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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

GREG STEVEN ELOFSON,
Plaintiff,
v.
STEPHANIE BIVENS, et al.,
Defendants.

Case No. 15-cv-05761-BLF

**ORDER GRANTING MOTIONS TO
DISMISS FIRST AMENDED
COMPLAINT WITHOUT LEAVE TO
AMEND**

[Re: ECF 48, 51, 70, 82, 102, 106]

Plaintiff Greg Steven Elofson (“Elofson”), proceeding pro se, filed this action to challenge Arizona state court orders relating to the guardianship and conservatorship of his father, Milo Elofson (“Milo”).¹ Elofson seeks relief from those orders under Federal Rule of Civil Procedure 60, and he additionally asserts numerous federal and state law claims against persons who were either involved in the Arizona proceedings or helped return Milo to Arizona after Elofson moved him out of state in violation of court orders.

Before the Court are motions to dismiss filed by six of the seven defendants named in the operative first amended complaint (“FAC”).² For the reasons discussed below, Elofson’s claims against all moving parties are **DISMISSED WITHOUT LEAVE TO AMEND**.

¹ The Court intends no disrespect in referring to Milo Elofson by his first name. It does so only to distinguish him from Plaintiff Greg Elofson.

² It does not appear that the seventh defendant, Stephanie McCollum, has been served with the summons and complaint. That circumstance will be addressed in a separate order.

1 **I. BACKGROUND**

2 This action arises from the circumstances surrounding the conservatorship of Elofson’s
3 father, Milo. Elofson claims that Milo suffered from vascular dementia and that Milo’s step-
4 daughter, Pam Dougherty-Elofson, abused Milo’s trust by withdrawing \$74,000 from Milo’s bank
5 account to pay off the mortgage on her house. FAC ¶¶ 130-31, ECF 29. When Milo discovered
6 the missing funds, he asked Elofson for help in figuring out what had happened. *Id.* ¶ 134.
7 Elofson retained an attorney, Stephanie Bivens, to advise him about protecting Milo’s finances
8 from Dougherty-Elofson. *Id.* ¶ 138. Bivens suggested that Milo be conserved and place under
9 Elofson’s guardianship. *Id.* ¶ 139. However, Bivens later informed Elofson that he could not be
10 appointed as Milo’s conservator because he could not be bonded. *Id.* ¶ 146. Elofson claims that
11 he decided to proceed with a petition for temporary guardianship of Milo, but not a
12 conservatorship. *Id.* ¶¶ 151-57. However, according to Elofson, Bivens nonetheless filed a
13 petition for both permanent guardianship and permanent conservatorship of Milo and forged
14 Elofson’s signature on that document. *Id.* ¶ 158.

15 Elofson states that he did not know that Bivens had filed a forged petition requesting both
16 guardianship and conservatorship of Milo. FAC ¶ 171. However, he questioned other aspects of
17 Bivens’ representation, and his relationship with her began to deteriorate. *Id.* ¶¶ 164-169. He
18 ultimately fired her. *Id.* ¶ 175. During the same time frame, the Arizona court appointed an
19 attorney named Paul Theut to represent Milo and appointed Elofson as Milo’s temporary guardian.
20 *Id.* ¶¶ 168, 172. The court later removed Elofson as Milo’s guardian and appointed a licensed
21 Arizona fiduciary named Stephanie McCollum as Milo’s guardian and conservator. *Id.* ¶¶ 205,
22 210, 306. Elofson claims that Theut and Bivens, along with McCollum and her attorney,
23 Lawrence Scaringelli, committed fraud on Elofson and the Arizona court throughout the
24 guardianship and conservatorship proceedings. *Id.* ¶¶ 168-306. Elofson also claims that he was
25 denied due process in the Arizona state court proceedings, asserting among other things that he
26 was not given adequate notice of certain hearings and other events. *Id.*

27 During the course of the Arizona proceedings, Elofson requested leave of court to move
28 Milo to California, where Elofson resided. FAC ¶ 269, ECF 29. That request was denied. *Id.*

1 Elofson nonetheless “traveled, with Milo, to California,” FAC ¶ 302, and took up residence with
2 him there, FAC ¶ 307. The Arizona state court found Elofson in civil contempt of court. FAC ¶
3 304.

4 In January 2015, Elofson contacted Monterey County Social Services to request a part-
5 time caregiver for Milo. FAC ¶ 307, ECF 29. Monterey County Social Services contacted
6 Monterey County Adult Protective Services, which contacted McCollum. *Id.* ¶¶ 312-13. Elofson
7 claims that McCollum and her attorney, Scaringelli, informed Monterey County Adult Protective
8 Services that Elofson had financially abused Milo and was responsible for missing monies from
9 Milo’s estate. *Id.* ¶ 313. In February 2015, Steven Mudd of Monterey County Adult Protective
10 Services, Monterey Police officers, and medical personnel went to Elofson’s residence and
11 transported Milo to Natividad Medical Center. *Id.* ¶¶ 314-17.³ Elofson removed Milo from
12 Natividad the following day. *Id.* The Arizona state court subsequently issued a fiduciary arrest
13 warrant for Elofson. *Id.* ¶ 320.

14 In September 2015, Elofson took Milo to Community Memorial Hospital (“Community
15 Hospital”) in Ventura, California, for evaluation “because of Milo’s strong urge to wander
16 throughout that night.” FAC ¶ 321-22, ECF 29. Community Hospital communicated with
17 McCollum and her attorney, Scaringelli, and was informed that Elofson had kidnapped Milo. *Id.* ¶
18 326. Community Hospital put Milo under twenty-four hour security oversight with standing
19 orders to prevent Elofson from entering the hospital or seeing Milo. *Id.* ¶¶ 329-332. Two weeks
20 later, Scaringelli emailed Elofson to inform him that Milo was back in Arizona. *Id.* ¶ 333.

21 Elofson claims that although Milo was in good physical health when he arrived at
22 Community Hospital, he deteriorated quickly once removed from Elofson’s care. FAC ¶¶ 331-36,
23 ECF 26. At the time Elofson filed the FAC, he was gravely concerned for his father, alleging that
24 Milo was suffering from bed sores, a kidney infection, dehydration, and starvation. *Id.* ¶ 335. The
25 FAC asserts claims against Dougherty-Elofson (Milo’s step-daughter), Bivens (Elofson’s former
26 attorney), Theut (Milo’s court-appointed attorney), McCollum (Milo’s guardian and conservator),
27

28 ³ The FAC alleges that this event occurred in February 2014, but this appears to be a typographical error.

1 Scaringelli (McCollum’s attorney), Mudd (employee of Monterey County Adult Protective
2 Services), and Community Hospital.

3 The FAC, spanning 168 pages and including 685 paragraphs of allegations, asserts twenty-
4 one claims: (1) relief from the Arizona state court guardianship order; (2) relief from the Arizona
5 state court conservatorship order; (3) relief from the Arizona state court conservatorship order;
6 (4) relief from the Arizona state court guardianship order; (5) breach of duty; (6) attorney
7 malpractice; (7) attorney malpractice; (8) breach of fiduciary duty; (9) defamation; (10) negligent
8 infliction of emotional distress; (11) financial elder abuse; (12) violation of civil rights under 42
9 U.S.C. § 1983; (13) human trafficking in violation of 18 U.S.C. § 1595; (14) violations of the
10 Racketeer Influenced and Corrupt Organizations Act (“RICO”); (15) abuse of process;
11 (16) violation of civil rights under 42 U.S.C. § 1983; (17) violation of civil rights under 42 U.S.C.
12 § 1983; (18) defamation; (19) violation of civil rights under 42 U.S.C. § 1983; (20) defamation;
13 and (21) wire fraud. The prayer requests that this Court set aside as null and void the Arizona
14 state court guardianship and conservatorship orders and award compensatory, statutory, and
15 punitive damages, as well as attorneys’ fees and costs.

16 Approximately three months after Elofson filed the FAC, he informed the Court that Milo
17 had passed away and requested that the Court order an autopsy to determine the cause of death.
18 Pl.’s Emergency Ex Parte Motion to Compel Emergency Autopsy, ECF 80. The Court denied that
19 request after determining that it lacks authority to order the Pinal County, Arizona Medical
20 Examiner to perform an autopsy. Order Denying Plaintiff’s Emergency Ex Parte Motion to
21 Compel Autopsy, ECF 84.

