

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JOSEPH NADOLSKI,

Plaintiff,

vs.

MARY WINCHESTER, et al.,

Defendants.

CASE NO. 13-CV-2370-LAB-DHB
ORDER ON MOTION TO DISMISS

Plaintiff Joseph Nadolski alleges that his constitutional rights were violated during a dispute in family court, and he has sued a number of parties under 42 U.S.C. § 1983 whom he believes are responsible. Now before the Court are their motions to dismiss.

I. Introduction

On August 22, 2012, Nadolski's ex-wife obtained a TRO against him in San Diego Superior Court. The TRO, which was issued by Defendant Judge Gregory Pollack, restricted Nadolski's contact with his ex-wife and two children. It also required him to surrender his firearms. Nadolski's claims arise out of his dissatisfaction with this TRO.

Nadolski alleges that during the TRO hearing Defendant Victoria Rothman, who was the attorney for Nadolski's ex-wife, and Defendant Mary Winchester, who was an investigator for Defendant Department of Health and Human Services (HHS), provided "false and histrionic" testimony that led to the TRO being granted. (Compl. ¶ 28.) Nadolski also alleges

1 that, prior to the hearing, a mediator who Nadolski has identified as John Doe interviewed
2 the children and helped prepare false and unethical declarations.

3 Nadolski also alleges that HHS's investigation of alleged child abuse wasn't thorough.
4 Winchester conducted the investigation, and Defendants Asoera and Weathersby
5 supervised her. Nadolski maintains that their supervision was insufficient, and that
6 Defendant Nick Macchione, the Director of the Department of Health and Human Resources,
7 failed to staff the Department with competent investigators. Finally, he claims that "The
8 Superior Court of California, San Diego County also did not provide the Plaintiff with the
9 same resources it provides to protect Plaintiff's constitutional rights the court deprived him
10 of, but provided resources to aid in violating those rights." (Compl. ¶ 2.) Nadolski doesn't
11 specify how the court's resources were unfairly distributed.

12 On September 11, 2012, Judge Pollack conducted a second hearing and concluded
13 that a permanent restraining order wasn't necessary. Nadolski's jumble of allegations also
14 include that another judge, Defendant Judge Trentacosta, violated his constitutional rights,
15 but he never explains how or identifies what role Judge Trentacosta played in the TRO
16 process. (Compl. ¶ 49.)

17 **II. Legal Standard**

18 A 12(b)(6) motion to dismiss for failure to state a claim challenges the legal sufficiency
19 of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). The Court must accept
20 all factual allegations as true and construe them in the light most favorable to Nadolski.
21 *Cedars-Sinai Med. Ctr. v. Nat'l League of Postmasters of U.S.*, 497 F.3d 972, 975 (9th Cir.
22 2007). To defeat the Defendants' motions to dismiss, Nadolski's factual allegations need't
23 be detailed, but they must be sufficient to "raise a right to relief above the speculative
24 level" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). That is, "some threshold
25 of plausibility must be crossed at the outset" before a case can go forward. *Id.* at 558
26 (internal quotations omitted). A claim has "facial plausibility when the plaintiff pleads factual
27 content that allows the court to draw the reasonable inference that the defendant is liable for
28 the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "The plausibility

1 standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility
2 that a defendant has acted unlawfully.” *Id.*

3 While the Court must draw all reasonable inferences in Nadolski’s favor, it need not
4 “necessarily assume the truth of legal conclusions merely because they are cast in the form
5 of factual allegations.” *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir.
6 2003) (internal quotations omitted). In fact, the Court does not need to accept any legal
7 conclusions as true. *Iqbal*, 556 U.S. at 678. A complaint does not suffice “if it tenders naked
8 assertions devoid of further factual enhancement.” *Id.* (internal quotations omitted). Nor
9 does it suffice if it contains a merely formulaic recitation of the elements of a cause of action.
10 *Twombly*, 550 U.S. at 555.

11 Because Nadolski is proceeding *pro se*, the Court construes his pleadings liberally,
12 and affords him the benefit of any doubt. See *Karim-Panahi v. L.A. Police Dep’t*, 839 F.2d
13 621, 623 (9th Cir. 1988). Of course, “[p]ro se litigants must follow the same rules of
14 procedure that govern other litigants.” *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987).

