

United States District Court  
For the Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

WYLMINA E. HETTINGA,  
  
Plaintiff,  
  
v.  
  
TIMOTHY P. LOUMENA, et al.,  
  
Defendants.

Case No. C-13-2217-RMW

**ORDER GRANTING MOTIONS TO  
DISMISS, DECLARING PLAINTIFF  
TO BE A VEXATIOUS LITIGANT,  
AND DENYING MOTION FOR STAY**

**[Re: Docket Nos. 29, 38, 41, 44, 51, 62,  
87, 100]**

All defendants move to dismiss plaintiff Wylmina Hettinga’s first amended complaint. Dkt. Nos. 29, 38, 41, 44, 51, 62; *see* Dkt. No. 7 (first amended complaint, “FAC”). Defendants Jeanie O’Connor and Chicago Title Company also request that the court declare plaintiff to be a vexatious litigant. Dkt. No. 53, at 14-16. Plaintiff brings a “motion for stay,” which the court interprets as a motion for a preliminary injunction. Dkt. Nos. 87, 100. For the reasons explained below, the court GRANTS defendants’ motions to dismiss without prejudice, GRANTS defendants Chicago Title Company and Jeanie O’Connor’s motion to declare plaintiff to be a vexatious litigant, GRANTS an injunction for pre-filing review of plaintiff’s future filings, and DENIES plaintiff’s motion for stay.

## I. BACKGROUND

1 This case arises out of plaintiff and defendant Timothy Loumena’s state divorce case, which  
2 has been ongoing since 2005. Plaintiff, who is *pro se*, alleges in the FAC that “[o]n February 27,  
3 2013, [defendant] Kennedy, purporting to be acting under the laws of the State of California,  
4 fraudulently claimed that Wylmina E. Hettinga, trustee of The Loumena 2000 Revocable Trust  
5 Agreement, established the 6th of December, 2000, Wylmina E [sic] Hettinga as an individual, and  
6 Pacific Almaden Investments, LLC a California Limited Liability Company had, for a valuable  
7 consideration, receipt of which was acknowledged, granted the Property to Defendants.” FAC ¶ 21.  
8 The FAC further states that plaintiff “did not receive any such valuable consideration, did not  
9 acknowledge receipt of any such valuable consideration, and did not grant [Hettinga and Loumena’s  
10 former family residence (the “property”)] to Defendants.” *Id.* ¶ 22. According to the FAC, the  
11 property was sold. *Id.* ¶ 23. It appears from Exhibit B to the FAC that the proceeds were divided  
12 among various creditors. *Id.* Ex. B.

13 Documents from the state court divorce case reveal that the state court repeatedly ordered  
14 that the property be sold, with the proceeds being placed in a trust account.<sup>1</sup> *See* Dkt. No. 31. In an  
15 order filed January 23, 2013, the state court wrote:

16 This Court previously ordered this property sold on 1 September 2011  
17 (order filed 28 March 2012). Under that Order, Respondent Timothy  
18 Loumena was to select the realtor, both parties were to sign any and all  
19 necessary paperwork, and the net proceeds were to be placed into an  
20 interest-bearing trust account. The Court reiterates and modifies that Order  
21 as follows:

- 22 (a) The property shall be listed and sold forthwith. The listing agent shall  
23 be the individual named on the record by Mr. Loumena – Scott Raley  
24 of Customer Service Realty. Mr. Loumena shall be the sole lister of  
25 the property.
- 26 (b) Mr. Loumena shall work with the realtor to prepare the property for  
27 sale and make decisions concerning the appropriate list price, what to  
28 do with offers received, and any other necessary elements of the sales  
process. . . . As to any documents requiring any signatures from Ms.  
Hettinga, . . . Mr. Loumena shall provide them, and those parties shall  
promptly sign and return the documents to Mr. Loumena. If three (3)  
days after presenting the documents, Mr. Loumena has not received

<sup>1</sup> Multiple defendants request that the court take judicial notice of documents from the state court divorce case. Dkt. Nos. 31, 45, 52, 64. These motions are GRANTED.

1 the necessary signatures, he may bring the documents to Department  
2 83 for the Court Clerk to sign as elisor on behalf of Ms. Hettinga, . . . .

3 *Id.* Ex. C. It appears that, pursuant to the January 23, 2013 state court order, Mr. Loumena was  
4 required to have the court clerk, defendant Kennedy, sign as elisor on behalf of plaintiff.