22 Defendants Dougherty-Elofson, Bivens, Theut, Mudd, Community Hospital, and
23 Scaringelli seek dismissal of the FAC under various theories, discussed below. In addition,
24 Scaringelli has filed a special motion to strike under California Code of Civil Procedure § 425.16.
25 The Court addresses the motions of each defendant in turn.

26 **II. DOUGHERTY-ELOFSON**

27 Elofson sues Dougherty-Elofson, Milo’s step-daughter, for breach of duty (Claim 5),
28 trafficking (Claim 13), and RICO violations (Claim 14). She seeks dismissal under Federal Rule

1 of Civil Procedure 12(b)(2) for lack of personal jurisdiction. In support of her motion, she submits
2 a declaration stating that she is a resident of Arizona; she has not lived in, traveled to, or been
3 physically present in California in more than twenty years; and she does not conduct business in
4 California. Dougherty-Elofson Decl. ¶¶ 2-4, ECF 51-1.

5 When a defendant raises a challenge to personal jurisdiction, the plaintiff bears the burden
6 of establishing that jurisdiction is proper. *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1068 (9th Cir.
7 2015). The plaintiff may meet that burden by submitting affidavits and discovery materials. *Doe*
8 *v. Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001). “Where, as here, the defendant’s motion is
9 based on written materials rather than an evidentiary hearing, the plaintiff need only make a prima
10 facie showing of jurisdictional facts to withstand the motion to dismiss.” *Ranza*, 793 F.3d at 1068
11 (internal quotation marks and citation omitted). “[T]he plaintiff cannot simply rest on the bare
12 allegations of its complaint,” but when evaluating the plaintiff’s showing, the court must accept
13 uncontroverted allegations in the complaint as true and resolve factual disputes created by
14 conflicting affidavits in the plaintiff’s favor.” *Schwarzenegger v. Fred Martin Motor Co.*, 374
15 F.3d 797, 800 (9th Cir. 2004) (internal quotation marks and citation omitted). “However,
16 plaintiff’s evidence must be admissible.” *Joseph Saveri Law Firm, Inc. v. Michael Criden P.A.*,
17 No. C-14-01740 (EDL), 2014 WL 3673313, at *2 (N.D. Cal. July 23, 2014) (citing *Nicosia v. De*
18 *Rooy*, 72 F. Supp. 2d 1093, 1097 (N.D. Cal. 1999)).

19 Elofson asserts that Dougherty-Elofson is subject to personal jurisdiction in this Court
20 under both California’s long-arm statute and RICO’s “ends of justice” provision, 18 U.S.C. §
21 1965(b). The Court addresses those arguments in turn.

22 **A. California’s Long-Arm Statute**

23 Where no applicable federal statute governs personal jurisdiction, “the law of the state in
24 which the district court sits applies.” *Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements*
25 *Ltd.*, 328 F.3d 1122, 1129 (9th Cir. 2003). “California’s long-arm statute allows courts to exercise
26 personal jurisdiction over defendants to the extent permitted by the Due Process Clause of the
27 United States Constitution.” *Id.* “[D]ue process requires that the defendant ‘have certain
28 minimum contacts’ with the forum state ‘such that the maintenance of the suit does not offend

1 traditional notions of fair play and substantial justice.” *Ranza*, 793 F.3d at 1068 (quoting *Int’l*
2 *Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)) (internal quotation marks and citation
3 omitted). “The strength of contacts required depends on which of the two categories of personal
4 jurisdiction a litigant invokes: specific jurisdiction or general jurisdiction.” *Id.* at 1068. General
5 jurisdiction lies when the defendant’s contacts “are so continuous and systematic as to render [it]
6 essentially at home in the forum State.” *Daimler AG v. Bauman*, 134 S. Ct. 746, 761 (2014)
7 (internal quotation marks and citation omitted). A nonresident that is subject to the court’s general
8 jurisdiction may be sued for claims “arising from dealings entirely distinct” from the forum-
9 related activities. *Id.* (internal quotation marks and citation omitted) (emphasis omitted). In
10 contrast, specific jurisdiction exists when the defendant’s contacts with the forum state are more
11 limited but the plaintiff’s claims arise out of or relate to those contacts. *Id.* at 754. General
12 jurisdiction is referred to as “all-purpose” jurisdiction whereas specific jurisdiction is referred to as
13 “case-specific” or “case-linked” jurisdiction. *Ranza*, 793 F.3d at 1069 n.2 (citations omitted).

14 Elofson does not argue that Dougherty-Elofson is subject to general jurisdiction in
15 California – he argues only that she is subject to specific jurisdiction. Courts in the Ninth Circuit
16 employ a three-prong test when determining whether a nonresident defendant may be subject to
17 specific personal jurisdiction in a forum:

- 18 (1) The non-resident defendant must purposefully direct his activities or
19 consummate some transaction with the forum or resident thereof; or perform some
20 act by which he purposefully avails himself of the privilege of conducting activities
in the forum, thereby invoking the benefits and protections of its laws;
- 21 (2) the claim must be one which arises out of or relates to the defendant’s forum-
related activities; and
- 22 (3) the exercise of jurisdiction must comport with fair play and substantial justice,
23 i.e. it must be reasonable.

24 *Schwarzenegger*, 374 F.3d at 802. “The plaintiff bears the burden of satisfying the first two
25 prongs of the test.” *Id.* If the plaintiff succeeds in doing so, the burden shifts to the defendant to
26 “set forth a ‘compelling case’ that the exercise of jurisdiction would not be reasonable.”
27 *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1076 (9th Cir. 2011) (quoting *Burger*
28 *King Corp. v. Rudzewicz*, 471 U.S. 462, 476-78 (1985)).

1 **1. Purposeful Direction or Availment**

2 “Purposeful direction” and “purposeful availment” are two distinct concepts, the former
3 most often used in suits sounding in tort and the latter in suits sounding in contract.
4 *Schwarzenegger*, 374 F.3d at 802. Purposeful availment may be found when the defendant
5 executes or performs a contract in the forum state or otherwise “purposefully avails itself of the
6 privilege of conducting activities within the forum State, thus invoking the benefits and
7 protections of its laws.” *Id.* (internal quotation marks and citation omitted). “In return for these
8 benefits and protections, a defendant must – as a quid pro quo – submit to the burdens of litigation
9 in that forum.” *Id.* (internal quotation marks and citation omitted). “A showing that a defendant
10 purposefully directed his conduct toward a forum state, by contrast, usually consists of evidence of
11 the defendant’s actions outside the forum state that are directed at the forum, such as the
12 distribution in the forum state of goods originating elsewhere.” *Id.* at 803. “The Supreme Court
13 has held that due process permits the exercise of personal jurisdiction over a defendant who
14 purposefully directs his activities at residents of a forum, even in the absence of physical contacts
15 with the forum.” *Id.* (internal quotation marks, citation, and brackets omitted).

16 Here, a purposeful direction analysis is most appropriate. Elofson sues Dougherty-Elofson
17 for breach of fiduciary duty – a tort – and for statutory claims that are more akin to tort than
18 contract. In asserting those claims, Elofson does not contend that Dougherty-Elofson availed
19 herself of the privileges of doing business in California, but rather that she committed intentional
20 acts aimed at California.

21 Purposeful direction is evaluated under the “effects” test first articulated in *Calder v.*
22 *Jones*, 465 U.S. 783 (1984). Under that test, “a defendant purposefully directed his activities at
23 the forum if he: (1) committed an intentional act, (2) expressly aimed at the forum state, (3)
24 causing harm that the defendant knows is likely to be suffered in the forum state.” *Picot v.*
25 *Weston*, 780 F.3d 1206, 1212 (9th Cir. 2015) (internal quotation marks and citation omitted).
26 Analysis of those factors must focus on the “defendant’s contacts with the forum state itself, not
27 the defendant’s contacts with persons who reside there.” *Walden v. Fiore*, 134 S. Ct. 1115, 1122
28 (2014).

