) Response to Susan Bond's Petition for Instructions and to Compel Distribution, filed by
7 William Rupert in the Circuit Court for the State of Oregon, County of Clackamas, Probate Dept.,
8 Case No. CV10030498 (Downes Mot., Ex. 3); (4) Declaration of Giles R. Downes in Support of
9 Defendants' Motion to Dismiss, filed in *Rupert I* (Downes Mot., Ex. 4).

10 In connection with the MZC Defendants' Motion to Dismiss, the MZC Defendants have
11 also filed a request for judicial notice for the same documents identified by Defendants Downes
12 and Schulte as Exhibits 1 and 2. *See* MZC Defendants' Request for Judicial Notice, ECF No. 51.

13 Furthermore, in connection with the Cartwright Defendants' Motion to Dismiss, the
14 Cartwright Defendants have requested that the Court take judicial notice of the following exhibit:
15 Plaintiff's First Amended Complaint filed in the Instant Proceeding. Cartwright Defendants' RJN
16 Exh. A, ECF No. 37-1, 37-2.

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18
19 of res judicata in support of their Motions to Dismiss, have raised matters outside the pleadings and
20 thus Federal Rule of Civil Procedure 12(d) mandates that the motions now be treated as motions
21 for summary judgment pursuant to Federal Rule of Civil Procedure 56. *See* Fed. R. Civ. P. 12(d)
22 ("If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and
23 not excluded by the court, the motion must be treated as one for summary judgment under Rule
24 56."). Second, Plaintiff argues that so much evidence has been submitted into the record that these
25 motions have in effect become motions for summary judgment. The Court is not persuaded by any
26 of these arguments. First, the motions brought by Defendants James, Susan, Downes, and Schulte
27 are brought pursuant to Rule 12(b)(2), not Rule 12(b)(6). In the context of a motion to dismiss for
28 lack of jurisdiction, a trial court may rule on the issue of personal jurisdiction by "relying on
affidavits and discovery materials without holding an evidentiary hearing," though "dismissal is
appropriate only if the plaintiff has not made a prima facie showing of personal jurisdiction."
Fields v. Sedgwick Assoc. Risks, Ltd., 796 F.2d 299, 301 (9th Cir. 1986). Therefore, the fact that
Defendants have sought to attach exhibits to their motions to dismiss for lack of jurisdiction does
not, in and of itself, necessarily convert their motions into ones for summary judgment. Second,
for purposes of these motions, the Court only takes judicial notice of exhibits that are referenced in
the complaint or matters in the public record, and thus, does not convert the motions into summary
judgment motions. *See Shaw v. Hahn*, 56 F.3d 1128, 1129 n.1 (9th Cir. 1995). Therefore, the
Court rejects Plaintiff's contention that these Motions to Dismiss must be treated as motions for
summary judgment.

1 Although a district court generally may not consider any material beyond the pleadings in
2 ruling on a Rule 12(b)(6) motion, a court may take judicial notice of documents referenced in the
3 complaint, as well as matters in the public record, without converting a motion to dismiss into one
4 for summary judgment. *See Lee v. City of L.A.*, 250 F.3d 668, 688-89 (9th Cir. 2001). A matter
5 may be judicially noticed if it is either “generally known within the territorial jurisdiction of the
6 trial court” or “capable of accurate and ready determination by resort to sources whose accuracy
7 cannot reasonably be questioned.” FED. R. EVID. 201(b).

8 Plaintiff objects to the Court taking judicial notice of these exhibits. However, Exhibits 1,
9 2, and 4 are all documents filed in *Rupert I*. As such they are documents in the public record, and
10 the Court may properly take judicial notice of them to determine the validity of Defendants’
11 arguments. *Del Puerto Water Dist. v. United States Bureau of Reclamation*, 271 F. Supp. 2d 1224,
12 1233 (E.D. Cal May 13, 2003) (“Judicially noticed facts often consist of matters of public record,
13 such as prior court proceedings”); *Chrisanthis v. United States*, 2008 WL 4848764, at *1 (N.D. Cal
14 Nov. 7, 2008) (“[D]ocuments publicly filed in [a] prior suit are proper subjects of judicial notice”).
15 However, the Court does not take judicial notice of disputed facts contained within the First
16 Amended Complaint filed in *Rupert I*. *Lee*, 250 F.3d at 689-90.

17 Plaintiff has stated that Exhibit 3, which is presented by Downes and Schulte as Plaintiff’s
18 responsive pleading in the Oregon Proceedings, *see* Downes Mot. at 5n.3, was ultimately rejected
19 by the Oregon Courts “for perceived defects of form, substance, and insufficient filing fees,” *see*
20 Opp’n to Downes Mot. at 22. Plaintiff has presented the Court with a letter from the Oregon courts
21 explaining that his responsive pleading in the Oregon Proceeding was deficient because Plaintiff
22 failed to pay sufficient filing fees and because Plaintiff incorrectly denoted several “third-party
23 complaints” as “counterclaims.” *See* Decl. in Support of Opp’n to Downes Mot., Ex. 12, ECF No.
24 30. Based on these conflicting exhibits, the Court finds that it is unclear whether or not this
25 document was actually entered into the public record in connection with the Oregon Proceedings.
26 Accordingly, the Court DENIES Defendants Downes and Schulte’s Request for Judicial Notice of
27 Exhibit 3.
28

1 In addition, Plaintiff has objected to the Court taking judicial notice of the Cartwright
2 Defendants' RJN Exhibit A. *See* Opp'n to Cartwright Mot. at 7. However, this exhibit is a copy of
3 the FAC in this case. *See* Cartwright Defendants' RJN Exh. A, ECF No. 37-1, 37-2. As such, it is
4 already part of the record in this case. In fact it is the operative complaint which is the source of
5 these Motions to Dismiss. Accordingly, the Courts GRANTS the Cartwright Defendants' request
6 for judicial notice but does not take judicial notice of any disputed facts contained within the
7 exhibit. *Lee*, 250 F.3d at 689-90.⁴

8 **B. MZC Defendants' Motion to Dismiss Pursuant to Rule 12(b)(6)**

9 First, the MZC Defendants move to dismiss Plaintiff's FAC pursuant to Federal Rule of
10 Civil Procedure 12(b)(6). Plaintiff claims that the MZC Defendants either violated, or conspired to
11 violate, RICO. FAC ¶¶ 92-113. The MZC Defendants contend that the only acts of misconduct
12 Plaintiff has alleged with any specificity concern their role representing Susan and Irene in *Rupert*
13 *I*. *See* MZC Mot. at 1. As such, the MZC Defendants argue that this conduct is privileged
14 petitioning activity and cannot form the basis of a viable claim for relief. *See* MZC Mot. at 2. The
15 MZC Defendants further argue that all additional acts of misconduct Plaintiff has alleged have not
16 been pled with sufficient particularity to satisfy the heightened pleading standards required by
17 Federal Rule of Civil Procedure 9(b) in cases brought under RICO. *See* MZC Reply at 3.⁵

18 For the following reasons, the Court agrees with the MZC Defendants and hereby grants
19 their Motion to Dismiss for failure to state a claim upon which relief can be granted.

20 **1. RICO Claims**

21 **a. Plaintiff's Claims Arising from *Rupert I* are barred by the *Noerr-***
22 ***Pennington* Doctrine**

23 Plaintiff alleges that the MZC Defendants violated, or conspired to violate, RICO when
24 they made false representations to Judge Fogel in *Rupert I*. According to Plaintiff, the MZC

25 _____
26 ⁴ In addition to the exhibits for which the Court denied judicial notice, the Court does not rely on
the exhibits that are the subject of all other pending requests for judicial notice, *see* ECF No. 59 &
63, and thus the Court denies these judicial notice requests as moot.