5 Plaintiff brings a single claim in the FAC, for violation of her civil rights under 42 U.S.C.  
6 § 1983. Plaintiff’s allegations arise directly out of the sale of the property in her divorce case.  
7 Specifically, plaintiff asserts that the forced sale of the property violated her Fourth Amendment  
8 rights, and her rights under the Takings Clause of the Fifth and Fourteenth Amendments. The FAC  
9 names as defendants Timothy Loumena, plaintiff’s ex-husband; Pamela Kennedy, the state court  
10 clerk; the State of California; Walter Hammon, the attorney appointed by the state court to represent  
11 plaintiff’s children; Travis Krepelka, Loumena’s attorney; Scott Raley, the court-appointed real  
12 estate listing agent; Chicago Title Company, which was involved in the sale of the property; and  
13 Jeanie O’Connor, who apparently has some relationship with Chicago Title Company.

## 14 **II. ANALYSIS**

### 15 **A. Legal Standard**

16 A motion to dismiss for failure to state a claim under Rule 12(b)(6) tests the legal sufficiency  
17 of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). In considering whether the  
18 complaint is sufficient to state a claim, the Court must accept as true all of the factual allegations  
19 contained in the complaint. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). However, the Court need  
20 not accept as true “allegations that contradict matters properly subject to judicial notice or by  
21 exhibit” or “allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable  
22 inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008). While a complaint  
23 need not allege detailed factual allegations, it “must contain sufficient factual matter, accepted as  
24 true, to ‘state a claim to relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 678 (quoting *Bell Atl.*  
25 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible when it “allows the court  
26 to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* at 678.  
27 “Determining whether a complaint states a plausible claim for relief . . . [is] a context-specific task  
28 that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* at 679.

1           **B. Motions to Dismiss**

2           Defendants base their motions to dismiss on several grounds, including Eleventh  
3 Amendment immunity, quasi-judicial immunity, the *Rooker-Feldman* doctrine, and failure to state a  
4 claim. The court finds that it lacks subject matter jurisdiction under the *Rooker-Feldman* doctrine,  
5 and thus does not address any of defendants’ other arguments.

6           Under the *Rooker-Feldman* doctrine, a federal district court has no authority to review the  
7 final determinations of a state court in judicial proceedings. *Dist. of Columbia Court of Appeals v.*  
8 *Feldman*, 460 U.S. 462, 476 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923).  
9 “The purpose of the doctrine is to protect state judgments from collateral federal attack. Because  
10 district courts lack power to hear direct appeals from state court decisions, they must decline  
11 jurisdiction whenever they are ‘in essence called upon to review the state court decision.’” *Doe &*  
12 *Associates Law Offices v. Napolitano*, 252 F.3d 1026, 1030 (9th Cir. 2001) (quoting *Feldman*, 460  
13 U.S. at 482 n.16). The *Rooker-Feldman* doctrine precludes not only review of decisions of the  
14 state’s highest court, but also those of its lower courts. *See Dubinka v. Judges of Superior Court*, 23  
15 F.3d 218, 221 (9th Cir. 1994). A challenge under the *Rooker-Feldman* doctrine is a challenge for  
16 lack of subject matter jurisdiction. *Olson Farms, Inc. v. Barbosa*, 134 F.3d 933, 937 (9th Cir. 1998).

17           The *Rooker-Feldman* doctrine applies when a plaintiff in federal court alleges a “de facto  
18 appeal” by (1) asserting errors by the state court as an injury and (2) seeking relief from the state  
19 court judgment as a remedy. *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1139-40 (9th Cir. 2004). “A  
20 federal action constitutes such a *de facto* appeal where ‘claims raised in the federal court action are  
21 ‘inextricably intertwined’ with the state court’s decision such that the adjudication of the federal  
22 claims would undercut the state ruling or require the district court to interpret the application of state  
23 laws or procedural rules.’” *Reusser v. Wachovia Bank, N.A.*, 525 F.3d 855, 859 (9th Cir. 2008)  
24 (quoting *Bianchi v. Rylaarsdam*, 334 F.3d 895, 898 (9th Cir. 2003)).