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a. Commission of an Intentional Act

Under the *Calder* effects test, Elofson first must demonstrate that Dougherty-Elofson committed an intentional act. In this context, “intent” refers to “an intent to perform an actual, physical act in the real world, rather than an intent to accomplish a result or consequence of that act.” *Schwarzenegger*, 374 F.3d at 806. Elofson identifies three intentional acts by Dougherty-Elofson: emailing Elofson to solicit his agreement to embezzle Milo’s funds, embezzlement of the funds, and speaking with Elofson by telephone to solicit his agreement to embezzle more of Milo’s funds. Pl.’s Opp. at 12-13, ECF 69. All three of those actions constitutes intentional acts under the effects test.

b. Expressly Aimed at the Forum State

Elofson has not shown, however, how those intentional acts were aimed at California. It is clear from the record that Milo resided in Arizona at the relevant time. Thus the conduct described by Elofson boils down to one Arizona resident’s solicitations to embezzle, and actual embezzlement of, the funds of another Arizona resident. Elofson suggests that the conduct was directed at California because it violated a number of California statutes, including California Penal Code § 503 (defining the term “embezzlement”), California Penal Code § 515 (providing that the elder or dependent status of a victim may be an aggravating circumstance), California Probate Code § 4231.5 (attorney in fact’s breach of duty), and California Welfare and Institutions Code § 15610.30 (defining financial elder abuse). However, because both Dougherty-Elofson and Milo were Arizona residents at the time of the alleged solicitation and embezzlement, California statutes do not apply.

Elofson also argues that the embezzlement was aimed at California because he had a “beneficiary interest” in Milo’s estate and he resides in California. Even if Dougherty-Elofson knew that embezzlement of *Milo’s* funds might injure *Elofson* in some way, such knowledge does not establish that Dougherty-Elofson’s alleged embezzlement of an Arizona resident’s funds in Arizona was expressly *aimed* at California. “[M]ere injury to a forum resident is not a sufficient connection to the forum” to establish personal jurisdiction. *Walden*, 134 S. Ct. at 1125. Thus Elofson has failed to satisfy the “expressly aimed” prong of the *Calder* effects test.

1 To the extent that Dougherty-Elofson’s telephone call and emails with Elofson, a
2 California resident, can be considered independent intentional acts that were aimed at California,
3 those acts – as distinguished from the embezzlement itself – did not harm Elofson, as discussed
4 below.

5 **c. Causing Harm Likely to be Suffered in the Forum State**

6 The final prong of the *Calder* test requires the plaintiff to show that the defendant caused
7 harm that the defendant knows is likely to be suffered in the forum state. As discussed above,
8 Elofson has not shown that Dougherty-Elofson’s alleged embezzlement of Milo’s funds was
9 aimed at California. Even if Elofson had made that showing, he has not established that the
10 embezzlement harmed him. Elofson argues that the embezzlement harmed him because he had a
11 “beneficiary interest” in Milo’s estate. To the extent that Elofson is arguing that he would have
12 inherited the funds had they not been embezzled, Elofson has not submitted evidence that he is
13 Milo’s heir and any speculation that the funds would have remained in Milo’s estate absent the
14 embezzlement is just that – speculation. Finally, even if Elofson had shown that the
15 embezzlement caused him harm, “[t]he proper question is not where the plaintiff experienced a
16 particular injury or effect but whether the defendant’s conduct connects him *to the forum* in a
17 meaningful way.” *Walden*, 134 S. Ct. at 1125 (emphasis added). Any incidental injury that
18 Elofson may have suffered as a result of one Arizona resident, Dougherty-Elofson, embezzling
19 funds from another Arizona resident, Milo, is insufficient to connect Dougherty-Elofson to
20 California in a meaningful way.

21 Finally, to the extent that Dougherty-Elofson’s telephone conversation and emails with
22 Elofson are sufficient to satisfy the first two prongs of the effects test, they are insufficient to
23 satisfy the third prong because those communications did not harm Elofson. Elofson makes clear
24 in the FAC and the briefing on Dougherty-Elofson’s motion that he rejected her solicitations of
25 wrongdoing in no uncertain terms. Thus the communications, as distinct from the alleged
26 embezzlement itself, do not satisfy the purposeful direction prong of *Schwarzenegger*.

27 **2. Arising Out Of**

28 The Ninth Circuit has dubbed the second prong of *Schwarzenegger*’s specific jurisdiction

1 inquiry as the “but for test.” *In re Western States Wholesale Nat. Gas Antitrust Litig.*, 715 F.3d
2 716, 742 (9th Cir. 2013). “Under the ‘but for’ test, a lawsuit arises out of a defendant’s contacts
3 with the forum state if a direct nexus exists between those contacts and the cause of action.” *Id.*
4 (internal quotation marks and citation omitted). That test is not satisfied here because to the extent
5 that Elofson’s claims against Dougherty-Elofson for breach of duty (Claim 5), trafficking (Claim
6 13), and RICO violations (Claim 14) arise out of Dougherty-Elofson’s alleged embezzlement of
7 funds in Arizona, such embezzlement does not constitute a contact with California for the reasons
8 discussed above. Moreover, Dougherty-Elofson’s alleged embezzlement of Milo’s funds was
9 certainly not dependent on any act completed by Elofson, as evidenced by his alleged refusal to
10 participate in the scheme.

11 3. Reasonableness

12 Elofson has not met his burden to make out a prima facie case on the first two
13 *Schwarzenegger* prongs. Accordingly the burden does not shift to Dougherty-Elofson to address
14 the reasonableness of requiring her to defend this suit in California. Moreover, given that the
15 record does not suggest any meaningful contacts between Dougherty-Elofson and California, this
16 Court’s exercise of personal jurisdiction over her would be unreasonable.

17 B. RICO’s “Ends of Justice” Provision

18 Under 18 U.S.C. § 1965(b), a district court may exercise personal jurisdiction over non-
19 resident participants in an alleged RICO conspiracy, even if those parties otherwise would not be
20 subject to the court’s jurisdiction, if “the ends of justice” so require. This “ends of justice”
21 provision permits a court, consistent with the purpose of the RICO statute, to “enable plaintiffs to
22 bring all members of a nationwide RICO conspiracy before a court in a single trial.” *Butcher’s*
23 *Union Local No. 498, United Food & Comm. Workers v. SDC Inv., Inc.*, 788 F.2d 535, 538 (9th
24 Cir. 1986). This power is not unlimited, however. In order for a court to exercise personal
25 jurisdiction through the “ends of justice” provision, “the court must have personal jurisdiction
26 over at least one of the participants in the alleged multi-district conspiracy and the plaintiff must
27 show that there is no other district in which a court will have personal jurisdiction over all of the
28 alleged coconspirators.” *Id.* at 539.

1 Elofson asserts a single claim under RICO (Claim 14), in which he alleges that Dougherty-
2 Elofson, Bivens, Theut, Scaringelli, and McCollum engaged in a pattern of racketeering activity.
3 FAC ¶¶ 586-605, ECF 29. Elofson acknowledges that all five of the alleged conspirators are
4 residents of Arizona. FAC ¶ 119.⁴ Because the United States District Court for the District of
5 Arizona would have personal jurisdiction over all the alleged coconspirators, the “ends of justice”
6 provision does not apply.

7 Elofson asserts that he could amend his pleading to allege that Mudd and Community
8 Hospital, both California residents, are RICO coconspirators. Elofson contends that if such an
9 amendment were permitted, the “ends of justice” provision would apply because this Court then
10 would have personal jurisdiction over at least one coconspirator and this would be the only district
11 in which all of the alleged coconspirators could be sued. However, Elofson has not offered any
12 facts to suggest that he plausibly could allege that Mudd and Community Hospital participated in a
13 RICO conspiracy with the Arizona residents.

14 Indeed, any such allegations would be inconsistent with the allegations set forth in the
15 current FAC. For example, Elofson alleges that McCollum and Scaringelli “falsely reported” to
16 Mudd that Elofson “was responsible for missing monies from Milo Elofson’s estate and that
17 Plaintiff Elofson therefore had financially abused Milo Elofson.” FAC ¶ 313, ECF 29. Elofson
18 also alleges that when Mudd and six Monterey police officers “stormed” Elofson’s residence and
19 removed Milo to a medical facility, “Mudd claimed that Defendants McCollum and Scaringelli
20 indicated that there were missing monies from Milo Elofson’s estate because of Plaintiff Elofson.”
21 *Id.* ¶ 314. Elofson alleges that “Scaringelli offered this as a statement of fact” even though
22 “Stephanie McCollum and Lawrence Scaringelli knew it was false.” *Id.* ¶ 458. He also asserts
23 that the false statements of McCollum and Scaringelli “were the single proximate cause of several
24 Monterey County police officers descending on Greg’s and Milo’s abode.” *Id.* ¶ 459.