27 ⁵ MZC Defendants also assert that Plaintiff's state law causes of action should be dismissed. *See*
28 MZC Mot. at 12. In light of the Court's finding the Plaintiff's claims arising from *Rupert I* are
barred by the *Noerr-Pennington* Doctrine, the Court does not need to address these additional
arguments.

1 Defendants represented to the court, in both declarations and oral arguments, that there were no
2 disputed or relevant assets in California when in fact they were aware of more than \$400,000 worth
3 of assets located in brokerage accounts in San Francisco. FAC ¶ 75; Opp'n to MZC Mot. at 21.
4 However, Plaintiff's allegations relate solely to the MZC Defendants' involvement as
5 representatives for Susan and Irene in *Rupert I*. As such, the MZC Defendants argue that such
6 representation constitutes protected petitioning activities under the *Noerr-Pennington* Doctrine.

7 "Under the *Noerr-Pennington* doctrine, those who petition any department of the
8 government for redress are generally immune from statutory liability for their petitioning conduct."
9 *Sosa v. DIRECTV, Inc.*, 437 F.3d 923, 929 (9th Cir. 2006).⁶ This doctrine derives from the First
10 Amendment's guarantee of "the right of the people . . . to petition the Government for a redress of
11 grievances." U.S. CONST. AMEND. I. Protected petitioning activities include representing another
12 in court proceedings and filing papers with the court. *See, e.g. Winters v. Jordan*, No. 09-00522,
13 2010 WL 2838634, *8 (E.D. Cal., July 20, 2010) (holding that plaintiffs' claims were barred under
14 the *Noerr-Pennington* doctrine when they arose out of "[defendant's] representation of [his client],
15 which include[d] acts of representing [client] in court proceedings, filing papers with the court on
16 [client's] behalf, and communications with the Nevada County district attorney's office.").
17 Moreover, while the *Noerr-Pennington* doctrine arose in the antitrust context, the Ninth Circuit has
18 expressly stated that it is no longer limited to antitrust actions. *See Sosa*, 437 F.3d at 931 ("we
19 conclude that the *Noerr-Pennington* doctrine stands for a generic rule of statutory construction,
20 applicable to any statutory interpretation that could implicate the rights protected by the Petition
21 Clause."). Specifically, the Ninth Circuit has applied the *Noerr-Pennington* doctrine to claims
22 brought under RICO. *See, e.g. Kearney v. Foley & Lardner, LLP*, 590 F.3d 638, 643-48 (9th Cir.
23 2009); *Sosa*, 437 F.3d at 929-32.

24 Here, Plaintiff is seeking to hold the MZC Defendants liable, under RICO, for their conduct
25 representing parties in a court proceeding and for filing papers with the court. FAC ¶ 102. As the
26

27 _____
28 ⁶ The *Noerr-Pennington* doctrine emerged in the context of two antitrust cases: *Eastern Railroad
Presidents' Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961), and *United Mine
Workers of America v. Pennington*, 381 U.S. 657 (1965).

1 MZC Defendants’ alleged involvement in the RICO conspiracy is based on protected petitioning
2 activity, Plaintiff has not stated a viable claim against them.

3 **b. The “Sham” Litigation Exception to the *Noerr-Pennington***
4 **Doctrine Does Not Apply**

5 Plaintiff disputes that the *Noerr-Pennington* doctrine bars his claim because he alleges the
6 MZC Defendants’ petitioning activities were part of a “sham” litigation, and therefore are not
7 protected by *Noerr-Pennington* immunity. *See* Opp’n to MZC Mot. at 22-23. As the Ninth Circuit
8 stated in *Freeman v. Lasky, Haas & Cohler*, 410 F.3d 1180 (9th Cir. 2005), “[w]hile *Noerr-*
9 *Pennington* immunity is broad, it is not so broad as to cover all litigation: ‘Sham’ petitions don’t
10 fall within the protection of the doctrine.” *Id.* at 1183-84. There are three formulations of the
11 sham exception:

12 First, if the alleged anticompetitive behavior consists of bringing a single sham
13 lawsuit (or a small number of such suits), the antitrust plaintiff must demonstrate
14 that the lawsuit was (1) objectively baseless, and (2) a concealed attempt to interfere
with the plaintiff’s business relationships.

15 Second, if the alleged anticompetitive behavior is the filing of a series of lawsuits,
16 “the question is not whether any one of them has merit-some may turn out to, just as
17 a matter of chance-but whether they are brought pursuant to a policy of starting
legal proceedings without regard to the merits and for the purpose of injuring a
market rival.”

18 Finally, in the context of a judicial proceeding, if the alleged anticompetitive
19 behavior consists of making intentional misrepresentations to the court, litigation
20 can be deemed a sham if “a party’s knowing fraud upon, or its intentional
misrepresentations to, the court deprive the litigation of its legitimacy.”

21 *Kottle v. Northwest Kidney Ctrs.*, 146 F.3d 1056, 1060 (9th Cir.1998) (citations omitted). Plaintiff
22 concedes that the second exception does not apply to this case. *See* MZC Opp’n at 23.

23 The Court does not find that the first formulation of the “sham exception” applies to
24 Plaintiff’s case. Importantly, Plaintiff has made only bare assertions that the MZC Defendants’
25 actions in *Rupert I* were baseless and a concealed attempt to interfere with his business
26 relationships. *See* MZC Opp’n at 23. Moreover, the MZC Defendants successfully obtained a
27 dismissal of Plaintiff’s case. *See Rupert I*. Therefore, there appears to have been sound basis for
28 asserting this defense, and Plaintiff cannot demonstrate that the MZC Defendants actions were

1 objectively baseless. *See Prof'l Real Estate Investors, Inc. v. Columbia Pictures Indus.*, 508 U.S.
2 49, 60n.5 (1993) (“A winning lawsuit is by definition a reasonable effort at petitioning for redress
3 and therefore not a sham”).

4 In addition, while Plaintiff claims that the MZC Defendants’ actions in *Rupert I* interfered
5 with his business relationships, the “sham” litigation exception generally centers on the use of
6 baseless litigation as an “anti-competitive weapon” or as a means of harming a market rival. *See,*
7 *e.g., Amarel v. Connell*, 102 F.3d 1494, 1518 (9th Cir. 1996) (stating that the “sham” exception
8 “requires the court to determine ‘whether the baseless lawsuit conceals ‘an attempt to interfere
9 directly with the business relationships of a competitor . . .’ through the ‘use [of] the governmental
10 process . . . as an anticompetitive weapon.’”) (citations omitted); *USS-POSCO Indus. v. Contra*
11 *Costa Cnty Bldg. & Const. Trades Council AFL-CIO*, 31 F.3d 800, 811 (9th Cir. 1994) (stating
12 that, in the context of the second formulation, courts look to whether lawsuits are brought “for the
13 purpose of injuring a market rival”). Plaintiff’s interest in his inheritance, however, has no
14 relationship to market competition or business. Rather, it is a personal financial relationship.
15 Accordingly, the Court finds that this is not a business relationship for purposes of the *Noerr-*
16 *Pennington* doctrine.