25           In this case, plaintiff brings a § 1983 claim based on the state court’s alleged violation of  
26 plaintiff’s Fourth, Fifth, and Fourteenth Amendment rights in ordering and executing the sale of  
27 plaintiff’s property. Plaintiff argues that the state court was wrong to order the sale of the family  
28 residence and compel the proceeds to be placed in a trust account. Plaintiff seeks relief in the form

1 of monetary damages. Tellingly, plaintiff’s “motion for stay” requests that this court stay the state  
2 court case. Dkt. No. 87, at 8. Similarly to the complaint, the motion for stay focuses on the clerk of  
3 the court’s actions in signing for Hettinga as elisor when Hettinga did not sign and return the  
4 documents necessary for the property’s sale as ordered by the state court. Clearly, this is the sort of  
5 collateral attack on a state court order contemplated by *Rooker* and *Feldman*. “The *Rooker-Feldman*  
6 doctrine, generally speaking, bars a plaintiff from bringing a § 1983 suit to remedy an injury  
7 inflicted by the state court’s decision.” *Jensen v. Foley*, 295 F.3d 745, 747 (7th Cir. 2002). Here,  
8 plaintiff’s § 1983 claim is barred by *Rooker-Feldman*, and the court thus dismisses without  
9 prejudice plaintiff’s complaint for lack of subject matter jurisdiction. *Durbin v. Dubuque*, 348 F.  
10 App’x 294, 295 (9th Cir. 2009) (ordering the district court to dismiss without prejudice).

11 **C. Motion to Stay**

12 As determined above, the court lacks jurisdiction over this suit. Plaintiff’s motion to stay,  
13 which is better characterized as a motion for a preliminary injunction, is related to the merits of  
14 plaintiff’s case. Dkt. No. 87; *see also* Dkt. No. 100 (indicating that the funds from sale of the  
15 property have already been disbursed, which likely moots the motion to stay). Accordingly, the  
16 court lacks jurisdiction to grant plaintiff’s requested stay, and plaintiff’s motion to stay is DENIED.

17 **D. Motion to Declare Plaintiff a Vexatious Litigant**

18 Defendants Chicago Title Company and Jeanie O’Connor also move for plaintiff to be  
19 declared a vexatious litigant. In the motion, these defendants request that the court require plaintiff  
20 to seek leave of the court before filing any more papers in this case or other cases in this district.

21 “The All Writs Act, 28 U.S.C. § 1651(a), provides district courts with the inherent power to  
22 enter pre-filing orders against vexatious litigants. However, such pre-filing orders are an extreme  
23 remedy that should rarely be used. Courts should not enter pre-filing orders with undue haste  
24 because such sanctions can tread on a litigant’s due process right of access to the courts.” *Molski v.*  
25 *Evergreen Dynasty Corp.*, 500 F.3d 1047, 1057 (9th Cir. 2007). At the same time, “[f]lagrant abuse  
26 of the judicial process cannot be tolerated because it enables one person to preempt the use of  
27 judicial time that properly could be used to consider the meritorious claims of other litigants.” *De*  
28 *Long v. Hennessey*, 912 F.2d 1144, 1148 (9th Cir. 1990).

1 The Ninth Circuit has adopted a four-factor test to determine whether a pre-filing review  
2 order is warranted. Specifically, “[a] pre-filing review order is appropriate if (1) the plaintiff is  
3 given adequate notice and an opportunity to oppose the order; (2) the Court compiles an adequate  
4 record for review; (3) the Court makes substantive findings as to the frivolous or harassing nature of  
5 the litigant’s actions; and (4) the order is narrowly tailored ‘to closely fit the specific vice  
6 encountered.’” *Missud v. Nevada*, 861 F. Supp. 2d 1044, 1055 (N.D. Cal. 2012) *aff’d*, 520 F. App’x  
7 534 (9th Cir. 2013) (quoting *Molski*, 500 F.3d at 1057). The court now considers these four factors.

8 As to the first factor—notice—plaintiff was given adequate notice because Chicago Title  
9 Company and Jeanie O’Connor filed the motion to declare plaintiff a vexatious litigant and plaintiff  
10 has had an opportunity to oppose the motion. *See* Dkt. No. 53, at 14-16. Nevertheless, plaintiff’s  
11 responses do not address the motion to declare plaintiff a vexatious litigant. *See* Dkt. Nos. 71, 72.