15 **III. Discussion**

16 Nadolski claims that, by their actions, each Defendant violated his constitutional rights
17 under § 1983. Three separate motions to dismiss have been filed. The first is from Judge
18 Pollack, Judge Trentacosta, and the California Superior Court. They argue that Nadolski’s
19 claims are barred by the *Rooker-Feldman* Doctrine, and that they are immune from suit. The
20 second motion to dismiss is from HHS, Winchester, Asoera, Macchione, Weathersby, and
21 San Diego County. They also argue that Nadolski’s claim is barred by the *Rooker-Feldman*
22 Doctrine, and also that he has failed to plead a sufficient cause of action under § 1983. The
23 final motion to dismiss is from Rothman, who makes the same two arguments.

24 The Court finds three problems with Nadolski’s claims. First, the claims are
25 inadequately pled. All that is clear from Nadolski’s complaint is that he believes the issuance
26 of the TRO violated his rights. The problem might be corrected with an amended complaint,
27 but that leads to a discussion of the other two problems. These are: (1) that his claims are
28 barred by the *Rooker-Feldman* doctrine; and (2) that Judge Pollack, Judge Trentacosta, and

1 the California Superior Court enjoy immunity from being sued on account of their judicial
2 functions.

3 **A. Failure to Plead a Sufficient Cause of Action Under 42 U.S.C. § 1983**

4 Nadolski alleges that the Defendants “violated his constitutional rights under the color
5 of law.” (Compl. ¶2.) The claim lacks specificity. Section 1983 is not a source of substantive
6 rights. Rather, it creates liability for those who deprive another of rights or privileges secured
7 by the U.S. Constitution or federal law while acting under the color of state law. *Albright v.*
8 *Oliver*, 510 U.S. 266, 271 (1994); *Wood v. Ostrander*, 879 F.2d 583, 587 (9th Cir. 1992).

9 In this case, Nadolski has vaguely alleged that his Second, Fourth, Fifth, and
10 Fourteenth Amendment rights were violated, but it’s unclear how he arrives at those claims
11 from his factual contentions, namely that Winchester and Rothman made false and
12 damaging statements, that The Department of Health and Human Services has a generally
13 inadequate investigations process, and that the Superior Court did not provide him with the
14 same resources that it provided to others. His complaint fails to make the connection. The
15 claims he alleges against each Defendant simply re-allege and incorporate by reference the
16 preceding facts and then state ““Plaintiff claims damages under 42 U.S.C. § 1983 for the
17 injuries set forth above against [Defendant] for violation of his constitutional rights under
18 color of law.” This is conclusory form language that is insufficient for pleading purposes.
19 *Iqbal*, 556 U.S. 662 at 663 (“[T]he tenet that a court must accept a complaint's allegations
20 as true is inapplicable to threadbare recitals of a cause of action's elements, supported by
21 mere conclusory statements.”).

22 Even if the Court disregards the conclusory nature of Nadolski’s claims, and instead
23 attempts to piece his claims together for him, the facts that Nadolski alleges are similarly
24 conclusory and unsupported. For instance, Nadolski explains that Defendant Winchester
25 sent him a letter indicating that the charge of general abuse against him was substantiated,
26 but that the letter was silent about the other charges against him that were investigated.
27 (Compl. ¶31.) Nadolski claims that this indicates “clearly Ms Winchester continues to abuse
28 her power. She clearly is trying to falsely testify or mislead the court in this case and

1 continues to infringe on the constitutional rights of this family.” (Compl. ¶ 31). But that
2 doesn’t logically follow. Nadolski has simply arrived at the legal conclusion that Winchester
3 intentionally misled the family court and infringed upon the constitutional rights of him and
4 his family without providing a clear factual basis for the charge. Similarly, Nadolski’s
5 assertion that “The Superior Court of California, San Diego County also did not provide the
6 Plaintiff with the same resources it provides to protect Plaintiff’s constitutional rights the court
7 deprived him of, but provided resources to aid in violating those rights” is completely bare.
8 (Compl. ¶ 2.) Nadolski offers no facts that explain what resources he was denied, or how
9 the resources he was given were comparatively inadequate.