17 The Court also does not find that the third formulation of the “sham exception” applies to
18 Plaintiff’s case. While Plaintiff has alleged that the MZC Defendants made fraudulent declarations
19 to Judge Fogel, “vague allegations of misrepresentation ‘are . . . insufficient to overcome *Noerr-*
20 *Pennington* protection.’” *Kottle*, 146 F.3d at 1064. Plaintiff argues that the brokerage accounts
21 were opened with a specialized department of Charles Schwab, called Charles Schwab
22 Institutional, which is headquartered in San Francisco. Opp’n to Susan Am. Mot. at 11-12. Based
23 on this evidence, Plaintiff claims that the accounts are located in San Francisco. *Id.* However, the
24 FAC alleges no facts suggesting that Susan or Irene were in California at the time the accounts
25 were allegedly opened. *See* MZC Mot. at 6. Furthermore, aside from his conclusory statement that
26 the accounts must be located in California, Plaintiff has provided no support for the proposition
27 that simply because a department is headquartered in California, all accounts with that department
28 are held there as well. Accordingly, Plaintiff has not provided sufficient evidence that the accounts

1 are located in California, or that the MZC Defendants knowingly made misrepresentations when
2 they submitted declarations stating that the assets were not located in California.

3 Moreover, even if the accounts were located in California, Plaintiff has not set forth how
4 hiding this information from Judge Fogel deprived the litigation in *Rupert I* of its legitimacy. In
5 Judge Fogel’s Order Granting the Motions to Dismiss in *Rupert I*, Judge Fogel did not rely on the
6 location of the assets. Rather, Judge Fogel remarked that the actions Plaintiff alleged in *Rupert I*
7 concerned Oregon residents, their Oregon attorneys, and estate planning decisions made in Oregon.
8 *See Rupert I*, at *4. Thus, Judge Fogel’s decision relied on the Oregon-based activities of the
9 *Rupert I* defendants. *See id.* The Court is, therefore, not convinced that Judge Fogel’s decision
10 would have changed even if the assets were in fact located in California. As such, given that there
11 is no proof that a misrepresentation was made, or that this alleged misrepresentation would have
12 undermined the legitimacy of the prior litigation, this exception does not apply.

13 Therefore, the “sham” litigation exception does not apply, and Plaintiff’s *Rupert I*-based
14 claims are barred by the *Noerr-Pennington* doctrine.

15 **2. Plaintiff’s Additional Claims for Violations of RICO or Conspiracy to**
16 **Violate RICO Have Not Been Stated with Sufficient Specificity**

17 In addition to his claims alleging violations of RICO which involve the MZC Defendants’
18 petitioning activities in *Rupert I*, Plaintiff also makes several statements throughout his FAC and in
19 his Opposition to the MZC Defendants’ Motion which allege that the MZC Defendants violated
20 RICO in other ways. First, in his Opposition to the MZC Defendants’ Motion to Dismiss, Plaintiff
21 raises a new allegation, not raised in his complaint, that the MZC Defendants “participate[d] in
22 defendant Susan Bond’s fraudulent trust asset misappropriation schemes.” *See Opp’n to MZC*
23 *Mot.* at 6. Second, in his FAC, Plaintiff states that the alleged RICO violations which occurred
24 during the Oregon Proceedings “also included defendant Zusman.” *See FAC* ¶ 103.

25 Federal Rule of Civil Procedure 9(b), which requires that a party “state with particularity
26 the circumstances constituting fraud,” FED. R. CIV. P. 9(b), governs claims brought under RICO.
27 *Moore v. Kayport Package Express, Inc.*, 885 F.2d 531, 541 (9th Cir. 1989) (“We have applied the
28 particularity requirements of Rule 9(b) to RICO claims”). As explained below, because these two

1 claims have not been pled with the sufficient specificity required by Rule 9(b), the Court dismisses
2 these additional claims against the MZC Defendants, for alleged violations of RICO, which are
3 separate from Plaintiff’s *Rupert I*-based RICO claims.

4 First, the Court addresses Plaintiff’s allegation that the MZC Defendants “participate[d] in
5 defendant Susan Bond’s fraudulent trust asset misappropriation schemes.” *See* Opp’n to MZC
6 Mot. at 6. Throughout his complaint, Plaintiff described the alleged misappropriation of trust
7 assets as involving Defendants Susan, James, Downes, Schulte, and the Cartwright Defendants.
8 *See* FAC. Plaintiff did not mention any involvement by the MZC Defendants in Bond’s trust asset
9 misappropriation schemes. *Id.* Now, in his Opposition to the MZC Defendants’ Motion to
10 Dismiss, Plaintiff makes broad statements that the MZC Defendants somehow aided their co-
11 Defendants in committing the allegedly illegitimate activities. *See* Opp’n to MZC Mot. at 6-7
12 (“The MZC Defendants are charged with *inter alia* participating in the RICO Phase Two-Cover Up
13 and Stonewall activities, that aided and abetted the breaches of trust by defendant Susan Bond,
14 through the assistance they gave in helping her evade and avoid her duty to account fully and
15 completely, for her administration of assets . . .”); 21-22 (“the MZC Defendants . . . aid[ed] and
16 abet[ted] Defendant Susan Bond’s cover-up and stonewall objectives”). Not only are these
17 statements merely conclusory, they are not supported by any evidence. As such, these allegations
18 are not stated with sufficient particularity as required by Federal Rule of Civil Procedure 9(b). *See*
19 *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir. 2007) (“where a complaint includes allegations
20 of fraud, Federal Rule of Civil Procedure 9(b) requires more specificity including an account of the
21 ‘time, place, and specific content of the false representations as well as the identities of the parties
22 to the misrepresentations.’”) (citations omitted). These statements ultimately do not suffice to
23 establish the MZC Defendants’ involvement in Bond’s alleged trust misappropriation schemes.

24 Second, the Court addresses Plaintiff’s broad assertion that the alleged RICO violations
25 which occurred during the Oregon Proceedings “also included defendant Zusman.” *See* FAC ¶
26 103. Although, throughout his complaint, Plaintiff described the Oregon Proceedings as involving
27 Defendants Susan, James, Downes, Schulte, and the Cartwright Defendants, *see* FAC, the only
28 reference to MZC’s involvement in the Oregon Proceedings is the one statement in the FAC that

1 the Oregon Proceedings “also included defendant Zusman,” who is a named partner of MZC. *See*
2 FAC ¶ 103. This lone statement does not satisfy the particularity required by Federal Rule of Civil
3 Procedure 9(b). Moreover, this allegation involves the right to petition the government, and thus is
4 subject to a heightened pleading standard under the *Noerr-Pennington* doctrine. *See Or. Natural*
5 *Res. Council v. Mohla*, 944 F.2d 531, 533 (9th Cir. 1991) (“Where a claim involves the right to
6 petition governmental bodies under *Noerr-Pennington*, however, we apply a heightened pleading
7 standard.”). Plaintiff’s scant allegation similarly does not satisfy the heightened pleading standard
8 under the *Noerr-Pennington* doctrine, as Plaintiff does not provide any underlying facts to support
9 this claim nor elaborates on it in any fashion.

10 Because the Plaintiff’s additional RICO claims separate from his *Rupert I*-based claims
11 against MZC Defendants have not been pled with sufficient specificity, the Court DISMISSES
12 them. However, as this is only Plaintiff’s First Amended Complaint and because the Court
13 dismisses Plaintiff’s claims, in part, for failure to meet the heightened pleading standard of Rule
14 9(b), the Court dismisses Plaintiff’s claims with leave to amend so that he may cure these defects.