25 Elofson repeats these allegations in various forms throughout the FAC, alleging for
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27 ⁴ The parties’ residences are listed in an unnumbered paragraph subheaded “PARTIES” located
28 between paragraph 119 and 120. *See* FAC at pp. 40-41, ECF 29. For ease reference, the Court
treats this unnumbered paragraph as part of paragraph 119.

1 example that “Stephanie McCollum and Lawrence Scaringelli made a false report to a government
2 agency, when they reported to Steve Mudd of Monterey County Adult Protective Services that
3 Greg Elofson was responsible for missing monies, taken from Milo Elofson.” *Id.* ¶ 463. Elofson
4 makes clear that Mudd was “[a]cting on Stephanie McCollum’s and Lawrence Scaringelli’s
5 statements” when Mudd “acted to confine Milo Elofson within the Natividad Medical Center.” *Id.*
6 ¶ 464. Given these allegations that McCollum and Scaringelli lied to Mudd *and* that Mudd relied
7 on those lies in bringing Monterey police officers to seize Milo, Elofson could not plausibly allege
8 that in fact Mudd was not relying in good faith on information received from McCollum and
9 Scaringelli but actually was a RICO coconspirator. *See Airs Aromatics, LLC v. Opinion Victoria’s*
10 *Secret Stores Brand Mgmt., Inc.*, 744 F.3d 595, 600 (9th Cir. 2014) (“A party cannot amend
11 pleadings to directly contradict an earlier assertion made in the same proceeding.”) (internal
12 quotation marks, citation, and brackets omitted).

13 The FAC contains similar allegations regarding Community Hospital, for example, that
14 “Defendants McCollum and Scaringelli [committed] the second act of Wire Fraud by
15 communicating to Community Memorial Hospital that Plaintiff Elofson had ‘kidnapped’ Milo
16 Elofson, which is elder abuse, and per se defamation.” FAC ¶ 681, ECF 29. The FAC also
17 alleges that “Milo was put in isolation at Community Medical Center in Ventura California, at the
18 orders of Defendants McCollum and Scaringelli.” *Id.* ¶¶ 565, 641. Given these allegations that
19 McCollum and Scaringelli informed Community Hospital that Elofson had kidnapped Milo, and
20 that Community Hospital followed the direction of McCollum and Scaringelli in isolating Milo
21 from Elofson, Elofson could not plausibly allege that in fact Community Hospital did not rely on
22 McCollum and Scaringelli but rather was a RICO coconspirator. *See Airs Aromatics*, 744 F.3d at
23 600.

24 Accordingly, the “ends of justice” provision does not apply and Elofson could not
25 plausibly amend his pleading to add facts that would trigger application of the provision.

26 **C. Conclusion**

27 In conclusion, Elofson has neither satisfied his burden of making out a prima facie case of
28 personal jurisdiction under California’s long-arm statute nor demonstrated that personal

1 jurisdiction lies under RICO’s “ends of justice” provision. Consequently, Dougherty-Elofson’s
2 motion to dismiss for lack of personal jurisdiction is GRANTED.

3 **III. BIVENS**

4 Elofson sues Bivens, his former attorney, for relief from judgment (Claim 1), attorney
5 malpractice (Claim 6), trafficking (Claim 13), and RICO violations (Claim 14). She seeks
6 dismissal under Rule 12(b)(2) for lack of personal jurisdiction. Bivens submits her own
7 declaration stating that she resides in Arizona; is licensed to practice law only in Arizona and does
8 practice in Arizona; does not own property, advertise, attend trade shows, or conduct business in
9 California; and has traveled to California only for short vacations. Bivens Decl. ¶¶ 3-7, ECF 71.
10 Elofson does not dispute any of those facts. Instead, he argues that Bivens is subject to personal
11 jurisdiction in this Court under both California’s long-arm statute and RICO’s “ends of justice”
12 provision, 18 U.S.C. § 1965(b).

13 **A. California’s Long-Arm Statute**

14 **1. Purposeful Direction or Availment**

15 Because Elofson’s attorney malpractice claim against Bivens sounds in tort and his other
16 claims against her are more in the nature of torts than contracts, a purposeful direction analysis is
17 appropriate. As set forth above, under that test, “a defendant purposefully directed his activities at
18 the forum if he: (1) committed an intentional act, (2) expressly aimed at the forum state, (3)
19 causing harm that the defendant knows is likely to be suffered in the forum state.” *Picot*, 780 F.3d
20 at 1212.

21 **a. Commission of an Intentional Act**

22 Under the *Calder* effects test, Elofson first must demonstrate that Bivens committed an
23 intentional act. Elofson contends that Bivens committed the following intentional acts: she
24 maintains a nationwide website which utilizes “viral marketing”; contracted to represent Elofson
25 in the Arizona guardianship and conservatorship proceedings; communicated with Elofson by
26 telephone and email regarding that representation; submitted to the Arizona state courts documents
27 that Elofson had notarized in California; and filed forged documents in the Arizona proceedings.

28 As evidence of those intentional acts, Elofson submits a request for judicial notice

1 accompanied by several documents, including screen shots of what appear to be a website
2 maintained by Bivens' law firm, a fee agreement between Elofson and Bivens' law firm, email
3 communications between Elofson and Bivens, and documents relating to Milo's guardianship
4 proceedings. *See* Pl.'s RJN, ECF 87. Bivens objects to Elofson's request for judicial notice,
5 asserting that the proffered documents are not appropriate subject matter for judicial notice. The
6 Court agrees and thus denies the request for judicial notice. Moreover, the documents are
7 inadmissible, as they are not authenticated. However, even if it were to consider all of the
8 documents submitted by Elofson, and to assume that Bivens committed each of the asserted acts,
9 the Court would conclude that Elofson has failed to show purposeful direction under the *Calder*
10 effects test for the reasons discussed below.

11 **b. Expressly Aimed at the Forum State**

12 Elofson has failed to show that Bivens' intentional acts, described above, were expressly
13 aimed at California. Elofson contends that Bivens' law firm expressly aimed marketing efforts at
14 California by means of the firm's interactive website. The Ninth Circuit has "struggled with the
15 question whether tortious conduct on a nationally accessible website is expressly aimed at any, or
16 all, of the forums in which the website can be viewed." *Mavrix Photo, Inc. v. Brand Techs., Inc.*,
17 647 F.3d 1218, 1229 (9th Cir. 2011). It is clear that merely operating a passive website that is
18 accessible in the forum state does not satisfy the express aiming prong of the effects test. *Id.*
19 However, "operating even a passive website in conjunction with something more – conduct
20 directly targeting the forum – is sufficient." *Id.* (internal quotation marks and citations omitted).
21 When considering whether a nonresident defendant has done something more, the Ninth Circuit
22 has "considered several factors, including the interactivity of the defendant's website, the
23 geographic scope of the defendant's commercial ambitions, and whether the defendant
24 individually targeted a plaintiff known to be a forum resident." *Id.* (internal quotation marks and
25 citations omitted).

26 Based on this record, it does not appear that the firm's website is particularly interactive.
27 Bivens states in her declaration that potential clients may submit their name, email address, and
28 telephone number, and ask a question. Bivens Decl. ¶ 4, ECF 71. Bivens responds only to

1 inquiries based on Arizona law involving Arizona elders. *Id.* Bivens practices exclusively in the
2 area of elder law, estate planning, and special needs law. *Id.* ¶ 3. Based on the unauthenticated
3 documents submitted by Elofson, it appears that an individual viewing the law firm’s website can
4 sign up for an online email, and may forward such online email to others. *See* Pl.’s RJN, ECF 87.
5 There is no indication that products may be purchased through the website or that the website
6 offers any special information or incentives to California residents. There is no indication that
7 Bivens’ law firm targets California residents. To the contrary, Elofson states that he “found
8 defendant Bivens through her website,” indicating that he was actively looking for a lawyer to
9 represent him with respect to Milo and searched the Internet for such a lawyer. Bivens states in
10 her declaration that she is licensed to practice law only in Arizona. The “something more”
11 required to find personal jurisdiction based on the website is missing. “If the defendant merely
12 operates a website, even a highly interactive website, that is accessible from, but does not target,
13 the forum state, then the defendant may not be haled into court in that state without offending the
14 Constitution.” *DFSB Kollektive Co. v. Bourne*, 897 F. Supp. 2d 871, 881 (N.D. Cal. 2012)
15 (internal quotation marks and citation omitted).