10 Even if Nadolski alleged a more robust set of facts, his claims would still be
11 problematic. For example, there is no legal remedy available to Nadolski for his claims that
12 Defendants Rothman and Winchester testified falsely, because a “false testimony”
13 constitutional claim does not exist under 42 U.S.C. § 1983. See *Briscoe v. LaHue*, 460 U.S.
14 325, 327 n.1 (1983) (“The Court . . . has not held that the false testimony of a police officer
15 in itself violates constitutional rights.”). Furthermore, the claim that HHS has an inadequate
16 investigations process also presents no clearly cognizable constitutional violation.

17 In sum, the Court agrees that Nadolski’s claims are inadequately pled, which subjects
18 them to dismissal under Fed. R. Civ. P. 12(b)(6).

19 **B. *Rooker-Feldman Doctrine***

20 Were the Court to give Nadolski leave to amend his complaint to correct the noted
21 deficiencies, there is still a larger, jurisdictional problem. Under the *Rooker-Feldman*
22 doctrine, federal courts lack subject matter jurisdiction to hear what are in essence appeals
23 from state court judgments. See *Exxon Mobil Corp. v. Saudi Basic Indus Corp.*, 544 U.S.
24 280, 283-84 (2005); *Cooper v. Ramos*, 704 F.3d 772, 778 (9th Cir. 2012) (“It is a forbidden
25 de facto appeal from state-court judgment, under *Rooker–Feldman* doctrine, when plaintiff
26 in federal district court complains of a legal wrong allegedly committed by the state court,
27 and seeks relief from the judgment of that court.”). Furthermore, If claims raised in the
28 federal court action are “inextricably intertwined” with the state court’s decision such that the

1 adjudication of the federal claims would undercut the state ruling or require the district court
2 to interpret the application of state laws, then the federal complaint must be dismissed for
3 lack of subject matter jurisdiction. *Bianchi v. Rylaarsdam*, 334 F.3d 895, 898 (9th Cir. 2003).
4 This doctrine even applies when the challenge to the state court's decision involves federal
5 constitutional issues. *Robinson v. Ariyoshi*, 753 F.2d 1468, 1471–72 (9th Cir.1985).

6 In this case, Nadolski seeks damages and injunctive relief based on the outcome of
7 proceedings in San Diego Superior Court. This falls squarely into the jurisdictional
8 prohibition of *Rooker-Feldman*. It is well-established that when a plaintiff brings a claim to
9 federal court that challenges the outcome of proceedings in family court, such a claim is
10 barred by the doctrine. See *Phifer v. City of New York*, 289 F.3d 49, 57 (2d Cir. 2002)
11 (holding that a mother's constitutional claims attacking a custody decision made in state
12 court were barred by the *Rooker-Feldman* doctrine); *Mellema v. Washoe County Dist. Atty*,
13 2012 WL 5289345 at *2 (E.D. Cal. Oct. 23, 2012) (holding that a plaintiff's claims against the
14 county seeking cancellation of child support payments and a reversal of a custody decision
15 in state court were barred by the *Rooker-Feldman* doctrine); *Prater v. City of Philadelphia*
16 *Family Court*, 2014 WL 2700095 at *2 (3d Cir. June 16, 2014) (holding that a father's claims
17 against the family court that refused to give him custody of his child were barred by the
18 *Rooker-Feldman* doctrine); *Stratton v. Mecklenburg County Dept. of Social Services*, 521
19 F. App'x. 278, 292 (4th Cir. 2013) (holding that the plaintiff's constitutional claims were, in
20 essence, an attempt to reverse the state court decision that required him to relinquish
21 custody of his children, and thus were barred by the *Rooker-Feldman* doctrine). Nadolski's
22 claims are a similar attempt to challenge, here in federal court, an adverse family court ruling
23 in state court. These claims are barred by the *Rooker-Feldman* doctrine.