15 3. Plaintiff’s Remaining State Law Claims Against MZC Defendants

16 Plaintiff has alleged only two federal claims: violation of RICO and conspiracy to violate
17 RICO. The FAC alleges that the Court has supplemental jurisdiction, pursuant to 28 U.S.C.
18 § 1367, over all of Plaintiff’s remaining claims, which arise under California and Oregon law. *See*
19 FAC ¶¶ 1, 114-133.

20 The federal supplemental jurisdiction statute provides: “[I]n any civil action of which the
21 district courts have original jurisdiction, the district courts shall have supplemental jurisdiction
22 over all other claims that are so related to claims in the action within such original jurisdiction that
23 they form part of the same case or controversy under Article III of the United States Constitution.”
24 28 U.S.C. § 1367(a). A district court may decline to exercise supplemental jurisdiction over a state
25 law claim if:

- 26 (1) the claim raises a novel or complex issue of State law,
- 27 (2) the claim substantially predominates over the claim or claims over which the
28 district court has original jurisdiction,

- 1 (3) the district court has dismissed all claims over which it has original
jurisdiction, or
- 2 (4) in exceptional circumstances, there are other compelling reasons for
declining jurisdiction.

3 28 U.S.C. § 1367(c). Because the Court dismisses the federal law claims against the MZC
4 Defendants, the Court declines to exercise supplemental jurisdiction over the state law claims
5 against the MZC Defendants pursuant to 28 U.S.C. § 167(c). *See Ove v. Gwinn*, 264 F.3d 817, 826
6 (9th Cir. 2001) (“A court may decline to exercise supplemental jurisdiction over state-law claims
7 once it has dismissed all claims over which it has original jurisdiction.”); *see also San Pedro Hotel*
8 *Co. v. City of L.A.*, 159 F.3d 470, 478 (9th Cir. 1998) (district court not required to provide
9 explanation when declining jurisdiction under 28 U.S.C. § 1367(c)(3)).

10 **4. Conclusion**

11 Because Plaintiff’s RICO claims against the MZC Defendants are either barred by the
12 *Noerr-Pennington* doctrine or have not been pled with sufficient specificity under Federal Rule of
13 Civil Procedure 9(b), the Court GRANTS WITHOUT PREJUDICE the MZC Defendant’s Motion
14 to Dismiss Plaintiff’s First Amended Complaint.

15 **C. Defendants’ Motions to Dismiss Pursuant to Rule 12(b)2**

16 Defendants Susan, James, Downes, Schulte, and the Cartwright Defendants also move to
17 dismiss Plaintiff’s FAC based on lack of personal jurisdiction. In his FAC and various
18 Oppositions, Plaintiff has described a series of acts of misconduct by Defendants through which
19 they violated or conspired to violate RICO. Plaintiff contends that these acts were directed at
20 causing him harm in California, and that accordingly personal jurisdiction is proper in California.
21 Defendants contest this argument. Each Defendant contends that they are residents of either
22 Oregon or Michigan, and thus do not have substantial contacts with California to give rise to
23 general jurisdiction. Further, Defendants argue that the various acts Plaintiff has alleged were
24 directed at their home states of Oregon and Michigan, and were not directed at harming Plaintiff in
25 California.

26 Plaintiff’s theory for why personal jurisdiction is proper is based on different acts of
27 misconduct with regards to each Defendant. However, Plaintiff contends that each of these acts is
28

1 part of the same chain of events directed at causing him harm in California. Moreover, there is
2 considerable overlap between the various Defendants and nearly all of the alleged acts of
3 misconduct involve multiple Defendants. Accordingly, the Court deems it appropriate to address
4 all of these motions together.

5 To determine the propriety of asserting personal jurisdiction over a nonresident defendant,
6 the Court examines whether such jurisdiction is permitted by the applicable state’s long-arm statute
7 and comports with the demands of federal due process. *Bauman v. DaimlerChrysler Corp.*, 644
8 F.3d 909, 919 (9th Cir. 2011). Because California’s long-arm statute, California Civil Procedure
9 Code § 410.10, is coextensive with federal due process requirements, the jurisdictional analyses
10 under state law and federal due process are the same. *See* CAL. CIV. PROC. CODE § 410.10 (“[A]
11 court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of
12 this state or of the United States.”). As such, “[f]or a court to exercise personal jurisdiction over a
13 nonresident defendant, that defendant must have at least ‘minimum contacts’ with the relevant
14 forum such that the exercise of jurisdiction ‘does not offend traditional notions of fair play and
15 substantial justice.’” *Schwarzenegger*, 374 F.3d at 800 (quoting *International Shoe Co. v.*
16 *Washington*, 326 U.S. 310, 316 (1945)). In addition, “the defendant’s ‘conduct and connection
17 with the forum State’ must be such that the defendant ‘should reasonably anticipate being haled
18 into court there.’” *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990) (quoting *World-Wide*
19 *Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)).

20 A court may exercise either general or specific jurisdiction over a nonresident defendant.
21 *Ziegler v. Indian River Cnty.*, 64 F.3d 470, 473 (9th Cir. 1995). General jurisdiction exists where a
22 nonresident defendant’s activities in the state are “continuous and systematic” such that said
23 contacts approximate physical presence in the forum state. *See Schwarzenegger*, 374 F.3d at 801
24 (internal quotation marks and citation omitted). Where general jurisdiction is inappropriate, a court
25 may still exercise specific jurisdiction where the nonresident defendant’s “contacts with the forum
26 give rise to the cause of action before the court.” *Doe v. Unocal Corp.*, 248 F.3d 915, 923 (9th Cir.
27 2001).

28 **1. General Jurisdiction**

1 Here, Plaintiff has not addressed whether any of the Defendants bringing Motions to
2 Dismiss for lack of personal jurisdiction are subject to general jurisdiction in California. *See*
3 Downes Reply at 9; Cartwright Reply at 10. However, none of these Defendants are residents of
4 California and there is no evidence that any of them have substantial business connections with
5 California. *See* FAC ¶¶ 5-14. Only one of the attorney defendants, Johansson, has a license to
6 practice law in California. FAC ¶¶ 6-7, 9-10; *but see Crea v. Busby*, 48 Cal. App. 4th 509, 515
7 (1996) (maintenance of a California law license alone is insufficient to confer general jurisdiction
8 in California). The law firm defendants, Schulte and Cartwright, do not have offices or any
9 employees in California, and both they and their employees have either nonexistent or sporadic
10 contacts with California. FAC ¶¶ 12-14. Susan has only visited California on vacation, and James
11 has never visited California. Susan Am. Mot. at 8. Accordingly, none of the defendants, other
12 than the MZC Defendants, a California law firm, has the kind of “continuous and systematic”
13 contacts with California to give rise to general jurisdiction.

14 **2. Specific Jurisdiction**

15 **a. Plaintiff Has Not Pled Sufficient Facts to Demonstrate Personal**
16 **Jurisdiction Under 18 U.S.C. § 1965(b)**

17 Plaintiff has alleged that, as Defendants are participants in a RICO conspiracy, 18 U.S.C.
18 § 1965(b) permits this Court to exercise personal jurisdiction over them. *See, e.g.,* Opp’n to
19 Downes at 11-13. Under 18 U.S.C. § 1965(b), a court may exercise jurisdiction over non-resident
20 participants in a RICO conspiracy, even if those parties would not otherwise be subject to personal
21 jurisdiction in that court. *See* 18 U.S.C. § 1965(b). However, “the court must have personal
22 jurisdiction over at least one of the participants in the alleged multi-district conspiracy and the
23 plaintiff must show that there is no other district in which a court will have personal jurisdiction
24 over all of the alleged co-conspirators.” *See Butcher’s Union Local No. 498 v. SDC Investment,*
25 *Inc.*, 788 F.2d 535, 539 (9th Cir. 1986).