16 Elofson also asserts that personal jurisdiction may be found based upon Bivens’ purposeful
17 availment of the privileges of doing business in California, as evidenced by Bivens’
18 communications with him and use of documents executed and notarized by him in California. The
19 Ninth Circuit has held that out-of-state legal representation does not, in and of itself, establish
20 purposeful availment of the privilege of conducting business in the forum state. *Sher v. Johnson*,
21 911 F.2d 1357, 1363 (9th Cir. 1990). In *Sher*, Florida attorneys represented a California client in
22 litigation before a Florida court, sent letters and bills to California, and traveled to California
23 several times to meet with their client. Those acts were not sufficient to establish a California
24 court’s personal jurisdiction over the Florida attorneys. *Id.* The Court perceives no meaningful
25 distinction between the facts of *Sher* and those in the present case. Bivens represented Elofson, a
26 California client, in Arizona state court proceedings and communicated with him about those
27
28

1 proceedings.⁵ Thus this case is unlike others in which personal jurisdiction has been found based
2 upon the out-of-state attorneys' representation of a California resident *in California proceedings*.
3 *See, e.g., Dillon v. Murphy & Hourihane, LLP*, No. 14-CV-01908-BLF, 2014 WL 5409040, at *9
4 (N.D. Cal. Oct. 22, 2014).

5 **c. Causing Harm Likely to be Suffered in the Forum State**

6 Elofson argues that Bivens' fraud on the Arizona court caused foreseeable harm to him in
7 California because Bivens' conduct was contrary to his express wishes and because he lost his
8 legal rights as Milo's beneficiary and durable power of attorney. Elofson also argues that he was
9 harmed by Bivens' fees, which harmed his beneficiary interest in Milo's estate. Even assuming
10 that Elofson did suffer harm in California, as discussed above, such harm was not the result of
11 conduct expressly aimed at California. Moreover, such harm to Elofson is insufficient to establish
12 personal jurisdiction of Bivens in California absent other meaningful contacts with the forum
13 state. *See Walden*, 134 S. Ct. at 1122.

14 **2. Arising Out Of**

15 As noted above, the inquiry to be asked when considering the "arising out of" prong is
16 whether there is a direct nexus between the claims and the defendant's contacts with the forum
17 state. *See In re Western States*, 715 F.3d at 742. There is no nexus here, because Elofson's claims
18 for relief from judgment (Claim 1), attorney malpractice (Claim 6), trafficking (Claim 13), and
19 RICO violations (Claim 14) arise from Bivens' representation of him in Arizona and not from any
20 contacts with California.

21 **3. Reasonableness**

22 Elofson has not met his burden to make out a prima facie case against Bivens on the first
23 two *Schwarzenegger* prongs. Accordingly the burden does not shift to Bivens to address the
24 reasonableness of requiring her to defend this suit in California. Moreover, given that this record
25 does not suggest any meaningful contacts between Bivens and California, this Court's exercise of
26 personal jurisdiction over her would be unreasonable.

27 _____
28 ⁵ Because Bivens never represented Elofson in a California court, Elofson's argument that Bivens
put herself within the purview of the California State Bar is without merit.

1 **B. RICO’s “Ends of Justice” Provision**

2 As discussed above, RICO’s “ends of justice” provision does not apply, because the FAC
3 alleges that all coconspirators reside in Arizona such that the United States District Court for the
4 District of Arizona would have personal jurisdiction over all coconspirators.

5 **C. Conclusion**

6 In conclusion, Elofson has neither satisfied his burden of making out a prima facie case of
7 personal jurisdiction under California’s long-arm statute nor demonstrated that personal
8 jurisdiction lies under RICO’s “ends of justice” provision. Consequently, Bivens’ motion to
9 dismiss for lack of personal jurisdiction is GRANTED.

10 **IV. THEUT**

11 Elofson sues Theut, Milo’s court-appointed attorney, for relief from judgment (Claim 2),
12 relief from judgment (Claim 3), attorney malpractice (Claim 7), breach of fiduciary duty (Claim
13 8), financial elder abuse (Claim 11), civil rights violations under § 1983 (Claim 12), trafficking
14 (Claim 13), and RICO violations (Claim 14). Theut seeks dismissal under Rule 12(b)(2) for lack
15 of personal jurisdiction and under Rule 12(b)(3) for improper venue.

16 Theut submits his own declaration stating that he has been an Arizona resident for twenty-
17 nine years, he is licensed to practice law only in Arizona, and his law firm’s only office always has
18 been located in Arizona. Theut Decl. ¶¶ 3-4, ECF 104. Theut also states that he is not licensed to
19 practice law in California, he does not own property in California, his law firm does not maintain a
20 website or advertise in California, and in undertaking Milo’s representation he did not consent to
21 jurisdiction in California. *Id.* ¶¶ 5-7. Finally Theut states that he has been to California only
22 during vacation and only during one or two weeks in his lifetime. *Id.* ¶ 8. Elofson does not
23 dispute those facts, but he asserts that Theut is subject to personal jurisdiction in this Court under
24 California’s long-arm statute and RICO’s “ends of justice” provision. Elofson also argues that
25 venue is proper in this Court.

26 **A. California’s Long-Arm Statute**

27 **1. Purposeful Direction or Availment**

28 Because Elofson’s claims against Theut for attorney malpractice and breach of fiduciary

1 duty sound in tort and his other claims against Theut are more in the nature of torts than contracts,
2 a purposeful direction analysis is appropriate. The test for purposeful direction is discussed as
3 follows.

4 **a. Commission of an Intentional Act**

5 Under the *Calder* effects test, Elofson must demonstrate that Theut committed an
6 intentional act. Elofson does not identify any intentional act committed by Theut in his opposition
7 to Theut’s motion. To the contrary, he asserts in his brief that “Theut did nothing to intervene”
8 when Scaringelli and McCollum were “trafficking” Milo. Pl.’s Opp. at 11, ECF 124. Elofson also
9 asserts that by aiding and abetting Scaringelli and McCollum, “Theut injected himself into the
10 forum state of California, under *Walden*, engaging the social services function of Monterey
11 County.” *Id.* at 12. Elofson does not actually state that Theut spoke to any employee of the
12 Monterey County Social Services department. Nor does he allege as much in his FAC. All the
13 contacts with Monterey County personnel are alleged to have been made by McCollum and
14 Scaringelli.

15 Because Elofson has the initial burden of making out a prima facie case with respect to
16 purposeful direction, his failure to articulate any commission of an intentional act by Theut is fatal
17 to his assertion of specific jurisdiction over Theut.

18 **B. RICO’s “Ends of Justice” Provision**

19 As discussed above, RICO’s “ends of justice” provision does not apply, because the FAC
20 alleges that all coconspirators reside in Arizona such that the United States District Court for the
21 District of Arizona would have personal jurisdiction over all coconspirators.

22 **C. Conclusion**

23 In conclusion, Elofson has neither satisfied his burden of making out a prima facie case of
24 personal jurisdiction under California’s long-arm statute nor demonstrated that personal
25 jurisdiction lies under RICO’s “ends of justice” provision. Consequently, Theut’s motion to
26 dismiss for lack of personal jurisdiction is GRANTED. In light of this ruling, the Court need not
27 reach Theut’s alternative motion to dismiss for improper venue.
28

1 **V. MUDD**

2 Elofson sues Mudd, the Monterey County Adult Protective Services employee who
3 allegedly brought six police officers to remove Milo from Elofson’s residence in February 2015,
4 only for violation of civil rights under § 1983 (Claim 16). Mudd seeks dismissal under Federal
5 Rule of Civil Procedure 12(b)(6), arguing that the FAC fails to allege facts sufficient to state a
6 claim upon which relief may be granted and that it appears on the face of the FAC that he is
7 entitled to qualified immunity.