24 C. Eleventh Amendment and Judicial Immunity

25 In addition to Nadolski's claims being barred by the *Rooker-Feldman* doctrine, the
26 claims against the California Superior Court, Judge Pollack, and Judge Trentacosta are
27 barred due to their immunity.

28 //

1 The Eleventh Amendment bars lawsuits against an arm of the state under principles
2 of sovereign immunity. *Franceschi v. Schwartz*, 57 F.3d 828, 831 (9th Cir. 1995). California
3 superior courts are classified as arms of the state, and therefore are protected by this
4 immunity. *Simmons v. Sacramento County Superior Court*, 318 F.3d 1156, 1161 (9th Cir.
5 2003); *Greater Los Angeles Council of Deafness, Inc. v. Zolin*, 812 F.2d 1103, 1110 (9th Cir.
6 1987).

7 Judicial officers are also, for the most part, immune from civil liability for acts
8 performed in their judicial capacity. *Mireles v. Waco*, 502 U.S. 9 (1991) (per curiam); *Mullis*
9 *v. United States. Bankr. Ct.*, 828 F.2d, 1385, 1394 (9th Cir. 1987). A judge can be
10 considered to be acting in his judicial capacity when the act is a function normally performed
11 by a judge, and the plaintiff dealt with the judge in his or her judicial capacity. *Stump v.*
12 *Sparkman*, 435 U.S. 349, 362 (1978). The only situations in which this immunity does not
13 apply are when the judge's actions are (1) nonjudicial; or (2) judicial in nature, but taken in
14 the complete absence of jurisdiction. In this case, Nadolski dealt with Judge Pollack solely
15 in his judicial capacities at the family court proceedings. It is unclear from the complaint what
16 the nature of Judge Trentacosta's actions were that caused Nadolski dissatisfaction, but the
17 Court will assume that any dealings between Nadolski and Judge Trentacosta were solely
18 judicial. Judicial immunity, therefore, bars Nadolski's claims against Judge Pollack and
19 Judge Trentacosta.

20 **D. Second Amendment Claim**

21 Nadolski, in his prayer for relief, seeks a finding that the "Lautner" Amendment, which
22 presumably means the Lautenberg Amendment, is unconstitutional. The Lautenberg
23 Amendment bans possession of firearms by individuals who have had a restraining order
24 issued against them because of accusations of domestic violence. 18 U.S.C. § 922(g)(9).
25 As a result of the TRO issued against Nadolski, officers forced him to surrender or sell his
26 firearms, and Nadolski is unhappy with this. He has failed, however, to name a proper
27 defendant for this claim, and instead he merely requests that the Court "[e]nter an order
28 declaring the Lautner amendment unconstitutional and portions of California law 273.5. The

1 statues forcing the sale or confiscation of firearms without due process violates the 2nd
2 amendment of the United States.” If Nadolski believes his Second Amendment rights have
3 been violated, he must bring a proper claim against the proper defendant, rather than
4 request a declaratory constitutional finding in his prayer for relief.

5 **IV. Conclusion**

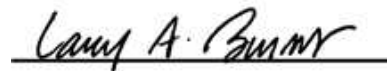
6 Nadolski’s complaint fails to state a claim against any of the listed Defendants for
7 which relief may be granted. His claims under 42 U.S.C. § 1983 does not allege any violation
8 of his constitutional rights by Defendants Winchester, Weathersby, Rothman, Asoera, Doe,
9 Macchione, San Diego County, and the Department of Health and Human Services, and
10 even if his complaint were amended to allege more specific facts, his claims would still be
11 barred by the *Rooker-Feldman* Doctrine. Their motions to dismiss are therefore **GRANTED**
12 and Nadolski’s claims against these Defendants are **DISMISSED WITH PREJUDICE**. The
13 Superior Court of California is protected by Eleventh Amendment immunity and Judge
14 Pollack and Judge Trentacosta are protected by judicial immunity. Their motions are also
15 **GRANTED** and Nadolski’s claims against these Defendants are **DISMISSED WITH**
16 **PREJUDICE**.

17

18 **IT IS SO ORDERED.**

19 DATED: August 6, 2014

20



21

HONORABLE LARRY ALAN BURNS
United States District Judge

22

23

24

25

26

27

28