26 Plaintiff has identified Susan, Downes, Zusman, Whitman, and Johansson as the “RICO
27 Defendants” who allegedly violated RICO. *See* FAC ¶¶ 6-10. As such, the Court may exercise
28 jurisdiction over these Defendants only if Plaintiff can demonstrate that the Court has jurisdiction

1 over at least one of these Defendants and that no other district exists where a court will have
2 jurisdiction over all of the RICO Defendants.

3 Here, the Court has jurisdiction over Zusman as he is a California resident. FAC ¶ 8. The
4 remaining RICO Defendants, however, are all Oregon residents. FAC ¶¶ 6-7, 9-10. While
5 Plaintiff has alleged that no other district will have jurisdiction over Zusman, *see* Opp'n to Downes
6 at 13, a plaintiff must do more than merely assert that there is no other district in which a court will
7 have jurisdiction over all of the alleged co-conspirators. *See Huntair, Inc. v. Gladstone*, 774 F.
8 Supp. 2d 1035, 1039-40 (N.D. Cal. 2011) (holding that plaintiffs' statement that they "were not
9 aware of any other district in which a court would have personal jurisdiction over all of the
10 defendants" was "conclusory" and "insufficient to meet Plaintiffs' burden to demonstrate that
11 jurisdiction under § 1965(b) would be appropriate.").

12 Despite Plaintiff's claims that no other district will have jurisdiction over Zusman, the FAC
13 states that he was a member of a conspiracy with six Oregon defendants, *see* FAC ¶ 8, and that his
14 involvement in the conspiracy was his representation of two Oregon residents in connection with
15 an estate established under Oregon law, *id.* Moreover, Zusman's law firm has an office in Oregon.
16 *See* Downes Reply at 4. Accordingly, the Court finds that an Oregon court may have jurisdiction
17 over all of the RICO defendants. As such, jurisdiction under 18 U.S.C. § 1965(b) is inappropriate,
18 and these motions must turn on traditional personal jurisdiction analysis.

19 **b. Plaintiff Has Not Pled Sufficient Minimum Contacts With**
20 **California to Demonstrate Specific Jurisdiction**

21 Plaintiff asserts that he has pled sufficient minimum contacts to demonstrate the existence
22 of specific personal jurisdiction over all of the defendants. *See* Opp'n to Downes at 13-14. To
23 determine whether a defendant's contacts with the forum state are sufficient to establish specific
24 jurisdiction, the Ninth Circuit employs a three-part test:

- 25 (1) The non-resident defendant must purposefully direct his activities or
26 consummate some transaction with the forum or resident thereof; or perform
27 some act by which he purposefully avails himself of the privilege of conducting
28 activities in the forum, thereby invoking the benefits and protections of its laws;
(2) the claim must be one which arises out of or relates to the defendant's forum-
related activities; and

1 (3) the exercise of jurisdiction must comport with fair play and substantial justice,
2 i.e. it must be reasonable.

3 *Schwarzenegger*, 374 F.3d at 802 (quoting *Lake v. Lake*, 817 F.2d 1416, 1421 (9th Cir. 1987)).
4 Plaintiff bears the burden of satisfying the first two prongs. *Sher*, 911 F.2d at 1361. If Plaintiff
5 does so, then the burden shifts to Defendants to “set forth a ‘compelling case’ that the exercise of
6 jurisdiction would not be reasonable.” *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066,
7 1076 (9th Cir. 2011) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476–78 (1985)).

8 The first prong is satisfied by either purposeful availment or purposeful direction. *Brayton*
9 *Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1128 (9th Cir. 2010). For suits sounding in
10 contract, courts typically apply the “purposeful availment” test, which asks whether the defendant
11 has “performed some type of affirmative conduct which allows or promotes the transaction of
12 business within the forum state.” *Sher*, 911 F.2d at 1361 (quoting *Sinatra v. Nat’l Enquirer, Inc.*,
13 854 F.2d 1191, 1195 (9th Cir. 1988)). By contrast, for cases involving tortious conduct, courts
14 most often employ a purposeful direction analysis, which asks whether the defendant has
15 “‘purposefully direct[ed] his activities at the forum state, applying an “effects” test that focuses on
16 the forum in which the defendant’s actions were felt, whether or not the actions themselves
17 occurred within the forum.’” *CollegeSource*, 653 F.3d at 1077 (quoting *Yahoo! Inc. v. La Ligue*
18 *Contre Le Racisme*, 433 F.3d 1199, 1206 (9th Cir. 2006) (en banc)). As this case involves claims
19 against Defendants for interfering with and depriving Plaintiff of his inheritance, it sounds in tort.
20 Accordingly, the Court analyzes this case under the purposeful direction test.

21 The Ninth Circuit evaluates purposeful direction using the three-part “*Calder*-effects” test.
22 *See Schwarzenegger*, 374 F.3d at 803; *see also Calder v. Jone*, 465 U.S. 783 (1984). Under this
23 test, “the defendant allegedly must have (1) committed an intentional act, (2) expressly aimed at
24 the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum
25 state.” *Yahoo! Inc.*, 433 F.3d at 1206 (internal quotation marks omitted). The Ninth Circuit
26 construes “intent” as “referring to an intent to perform an actual, physical act in the real world,
27 rather than an intent to accomplish a result or consequence of that act.” *Schwarzenegger*, 374 F.3d
28 at 806. In addition, “[t]here is no requirement that the defendant have any physical contacts with
the forum.” *Brayton Purcell*, 606 F.3d at 1128.

1 Plaintiff has alleged the following intentional acts:

- 2 (1) Susan, with the assistance of Downes and Schulte, mismanaged and
3 misappropriated assets from Samuel’s Trust and Irene’s Trust, FAC ¶¶ 101-
4 102;
- 5 (2) James accepted and failed to return assets misappropriated from these trusts,
6 FAC ¶¶ 117-118;
- 7 (3) Susan transferred over \$400,000 worth of assets to brokerage accounts held
8 by Charles Schwab in San Francisco, California, FAC ¶ 74;
- 9 (4) Susan, Downes, and the Cartwright Defendants mailed papers and pleadings
10 from the Oregon Proceedings to Plaintiff in California, FAC ¶ 72;
- 11 (5) the Cartwright defendants improperly issued writs of garnishment on a
12 Portland, Oregon branch of JP Morgan resulting in funds being levied from
13 accounts held by Plaintiff in Nebraska and California, FAC ¶¶ 87-88; and
- 14 (6) Susan, potentially with the aid of the Cartwright Defendants, filed a
15 judgment from the Oregon proceeding in Santa Cruz Superior Court
16 resulting in wrongful collection activities in California, FAC ¶ 86.