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

9 “A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a
10 claim upon which relief can be granted ‘tests the legal sufficiency of a claim.’” *Conservation*
11 *Force v. Salazar*, 646 F.3d 1240, 1241-42 (9th Cir. 2011) (quoting *Navarro v. Block*, 250 F.3d
12 729, 732 (9th Cir. 2001)). When determining whether a claim has been stated, the Court accepts
13 as true all well-pled factual allegations and construes them in the light most favorable to the
14 plaintiff. *Reese v. BP Exploration (Alaska) Inc.*, 643 F.3d 681, 690 (9th Cir. 2011). However, the
15 Court need not “accept as true allegations that contradict matters properly subject to judicial
16 notice” or “allegations that are merely conclusory, unwarranted deductions of fact, or
17 unreasonable inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008)
18 (internal quotation marks and citations omitted). While a complaint need not contain detailed
19 factual allegations, it “must contain sufficient factual matter, accepted as true, to ‘state a claim to
20 relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*
21 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible when it “allows the
22 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*

23 Claim 16 alleges that Mudd “used the power of the government, Adult Protective Service,
24 which is funded by the United States, to falsely imprison Milo Elofson and deprive him of his
25 liberty . . . without Due Process of Law under the 14th Amendment of the U.S. Constitution.”
26 FAC ¶ 647, ECF 29. Claim 16 goes on to allege that “in sequestering Milo Elofson from his only
27 living family member, Greg Elofson, Steven Mudd violated Greg Elofson’s rights to Freedom of
28 Association under the 14th Amendment of the United States Constitution.” *Id.* ¶ 648.

1 To the extent that Elofson seeks redress for Milo’s alleged false imprisonment, Mudd
2 requests that the Court take judicial notice of documents filed in the Arizona state court. *See*
3 Mudd’s RJN, ECF 48-1. That request is granted. *See Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*,
4 442 F.3d 741, 746 n.6 (9th Cir. 2006) (“We may take judicial notice of court filings and other
5 matters of public record.”). The Arizona filings show that Elofson did not have legal custody of
6 Milo when Mudd allegedly falsely imprisoned him; Elofson had removed Milo from Arizona to
7 California in violation of court orders. *See* Mudd’s RJN, ECF 48-1. Accordingly, because
8 Elofson was not Milo’s conservator at the time in question, and did not have legal custody of
9 Milo, he lacks standing to bring a § 1983 claim on Milo’s behalf for false imprisonment without
10 due process of law. *See Collins v. West Hartford Police Dep’t*, 324 Fed. App’x 137, 139 (2d Cir.
11 2009). Accordingly, Mudd’s motion to dismiss Claim 16 to the extent it is based on Milo’s
12 alleged false imprisonment is GRANTED.

13 To the extent that Elofson seeks redress for deprivation of Milo’s company, “[t]he
14 substantive due process right to family integrity or to familial association is well established.”
15 *Rosenbaum v. Washoe Cnty.*, 663 F.3d 1071, 1079 (9th Cir. 2011). A child may assert a
16 Fourteenth Amendment due process claim if he or she is deprived of the companionship and
17 society of a parent through official conduct. *Lemire v. Cal. Dep’t of Corrs. & Rehab.*, 726 F.3d
18 1062, 1075 (9th Cir. 2013). “Only official conduct that shocks the conscience is cognizable as a
19 due process violation.” *Id.* (internal quotation marks and citation omitted). As noted above, the
20 records submitted by Mudd establish that Elofson removed Milo from Arizona in violation of state
21 court orders and without permission of Milo’s duly appointed guardian and conservator,
22 McCollum. Under those circumstances, Mudd’s actions – removing Milo from Elofson’s custody
23 and taking him to a medical facility for evaluation – cannot be said to shock the conscience.
24 Elofson argues that “having six police officers storm your home, take away your father to a
25 location unknown, demanding that you do not follow or try to find him, *does* shock the
26 conscience.” Pl.’s Opp. at 11, ECF 56. The Court has not located a single case suggesting that
27 Mudd’s utilization of local authorities to retrieve Milo shocks the conscience. However, even
28 assuming for purposes of this motion that Elofson’s allegations are sufficient to make out a

1 constitutional violation, Mudd is entitled to qualified immunity for the reasons discussed below.

2 **B. Qualified Immunity**

3 Mudd argues that even if the Court were to conclude that Elofson has stated a viable claim
4 for relief, dismissal is appropriate on the ground of qualified immunity. “The doctrine of qualified
5 immunity shields government officials performing discretionary functions from liability for
6 damages ‘insofar as their conduct does not violate clearly established statutory or constitutional
7 rights of which a reasonable person would have known.’” *Dunn v. Castro*, 621 F.3d 1196, 1198-
8 99 (9th Cir. 2010) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). In analyzing
9 whether a government official is entitled to qualified immunity, the court looks at two distinct
10 questions: (1) whether the facts alleged, construed in the light most favorable to the injured party,
11 establish the violation of a constitutional right; and (2) whether the right was clearly established
12 such that a reasonable government official would have known that his conduct was unlawful in the
13 situation he confronted. *Id.* at 1199. Courts may exercise their discretion in deciding “which of
14 the two prongs of the qualified immunity analysis should be addressed first in light of the
15 circumstances in the particular case at hand.” *Pearson v. Callahan*, 555 U.S. 223, 242 (2009).

16 “[T]he Supreme Court has ‘repeatedly . . . stressed the importance of resolving immunity
17 questions at the earliest possible stage in litigation.’” *Dunn*, 621 F.3d at 1199 (quoting *Hunter v.*
18 *Bryant*, 502 U.S. 224, 227 (1991)). “Qualified immunity confers upon officials a right, not merely
19 to avoid standing trial, but also to avoid the burdens of such pretrial matters as discovery.” *Id.*
20 (internal quotation marks and citations omitted). Although the first prong of the qualified
21 immunity analysis calls for a factual inquiry, the second prong “is solely a question of law for the
22 judge.” *Id.* (internal quotation marks and citations omitted). “As to the second prong, the
23 relevant, dispositive inquiry in determining whether a right is clearly established is whether it
24 would be clear to a reasonable officer that his conduct was unlawful in the situation he
25 confronted.” *Id.* (internal quotation marks, citation, and brackets omitted).

26 “A court, when deciding whether there has been a violation of a clearly established right
27 for qualified immunity, must strike the proper balance in defining that right.” *Dunn*, 621 F.3d at
28 1200. If the right is defined too generally, it will bear no relationship to the objective legal

1 reasonably that is the touchstone of the inquiry. *Id.* “[T]he right the official is alleged to have
2 violated must have been “clearly established” in a more particularized, and hence more relevant,
3 sense: The contours of the right must be sufficiently clear that a reasonable official would
4 understand that what he is doing violates that right.” *Id.* (internal quotation marks and citation
5 omitted).

6 Here, the FAC alleges that “Stephanie McCollum and Lawrence Scaringelli made a false
7 report to a government agency, when they reported to Steve Mudd of Monterey County Adult
8 Protective Services that Greg Elofson was responsible for missing monies, taken from Milo
9 Elofson.” FAC ¶ 463, ECF 29. The FAC alleges expressly that Mudd was “[a]cting on Stephanie
10 McCollum’s and Lawrence Scaringelli’s statements” when Mudd “acted to confine Milo Elofson
11 within the Natividad Medical Center.” *Id.* ¶ 464. The Arizona state court documents of which the
12 Court takes judicial notice show that McCollum was Milo’s duly appointed guardian and
13 conservator and that Scaringelli was her counsel. *See* Mudd’s RJN, ECF 48-1. Thus, addressing
14 the second prong of the qualified immunity analysis only, the question presented by Mudd’s
15 motion is whether it was clearly established in February 2015 that an individual who removes an
16 elder relative from his home state in violation of court order, contrary to the wishes of the elder’s
17 court-appointed conservator, has a right to retain physical custody of the elder and be free from the
18 efforts of Adult Protective Services and local law enforcement, acting on the directive of the
19 conservator and on court-approved conservatorship papers, to investigate and obtain a medical
20 evaluation of the elder. Elofson has not cited any cases, and the Court has discovered none,
21 indicating that such right was clearly established. Accordingly, even assuming that Elofson has
22 stated a viable claim against Mudd for a constitutional violation, Mudd is entitled to dismissal
23 based on qualified immunity.

24 **C. Conclusion**

25 Elofson’s only claim against Mudd, Claim 16, fails to state a claim upon which relief may
26 be granted. Moreover it is clear that Mudd is entitled to qualified immunity on Claim 16. Finally,
27 in light of Mudd’s entitlement to qualified immunity, amendment would be futile. Accordingly,
28 Mudd’s motion to dismiss under Rule 12(b)(6) is GRANTED WITHOUT LEAVE TO AMEND.

1 **VI. COMMUNITY HOSPITAL**

2 Elofson sues Community Hospital, located in Ventura County, which barred Elofson from
3 seeing Milo and ultimately returned Milo to his conservator, McCollum, for civil rights violations
4 under § 1983 (Claim 17) and defamation (Claim 18). Community Hospital seeks dismissal for
5 improper venue under Rule 12(b)(3) and failure to state a claim under Rule 12(b)(6).