12 Under the second and third factors, the court must compile an adequate record for review  
13 and make substantive findings as to the frivolous or harassing nature of plaintiff’s actions. Plaintiff  
14 has been declared a vexatious litigant in state court as a result of her filings in her divorce case. Dkt.  
15 No. 52-17, at 4. In this district, plaintiff has filed at least five cases, including the instant case and  
16 another similar case also before the undersigned. *Hettinga v. Orlando, et al.*, No. 09-cv-00253;  
17 *Hettinga v. Hammon, et al.*, No. 09-cv-06040; *Hettinga, et al. v. Loumena, et al.*, No. 10-cv-02975;  
18 *Hettinga v. Loumena, et al.*, No. 13-cv-02217; *Pacific Almaden Investments, LLC v. Hettinga, et al.*,  
19 No. 14-cv-01631 (cross-complaint, though the complaint, while not filed by Hettinga, mirrors her  
20 other cases). This court also has a pending motion to declare plaintiff a vexatious litigant in that fifth  
21 case. Case No. 14-cv-01631, Dkt. No. 34. All three of plaintiff’s prior cases in this district were  
22 dismissed for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine. Dkt. Nos. 52-4  
23 Ex. D (*Orlando* case), 52-8 Ex. H (*Hammon* case), 52-11 Ex. K (first *Loumena* case). Plaintiff  
24 appealed one of those dismissals to the Ninth Circuit, and the Ninth Circuit found plaintiff’s appeal  
25 to be frivolous. *See* Dkt. Nos. 52-5 Ex. E (“[W]e find that the appeal is frivolous.”), 52-6 Ex. F  
26 (“[T]he questions raised in this appeal are so insubstantial as not to require further argument . . .”).  
27 Moreover, all of plaintiff’s cases arise out of plaintiff’s underlying divorce action and seek to obtain  
28 relief from the state court’s decisions in plaintiff’s long-running divorce case. While no court in this

1 district has reached the substantive merits of plaintiff's cases because the district court has lacked  
2 subject matter jurisdiction over all of plaintiff's cases thus far, none of plaintiff's cases appear to  
3 have any substantive merit. Rather, plaintiff's suits in this district typically name all attorneys and  
4 various other individuals involved in her divorce case as defendants. This practice of suing those  
5 involved in plaintiff's state court case has likely harassed those individuals and impeded the  
6 progress of that case. As noted above, the state court has declared plaintiff a vexatious litigant, and  
7 plaintiff's divorce action has been pending for nine years. Therefore, plaintiff Wylmina Hettinga is a  
8 vexatious litigant, and the court will impose a pre-filing review injunction on plaintiff.

9 Finally, the court must narrowly tailor the pre-filing review order to the specific vice  
10 encountered. Here, the vice is plaintiff's tendency to file frivolous lawsuits relating to her ongoing  
11 divorce action. The court therefore enjoins plaintiff from filing any documents in this case, her other  
12 currently pending case, No. 14-cv-01631, or from filing any new action in the Northern District of  
13 California arising out of facts related to plaintiff's divorce case, without passing a pre-filing review.  
14 This narrowly tailored order captures plaintiff's pattern of abusive conduct without unnecessarily  
15 impeding her access to the judicial system. By requiring a pre-filing review of plaintiff's future  
16 actions related to plaintiff's divorce case, the court seeks to preclude plaintiff from further harassing  
17 the individuals involved in the divorce case. To this court's knowledge, plaintiff has not engaged in  
18 any abusive litigation conduct in this district beyond repeatedly seeking to challenge the state  
19 court's actions in plaintiff's divorce case, so plaintiff remains free to pursue any other claims she  
20 may have.

### 21 III. ORDER

22 For the foregoing reasons, the court GRANTS defendants' motions to dismiss with prejudice  
23 as to further filings in federal court, GRANTS Chicago Title Company and Jeanie O'Connor's  
24 motion to declare plaintiff to be a vexatious litigant, and DENIES plaintiff's motion for stay. The  
25 court imposes the following pre-filing review on future filings by plaintiff Wylmina Hettinga: The  
26 Clerk of this court may not file or accept any further complaints filed by or on behalf of Wylmina  
27 Hettinga as a named plaintiff that arise out of facts related to plaintiff's divorce case. If Ms.  
28 Hettinga wishes to file a complaint arising out of facts related to her divorce case, she shall provide

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a copy of any such complaint, a letter requesting that the complaint be filed, and a copy of this order to the Clerk of this court. The Clerk shall then forward the complaint, letter, and copy of this order to the Duty Judge for a determination whether the complaint should be accepted for filing. Any violation of this order will expose plaintiff to a contempt hearing and appropriate sanctions, and any action filed in violation of this order will be subject to dismissal.

Dated: September 30, 2014

  
RONALD M. WHYTE  
United States District Judge