17 The Court will address each of these acts in turn.

18 **i. Susan, With the Assistance of Downes and Schulte, Mismanaged and**
19 **Allegedly Misappropriated Trust Assets**

20 With regard to the alleged management of the trusts, Judge Fogel ruled in *Rupert I* that
21 these activities were directed at the management of an estate in Oregon and were therefore not
22 directed at California.⁷ See *Rupert I*, at 4. The Court agrees with Judge Fogel. Susan’s alleged

23 ⁷ Defendants Susan, Downes, and Schulte contend that both issue preclusion and principles of res
24 judicata prevent Plaintiff from asserting, in this action, that jurisdiction is appropriate in California
25 because this issue was already decided in *Rupert I*. See Susan Am. Mot. at 5-6; Downes Mot. at 5-
26 6. Issue preclusion bars re-litigation of issues adjudicated in an earlier proceeding if three
27 requirements are met: (1) the issue necessarily decided at the previous proceeding is identical to the
28 one which is sought to be re-litigated; (2) the first proceeding ended with a final judgment on the
merits; and (3) the party against whom collateral estoppel is asserted was a party or in privity with
a party at the first proceeding. See *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746
(9th Cir. 2006). “Res judicata, also known as claim preclusion, bars litigation in a subsequent
action of any claims that were raised *or could have been raised* in the prior action.” *W. Radio
Servs. Co. v. Glickman*, 123 F.3d 1189, 1192 (9th Cir. 1997) (emphasis added); *accord Owens v.
Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 713 (9th Cir. 2001). Res judicata is applicable
whenever there is: “(1) an identity of claims[;] (2) a final judgment on the merits[;] and (3) identity
or privity between parties.” *W. Radio Servs. Co.*, 123 F.3d at 1192 (citing *Blonder-Tongue Lab. v.
Univ. of Ill. Found.*, 402 U.S. 313, 323-24 (1971)). While the Court acknowledges that Plaintiff’s

1 mismanagement of trust assets occurred in Oregon, FAC ¶¶ 32-72, and any assistance Downes and
2 Schulte provided to Susan took place in Oregon, FAC ¶¶ 52-72. Furthermore, while Susan and
3 Downes sent letters and called Plaintiff in California, their communications concerned the estate
4 planning decisions of Irene, an Oregon resident. FAC ¶¶ 33-72. Accordingly, all of Susan,
5 Downes, and Schulte’s trust management activities were aimed at Oregon and not California.⁸

6 **ii. James Accepted Trust Assets**

7 To the extent James benefited from the management of these trusts, he did so in Michigan.
8 See FAC ¶¶ 11, 118. Plaintiff appears to assert that jurisdiction is proper over James because he
9 performed an intentional act, receipt of funds in Michigan, which caused harm to Plaintiff in
10 California, and that James was aware that Plaintiff was a resident of California. See FAC ¶ 11.
11 However, when James accepted funds from his parents’ trusts, his express aim was obtaining a
12 benefit in Michigan. Accordingly, James’s actions are not sufficient to constitute express aiming at
13 California. See *Schwarzenegger*, 374 F.3d at 807 (“It may be true that [plaintiff’s] intentional act
14 eventually caused harm to [defendant] in California, and [plaintiff] may have known that
15
16

17 present action is based on a similar nexus of facts as *Rupert I*, neither the doctrines of issue
18 preclusion or res judicata are applicable in this case. First, Plaintiff has alleged new jurisdictional
19 facts. For example, he has now alleged events concerning the Oregon Proceeding and the filing of
20 a judgment in California. As such the question of personal jurisdiction, in this action, is not
21 identical to the question of personal jurisdiction in *Rupert I*. Accordingly the first requirement of
22 issue preclusion has not been satisfied, and therefore, the doctrine does not apply in this case.
23 Second, unlike Plaintiff’s present action, his action in *Rupert I* did not include claims for violations
24 of RICO. As such, there is not an identity of claims between this action and *Rupert I*.
25 Accordingly, the first requirement of res judicata has not been satisfied and therefore the doctrine
26 does not apply.

27 ⁸ Plaintiff has also argued that the doctrine of judicial estoppel should bar Defendant Susan from
28 arguing that he received his “full and fair day in court” during the Oregon Proceedings. See Opp’n
to Susan Am. Mot. at 9-10. Plaintiff contends that, during the Oregon Proceedings, his
counterclaims were dismissed for lack of standing. *Id.* As such, the Oregon courts did not reach
the merits of his claim. *Id.* Based on these arguments, the Court gathers that Plaintiff is arguing
that Susan should not be able to claim a preclusive effect on the current proceedings based on the
judgment in the Oregon Proceedings. The Court notes, however, that Susan’s issue preclusion
argument is based on the judgment in *Rupert I*, not the Oregon Proceedings. See Susan Am. Mot.
at 5-6. Moreover, as the Court holds that Plaintiff’s claims in this action are not precluded by any
of his prior judgments, see *supra* note 7, Plaintiff’s argument for judicial estoppel is therefore
moot, and the Court need not rule on it.

1 [defendant] lived in California. But this does not confer jurisdiction, for [plaintiff's] express aim
2 was local.”).

3 **iii. Susan Transferred Assets to California**

4 With regards to Susan’s alleged transfer of assets to California, it is not clear how Plaintiff
5 suffered harm in California from this activity. Both the management of assets and the Oregon
6 Proceedings—the actions which allegedly deprived Plaintiff of his inheritance—occurred in
7 Oregon. *See* FAC. Regardless of where Susan may have allegedly transferred these assets, it
8 would not have impacted the outcome of these events. As such, the location of the assets has no
9 bearing on Plaintiff’s inheritance.⁹

10 Plaintiff has also argued that Judge Fogel was unaware that Susan may have transferred
11 assets to California when he issued his ruling in *Rupert I*. FAC ¶ 74. Had Judge Fogel known this,
12 Plaintiff claims, he “certainly would have ruled differently.” *Opp’n to Downes* at 11. However, as
13 discussed above, Judge Fogel’s decision did not rely upon the location of the trust assets, *see*
14 *Rupert I* at 4, and thus the Court does not agree that this information would have altered Judge
15 Fogel’s decision.

16 **iv. Susan, Downes, and the Cartwright Defendants Mailed Papers and**
17 **Pleadings from the Oregon Proceedings to Plaintiff in California**

18 ⁹ Plaintiff has also requested that he be permitted to conduct jurisdictional discovery on either
19 Defendant Susan Bond or Charles Schwab Institutional in San Francisco, California, regarding the
20 assets allegedly transferred to California. *See Opp’n to Downes Mot.* at 25; *Opp’n to Susan Am.*
21 *Mot.* at 17-19. Plaintiff argues that information about these assets, specifically their location,
22 “promises to be dispositive upon the issue of personal jurisdiction.” *See Opp’n to Susan Am. Mot.*
23 at 19. “Discovery may appropriately be granted where pertinent facts bearing on the question of
24 jurisdiction are controverted or where a more satisfactory showing of the facts is necessary.” *Data*
25 *Disc, Inc. v. Sys. Tech. Assocs., Inc.*, 557 F.2d 1280, 1285 n.1 (9th Cir. 1977). However, “[i]n
26 granting discovery, the trial court is vested with broad discretion.” *Id.* “[A] refusal [to grant
27 jurisdictional discovery] is not an abuse of discretion when it is clear that further discovery would
28 not demonstrate facts sufficient to constitute a basis for jurisdiction.” *Wells Fargo & Co. v. Wells*
Fargo Express Co., 556 F.2d 406, 430 n.24 (9th Cir. 1977). Here, as discussed above, the location
of the assets, even if Susan transferred them to California, does not have any bearing on the harm
Plaintiff suffered in California. As such, were Plaintiff to obtain evidence through discovery
demonstrating that assets were transferred to California, it would not be sufficient to establish
personal jurisdiction. Moreover, Plaintiff has already attached, as Exhibit Numbers 7, 8, 9, and 10
to his Declaration in Support of his Opposition to Downes’s Motion, numerous documents
regarding these accounts, including letters between Charles Schwab and Irene, Monthly Billing
Statements, and Quarterly Billing Statements. *See ECF No. 30, Ex. Nos. 7, 8, 9, 10.* Therefore, it
is unclear what additional documents Plaintiff hopes to obtain by conducting discovery.
Accordingly, Plaintiffs request for jurisdictional discovery is DENIED.