6 **A. Improper Venue**

7 A defense of improper venue may be raised by motion under Federal Rule of Civil
8 Procedure 12(b)(3). When venue is improper, the court “shall dismiss, or if it be in the interest of
9 justice, transfer such case to any district or division in which it could have been brought.” 28
10 U.S.C. § 1406(a). The plaintiff bears the burden of showing that venue is proper. *See Piedmont*
11 *Label Co. v. Sun Garden Packing Co.*, 598 F.2d 491, 496 (9th Cir. 1979) (“Plaintiff had the
12 burden of showing that venue was properly laid in the Northern District of California.”). “When
13 the plaintiff asserts multiple claims, it must establish that venue is proper as to each claim.” *Kaia*
14 *Foods, Inc. v. Bellafigiore*, 70 F. Supp. 3d 1178, 1183 (N.D. Cal. 2014). “However, where venue
15 exists for the principal claim, federal courts will also adjudicate closely related claims, even if
16 there is no independent source of venue for the related claims.”

17 Venue is governed by 28 U.S.C. § 1391(b), which provides as follows:

18 (b) Venue in general.--A civil action may be brought in—

19 (1) a judicial district in which any defendant resides, if all defendants are residents
20 of the State in which the district is located;

21 (2) a judicial district in which a substantial part of the events or omissions giving
22 rise to the claim occurred, or a substantial part of property that is the subject of the
action is situated; or

23 (3) if there is no district in which an action may otherwise be brought as provided
24 in this section, any judicial district in which any defendant is subject to the court's
personal jurisdiction with respect to such action.

25 28 U.S.C. § 1391(b).

26 Elofson does not argue in his opposition brief that any of these subsections applies here.
27 Subsection (b)(1) clearly does not apply because not all defendants are residents of California, the
28 state in which this judicial district is located. Nor does subsection (b)(2) apply, as the only events

1 described in the FAC which occurred in the Northern District of California are those relating to
2 Defendant Mudd. Those events make up a very small part of the overall circumstances giving rise
3 to this action, which is illustrated by the fact that Mudd is named in only one of the twenty-one
4 claims asserted in the FAC. Consequently, Elofson cannot show that “a substantial part of the
5 events” giving rise to the action occurred in this judicial district. Finally, with respect to (b)(3),
6 Elofson bears the burden of establishing that venue is proper on the basis that there is no other
7 judicial district in which venue would be proper. *See Piedmont Label Co.*, 598 F.2d at 496.
8 Elofson has not attempted to meet this burden. Instead, he argues that venue is proper under
9 RICO’s “ends of justice” provision. That argument is without merit for the reasons discussed
10 above.

11 The Court has considered whether it would be more appropriate to dismiss the action or
12 transfer it to the United States District Court for the Central District of California, the district in
13 which Community Hospital is located. If the only claims remaining in the case were asserted
14 against Community Hospital, the Court would be inclined to transfer the case. However, Elofson
15 also has claims remaining against McCollum, an Arizona resident who may not be amenable to
16 suit in the Central District of California.⁶ The Court therefore concludes that transfer of the entire
17 action to the Central District would be inappropriate, and that dismissal is warranted under the
18 particular facts of this case.

19 Accordingly, Community Hospital’s motion to dismiss for improper venue is GRANTED.

20 **B. Failure to State a Claim**

21 In light of its ruling that Community Hospital is entitled to dismissal for improper venue,
22 the Court need not address Community Hospital’s motion to dismiss for failure to state a claim.

23 **C. Conclusion**

24 Community Hospital’s motion to dismiss for improper venue is GRANTED.

25

26

27 ⁶ Since McCollum has not moved to dismiss the FAC, the Court has not had occasion to determine
28 whether she is subject to personal jurisdiction in California or where venue might be proper with
respect to claims against her. It appears that McCollum has not yet been served with the
Summons and FAC.

1 **VII. SCARINGELLI**

2 Elofson sues Scaringelli, counsel for Milo’s guardian and conservator, McCollum, for
3 relief from Arizona state court orders (Claims 3 and 4), breach of fiduciary duty (Claim 8),
4 defamation (Claim 9), negligent infliction of emotional distress (Claim 10), financial elder abuse
5 (Claim 11), violation of civil rights under § 1983 (Claims 12 and 19), trafficking (Claim 13),
6 RICO violations (Claim 14), abuse of process (Claim 15), and wire fraud (Claim 21). Scaringelli
7 seeks dismissal for lack of subject matter jurisdiction under Federal Rule of Civil Procedure
8 12(b)(1) and for lack of personal jurisdiction under Rule 12(b)(2). He also brings a special motion
9 to strike under California Code of Civil Procedure § 425.16.

10 Scaringelli submits his own declaration stating that he resides in Arizona, he is admitted to
11 practice law only in Arizona, and he has never practiced law in a state other than Arizona.
12 Scaringelli Decl. ¶ 25, ECF 107. He states that he does not own property in California, operate a
13 business in California, or advertise in California. *Id.* ¶ 26. His contacts with California are limited
14 his residency there between 1988 and 1991 while he attended law school. *Id.* ¶ 25. Elofson does
15 not dispute any of those facts, but he argues that federal subject matter exists and that Scaringelli
16 is subject to personal jurisdiction in this Court under California’s long-arm statute and RICO’s
17 “ends of justice” provision.

18 **A. Subject Matter Jurisdiction**

19 A party may challenge the Court’s subject matter jurisdiction by bringing a motion to
20 dismiss under Federal Rule of Civil Procedure 12(b)(1). “A Rule 12(b)(1) jurisdictional attack
21 may be facial or factual.” *Safe Air For Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004).
22 In a facial attack, the movant asserts that the lack of subject matter jurisdiction is apparent from
23 the face of the complaint. *Id.* In a factual attack, the movant disputes the truth of allegations that
24 otherwise would give rise to federal jurisdiction. *Id.* “In resolving a factual attack on jurisdiction,
25 the district court may review evidence beyond the complaint without converting the motion to
26 dismiss into a motion for summary judgment.” *Id.* “The court need not presume the truthfulness
27 of the plaintiff’s allegations.” *Id.* Once the moving party has presented evidence demonstrating
28 the lack of subject matter jurisdiction, the party opposing the motion must present affidavits or

1 other evidence sufficient to establish subject matter jurisdiction. *Id.* Such evidence must be
 2 admissible. *Ou-Young v. Rea*, No. 5:13-CV-03118-PSG, 2013 WL 5934674, at *2 (N.D. Cal.
 3 Nov. 4, 2013) (citing *Ass’n of Am. Med. Colls. v. United States*, 217 F.3d 770, 778 (9th Cir.
 4 2000)).

5 Scarengelli’s challenge to subject matter jurisdiction appears to be a factual one, as he
 6 submits a significant amount of documentary evidence for the Court’s consideration. Scaringelli
 7 asks the Court to take judicial notice of documents filed in the United States District Court for the
 8 Central District of California, where Elofson previously litigated claims similar to those brought
 9 here. *See Scaringelli RJN*, ECF 108. That request is granted. *See Reyn’s Pasta Bella, LLC v.*
 10 *Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) (“We may take judicial notice of court
 11 filings and other matters of public record.”). The Court also considers the documents attached to
 12 Scaringelli’s declaration, which are properly authenticated. *See Scaringelli Decl.*, ECF 107.
 13 Taken together, those documents give a fairly detailed picture of Scaringelli’s involvement in the
 14 Arizona guardianship and conservatorship proceedings in his role as counsel for McCollum.

15 Elofson in turn asks the Court to take judicial notice of numerous documents that he
 16 attaches to his opposition brief. *See Pl.’s Opp.*, ECF 122, *Pl.’s RJN*, ECF 123. Those documents
 17 are not properly authenticated. Thus they are not considered by the Court except insofar as they
 18 are court records of which the Court may take judicial notice. *See Reyn’s Pasta Bella*, 442 F.3d at
 19 746 n.6.