1 As for the mailing of papers and pleadings from the Oregon Proceedings to Plaintiff in
2 California, Oregon law required Defendants to mail notices to Plaintiff regarding the Oregon
3 Proceedings. *See* OR. REV. STAT. § 130.035 (2010). Moreover, all of these documents concerned
4 ongoing litigation in Oregon over the rights of Plaintiff and his siblings to an Oregon estate. FAC
5 ¶ 82. Accordingly, the fact that Plaintiff received papers in California does not convert these
6 Oregon-based activities into express aiming at California.

7 **v. The Cartwright Defendants Issued Writs of Garnishment; Susan,**
8 **Potentially with the Cartwright Defendants, Filed a Judgment in Santa**
9 **Cruz Superior Court, Resulting in Wrongful Collection Activities**
10 **Against Plaintiff**

11 As for the issuing of writs of garnishment by the Cartwright Defendants and the filing of
12 the Oregon judgment in California, these activities were intended to collect a money judgment
13 from Plaintiff in California, and resulted in funds being taken from his checking account in
14 California. *See* FAC ¶¶ 86-87. As such, they may in fact satisfy the *Calder* effects test.

15 However, under the second prong of the personal jurisdiction analysis, to provide a basis
16 for jurisdiction, a “claim must be one which arises out of or relates to the defendant’s forum-related
17 activities.” *Schwarzenegger*, 374 F.3d at 802. “In determining whether [a plaintiff’s] claims arise
18 out of [a defendant’s] forum-related conduct, ‘the Ninth Circuit follows the ‘but for’ test.’ Hence,
19 [a plaintiff] must show that he would not have suffered an injury ‘but for’ [a defendant’s] forum-
20 related conduct.” *Menken v. Emm*, 503 F.3d 1050, 1058 (9th Cir. 2007).

21 Here, the issuing of writs of garnishment and the filing of a judgment are not the source of
22 the harm that Plaintiff suffered. Rather, any harm which occurred to Plaintiff occurred during the
23 Oregon Proceedings when an Oregon Court ordered him to pay attorney’s fees and costs. *See* FAC
24 ¶ 85. As already stated, this litigation occurred in Oregon and concerned rights to an Oregon
25 estate. Like the pleadings and papers, the mere fact that Plaintiff is a California resident does not
26 alter the fact that this litigation was aimed at Oregon. Susan and the Cartwright Defendants merely
27 sought to enforce a valid judgment. As such, they did not create any additional harm to Plaintiff by
28 their actions. Merely seeking to enforce a valid judgment is not sufficient to confer personal
jurisdiction on Susan or the Cartwright Defendants. *See Menken*, 503 F.3d at 1061 (holding that

1 when defendant filed an out-of-state judgment in Arizona in order to collect a money judgment,
2 “the simple domestication of a foreign judgment in Arizona, standing alone, is unlikely sufficient
3 to confer personal jurisdiction on the judgment creditor.”).

4 To the extent Plaintiff has alleged that these Defendants acted improperly when they
5 attempted to collect the Oregon judgment, this is merely a legal conclusion and does not
6 demonstrate that these actions caused Plaintiff to suffer harm in California. *See Swartz v. KPMG*
7 *LLP*, 476 F.3d 756, 766 (9th Cir. 2007) (“mere ‘bare bones’ assertions of minimum contacts with
8 the forum or legal conclusions unsupported by specific factual allegations will not satisfy a
9 plaintiff’s pleading burden.”). Under Oregon law, an attorney, like the Cartwright Defendants,
10 “who is an active member of the Oregon State Bar may issue a writ for the purpose of enforcing
11 . . . a judgment that requires payment of money.” OR. REV. STAT. § 18.635 (2008). Accordingly,
12 the issuing of these writs was appropriate procedure in Oregon following a final judgment.

13 Furthermore, in *Menken v. Emm*, the Ninth Circuit suggested that the mere filing of a
14 judgment most likely will not give rise to jurisdiction unless a party used the judgment tortiously to
15 cause harm in the forum state. *See Menken*, 503 F.3d at 1061. In *Menken*, defendant obtained a
16 judgment against plaintiff, an Arizona resident, in the United States District Court for the District
17 of Nevada. *Id.* at 1054. Defendant then sought to recover the Nevada judgment in Arizona.
18 However, he demanded an amount in excess of the judgment, and attempted to “extract the
19 judgment payoff” by recording an invalid lien on plaintiff’s property. *Id.* The Ninth Circuit held
20 that the defendant had engaged in sufficient wrongful conduct targeted at the plaintiff in Arizona,
21 and thus personal jurisdiction was proper in Arizona. *Id.* at 1059-61. Plaintiff asserts that *Menken*
22 supports the exercise of personal jurisdiction over Susan based on her filing of a judgment in
23 California. *See Opp’n to Susan Am. Mot.* at 14-16. However, Plaintiff has alleged, in his FAC,
24 only that Susan failed to follow proper procedure for filing an out-of-state judgment as dictated by
25 the California Sister-State Money Judgment Act. *See FAC* ¶¶ 85-91. Chiefly, he states that she
26 failed to provide him with proper notice that the judgment had been filed. *Id.* According to
27 Plaintiff, this resulted in funds being wrongfully levied from his accounts because, had he been
28 given proper notice, he claims he would have been able to obtain a stay preventing enforcement of

1 the Oregon judgment. *See id.* However, merely failing to provide plaintiff with proper notice that
2 a judgment was filed does not rise to the level of tortious activity described in *Menken*. *Menken*,
3 503 F.3d at 1061. Consequently, this is not sufficient to confer personal jurisdiction on Susan.

4 Therefore, none of the acts Plaintiff has alleged are sufficient to constitute “minimum
5 contacts” with California. As such, Plaintiff has not met his burden of demonstrating that the Court
6 has personal jurisdiction over defendants Susan, James, Downes, Schulte, or the Cartwright
7 Defendants.¹⁰

8 3. Reasonableness

9 Furthermore, under the third prong of the personal jurisdiction analysis, “exercise of
10 jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable.”
11 *Schwarzenegger*, 374 F.3d at 802. In determining whether or not the exercise of jurisdiction is
12 reasonable the Court considers seven factors: (1) the extent of the defendants’ purposeful
13 interjection into the forum state’s affairs; (2) the burden on the defendant of defending in the
14 forum; (3) the extent of conflict with the sovereignty of the defendants’ state; (4) the forum state’s
15 interest in adjudicating the dispute; (5) the most efficient judicial resolution of the controversy; (6)
16 the importance of the forum to the plaintiff’s interest in convenient and effective relief; and (7) the
17 existence of an alternative forum. *Menken*, 503 F.3d at 1060. “None of these factors is
18 dispositive,” and the court “must balance the seven.” *Roth v. Garcia Marquez*, 942 F.2d 617, 623
19 (9th Cir. 1991).

20
21
22 ¹⁰ Plaintiff has also alleged that the Cartwright Defendants filed a false proof of service of process.
23 Opp’n to Cartwright Mot. at 6. According to Plaintiff, the Cartwright Defendants filed a
24 Certificate of Service claiming that service of process was made by express mail on December 17,
25 2012. *Id.* However, the records of the United States Postal Service (“USPS”) indicate that the
26 papers with which Plaintiff was eventually served were not received until 4:00 p.m. on December
27 18, 2012. *See* Decl. in Support of Opp’n to Cartwright Mot., Ex. 28 pg 4. Thus, Plaintiff claims
28 that the Certificate of Service is false. *See* Opp’n to Cartwright Mot. at 6. The Cartwright
Defendants contend that the Certificate of Service is not false, and that the records of USPS merely
indicate that the motion was processed the day after it was delivered. *Id.* The Court is persuaded
by the Cartwright Defendants. First, given that the Certificate of Service and the records of USPS
differ by only one day, the most likely explanation is that the service of process was delivered to
the post office on December 17, 2012 and processed the following day. Second, Plaintiff has not
stated what relief he is requesting in the event the Court was persuaded that this proof of service
was false. Accordingly, the Court does not find that the Cartwright Defendants filed a false proof
of service.

1 In light of the Court’s prior analysis that the Defendants do not have sufficient minimum
2 contacts with California, the Court finds it need not rule on whether these factors support the
3 exercise of jurisdiction. Nevertheless, the Court does believe that these factors further weigh in
4 favor of declining to exercise jurisdiction. Most significantly, all of the Defendants who have filed
5 motions to dismiss for lack of personal jurisdiction are residents of either Oregon or Michigan and
6 have only minimal, if any, connections with California. *See* FAC. As such, they will likely face a
7 substantial burden if they are haled into court in California. Moreover, the vast majority of the
8 events asserted by Plaintiff occurred in Oregon and concern parties, trusts, and an estate in Oregon.
9 *See Id.* As such, there is both an alternative forum, an Oregon Court, which exists to hear
10 Plaintiff’s case, and the interests of judicial efficiency are served by resolving this case in Oregon.
11 Accordingly, while the Court does not rule on the reasonableness of exercising jurisdiction over
12 Defendants, the Court notes that this seven factor test strongly supports not exercising jurisdiction.

13 4. Transfer to the District of Oregon

14 Plaintiff has requested that, as an alternative to dismissal, the Court should transfer this
15 action to the District of Oregon. Opp’n to Susan Am. Mot. at 23-25; Opp’n to Cartwright Mot. at
16 24-25. Plaintiff contends that the first predicate act of his alleged RICO conspiracy is a claim for
17 wire fraud against Susan which occurred on October 13, 2008. Opp’n to Susan Am. Mot. at 23.
18 Actions under RICO are subject to a four-year statute of limitations. *See Agency Holding Corp. v.*
19 *Malley-Duff & Assocs., Inc.*, 483 U.S. 143, 156 (1987) (holding that four-year statute of limitations
20 applied to RICO civil enforcement actions). As such, if the Court dismisses Plaintiff’s action, he
21 will not be able to reallege this claim should he decide to re-file this action in a court with proper
22 jurisdiction.

23 The Ninth Circuit has stated that “it would not be in the interests of justice to transfer [an
24 action]” when it “smacks of harassment and bad faith on the plaintiff’s part in that it appears that
25 [plaintiff] filed it here after repeatedly losing on at least some similar claims in [the forum to which
26 transfer was requested].” *King v. Russell*, 963 F.2d 1301, 1304-5 (9th Cir. 1992). While the Court
27 does not go so far as to say that Plaintiff’s claim “smacks of harassment,” the source of his action
28 seems to be his apparent disfavor “after repeatedly losing on at least some similar claims” in

1 Oregon and California. The fact that this constitutes Plaintiff’s second suit in the Northern District
2 of California related to this matter, and the fact that he has repeatedly sued opposing counsel in
3 each of his respective lawsuits, suggests that Plaintiff is bringing this action in “bad faith” in
4 response to the California and Oregon judgments.

5 Accordingly, at least at this time, the Court finds that transferring this case to the District of
6 Oregon would not be “in the interests of justice.” Plaintiff’s alternative request to transfer is
7 DENIED.¹¹

8 **5. Conclusion**

9 The Court GRANTS Defendants Downes and Schulte’s Motion to Dismiss, Defendants
10 Susan and James’ Motion to Dismiss, and the Cartwright Defendants’ Motion to Dismiss. As this
11 is Plaintiff’s First Amended Complaint, the Court dismisses without prejudice so that Plaintiff may
12 have the opportunity to cure his complaint by pleading additional jurisdictional facts.

13 **IV. CONCLUSION**

14 Accordingly, the Court GRANTS WITHOUT PREJUDICE the MZC Defendants’ Motion
15 to Dismiss for failure to state a claim upon which relief can be granted; Defendants Downes and
16 Schulte’s Motion to Dismiss for lack of personal jurisdiction; Defendants Susan and James’
17 Motion to Dismiss for lack of personal jurisdiction; the Cartwright Defendants’ Motion to Dismiss
18 for lack of personal jurisdiction.

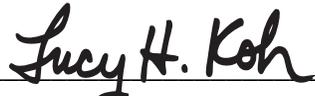
19 Because the Court determines that the First Amended Complaint may be cured by
20 additional factual allegations, Plaintiff is granted leave to amend. Should Plaintiff elect to file a
21 Second Amended Complaint curing the deficiencies discussed herein, he shall do so within 30 days
22 of the date of this Order. Failure to meet the 30 day deadline to file an amended complaint or
23 failure to cure the deficiencies identified in this Order will result in a dismissal with prejudice.
24 Plaintiff may not add new causes of action or parties without leave of the Court or stipulation of the
25 parties pursuant to Federal Rule of Civil Procedure 15.

26
27
28 ¹¹ The Court does, however, note that Plaintiff could have filed, and perhaps still may re-file, his
complaint in Oregon instead of the Northern District of California.

1 Plaintiff has also filed a Motion for Leave to File a Second and Supplemented Complaint.
2 ECF No. 78. In light of the fact that the Court dismisses Plaintiff's FAC without prejudice, the
3 Court DENIES this motion as moot.¹²

4 **IT IS SO ORDERED.**

5
6 Dated: 9/17/2013

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8 _____
9 LUCY H. KOH
10 United States District Judge

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21 ¹² In Plaintiff's Motion for Leave to File a Second Amended and Supplemented Complaint, which
22 Defendants oppose, Plaintiff has requested leave to add four additional defendants: Jessica
23 MacGregor, Kate Kimberlin, Kevin Eng, and the law firm of Long & Levit, LLP. These parties
24 however, are all representing Defendants in the instant proceeding. Moreover, Plaintiff's claim
25 against them appears to be based entirely on their involvement as representatives for Defendants in
26 either the instant proceeding or in *Rupert I*. As discussed above, representing a party in a court
27 proceeding is a protected petitioning activity under the *Noerr-Pennington* doctrine. As such,
28 Plaintiff's alleged claims against these parties are not actionable. Furthermore, the Court has
granted Defendants' Motions to Dismiss, which were presented to the Court, in part, by these
parties. As in *Rupert I*, the fact that these parties have been successful in their efforts before the
Court is strong evidence that this litigation is not a sham. Accordingly, Plaintiff's Motion for
Leave to Amend is hereby denied. Plaintiff will have the opportunity to amend his complaint by
adding additional factual allegations. However, he will not be permitted to add any additional
defendants or claims without a stipulation from the Court or the parties.