20 Turning to the substance of Scaringelli’s claim, he asserts that this record makes clear that
 21 the present action is a de facto appeal of the numerous Arizona state court rulings that were
 22 adverse to Elofson. Scaringelli points out that this Court previously ruled that it lacked subject
 23 matter jurisdiction over the federal claims alleged in Elofson’s original complaint, all of which
 24 sought relief from Arizona state court orders. *See Order Denying Plaintiff’s Motion for*
 25 *Appointment of Counsel; Denying Plaintiff’s Application for a Temporary Restraining Order; and*
 26 *Granting Plaintiff’s Motion for Leave to File an Amended Complaint (“Prior Order”)*, ECF 23.
 27 The Court’s ruling was based on the *Rooker-Feldman* doctrine, under which a federal district court
 28 lacks authority to review the final determinations of a state court in judicial proceedings. *See Dist.*

1 of *Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476 (1983); *Rooker v. Fidelity Trust Co.*,
2 263 U.S. 413, 415-16 (1923). Scaringelli quotes extensively from the Prior Order, finding a
3 *Rooker-Feldman* bar with respect to the complaint’s federal claims and indicating that absent a
4 viable federal claim the Court would decline to exercise supplemental jurisdiction over the
5 complaint’s state law claims. See Scaringelli Mot. at 2-3. Although Elofson subsequently filed
6 the operative FAC, Scaringelli contends that the amendments do not change the nature of
7 Elofson’s claims.

8 The Court agrees. Elofson has added what amounts to a scholarly discussion of the
9 *Rooker-Feldman* doctrine to his pleading. However, his thorough discussion of many cases
10 addressing that doctrine does not alter this Court’s conclusion that all of his federal claims are
11 barred by the doctrine. The purpose of the *Rooker-Feldman* doctrine “is to protect state judgments
12 from collateral federal attack. Because district courts lack power to hear direct appeals from state
13 court decisions, they must decline jurisdiction whenever they are ‘in essence called upon to review
14 the state court decision.’” *Doe & Assocs. Law Offices v. Napolitano*, 252 F.3d 1026, 1030 (9th
15 Cir. 2001) (quoting *Feldman*, 460 U.S. at 482 n.16). The *Rooker-Feldman* doctrine precludes not
16 only review of decisions of the state’s highest court, but also those of its lower courts. See
17 *Dubinka v. Judges of Superior Court*, 23 F.3d 218, 221 (9th Cir. 1994).

18 “*Rooker-Feldman* may also apply where the parties do not directly contest the merits of a
19 state court decision, as the doctrine prohibits a federal district court from exercising subject matter
20 jurisdiction over a suit that is a de facto appeal from a state court judgment.” *Reusser v. Wachovia*
21 *Bank, N.A.*, 525 F.3d 855, 859 (9th Cir. 2008) (internal quotation marks and citation omitted). “A
22 federal action constitutes such a de facto appeal where claims raised in the federal court action are
23 inextricably intertwined with the state court’s decision such that the adjudication of the federal
24 claims would undercut the state ruling or require the district court to interpret the application of
25 state laws or procedural rules.” *Id.* (internal quotation marks and citation omitted).

26 As discussed above, Elofson’s claims against most defendants are subject to dismissal for
27 lack of personal jurisdiction, failure to state a claim, and improper venue. All of his remaining
28 federal claims – those asserted against Scaringelli and those asserted against McCollum – depend

1 upon the asserted invalidity of the Arizona state court orders regarding Milo’s guardianship and
2 conservatorship. Claims 3 and 4, brought under Federal Rule of Civil Procedure 60, directly
3 request that this Court set aside the Arizona state court orders as null and void. Claims 12 and 19,
4 asserted under § 1983, allege that the Arizona state court proceedings deprived Plaintiff and Milo
5 of due process and free association rights protected under the Fourteenth Amendment. Claim 13
6 for trafficking and Claim 14 for RICO violations allege that Defendants’ control over Milo’s
7 assets and person pursuant to the Arizona state court orders constitute human trafficking and
8 racketeering activity. Claim 21 for wire fraud alleges that McCollum and Scaringelli committed
9 wire fraud when they asserted McCollum’s rights as Milo’s guardian and conservator in
10 communications to Mudd and Community Hospital. All of these claims are inextricably
11 intertwined with the Arizona state court proceedings and resulting orders and therefore are subject
12 to dismissal under the *Rooker-Feldman* doctrine for lack of subject matter jurisdiction..

13 Having concluded that all federal claims remaining in the FAC are subject to dismissal, the
14 Court declines to exercise supplemental jurisdiction over the state law claims asserted in the FAC.
15 “A district court ‘may decline to exercise supplemental jurisdiction’ if it ‘has dismissed all claims
16 over which it has original jurisdiction.’” *Sanford v. MemberWorks, Inc.*, 625 F.3d 550, 561 (9th
17 Cir. 2010) (quoting 28 U.S.C. § 1367(c)(3)). “[I]n the usual case in which all federal-law claims
18 are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction
19 doctrine – judicial economy, convenience, fairness, and comity – will point toward declining to
20 exercise jurisdiction over the remaining state-law claims.” *Id.* (quoting *Carnegie-Mellon Univ. v.*
21 *Cohill*, 484 U.S. 343, 350 n. 7 (1988)). Here, the case is in its early stages. The Court has issued
22 several orders in the case denying Elofson’s motions with respect to appointment of counsel,
23 temporary injunctive relief, and the like. However, the present order is the first to address motions
24 to dismiss. Under these circumstances, the Court perceives no reason to exercise supplemental
25 jurisdiction over Elofson’s state law claims.

26 **B. Personal Jurisdiction and Special Motion to Strike**

27 In light of the Court’s determination that Scaringelli is entitled to dismissal for lack of
28 subject matter jurisdiction, the Court need not reach his alternative motion to dismiss for lack of

1 personal jurisdiction. Moreover, Scaringelli's papers indicate that if it dismisses the claims
2 against him, the Court need not reach his special motion to strike under California Code of Civil
3 Procedure § 425.16. The Court therefore deems that motion to be withdrawn.

4 **C. Conclusion**

5 Scaringelli's motion to dismiss for lack of subject matter jurisdiction is GRANTED.

6 **VIII. LEAVE TO AMEND**

7 The Court has reviewed carefully all of Elofson's arguments, which he has presented quite
8 articulately in his briefing and at the hearing on this matter, and has given careful consideration to
9 whether Elofson might be able to cure the defects noted herein if granted leave to amend. The
10 Court concludes that he could not. The Court has determined that it lacks personal jurisdiction
11 over most of the defendants, and there is no indication on this record that jurisdictional discovery
12 could reveal facts that would alter that determination. As to the two defendants over whom the
13 Court clearly has personal jurisdiction, Mudd and Community Hospital, Mudd has established
14 entitlement to dismissal based on qualified immunity, a defect that could not be cured by
15 amendment. Community Hospital has established entitlement to dismissal for lack of proper
16 venue, and there is no indication on this record that amendment could alter that analysis. Finally,
17 Scaringelli has demonstrated that all of the remaining federal claims in the FAC are barred by the
18 *Rooker-Feldman* doctrine, again, a defect that could not be cured by amendment. Accordingly,
19 leave to amend is DENIED as to all moving parties.

20 It is apparent from the record and from the passion with which Elofson has pursued this
21 lawsuit that he cared deeply for his father, Milo. The Court has no doubt that he believes sincerely
22 that injustice has been done and that redress is due. This Court simply is not the proper forum for
23 Elofson's efforts.

24 **IV. ORDER**

25 For the reasons discussed above,

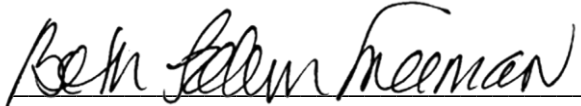
26 (1) Defendant Dougherty-Elofson's motion to dismiss for lack of personal jurisdiction
27 is GRANTED WITHOUT LEAVE TO AMEND;

28 (2) Defendant Bivens' motion to dismiss for lack of personal jurisdiction is

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- GRANTED WITHOUT LEAVE TO AMEND;
- (3) Defendant Theut’s motion to dismiss for lack of personal jurisdiction is
GRANTED WITHOUT LEAVE TO AMEND;
- (4) Defendant Mudd’s motion to dismiss on the basis of qualified immunity is
GRANTED WITHOUT LEAVE TO AMEND;
- (5) Defendant Community Hospital’s motion to dismiss for improper venue is
GRANTED WITHOUT LEAVE TO AMEND;
- (6) Defendant Scaringelli’s motion to dismiss for lack of subject matter jurisdiction is
GRANTED WITHOUT LEAVE TO AMEND.

Dated: February 13, 2017


BETH LABSON FREEMAN
United States District Judge