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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 DR. JUAN BRIBIESCA, M.D., C.C.P.,
12 Plaintiff,
13 v.
14 PROCOPIO, CORY, HARGREAVES,
15 AND SAVITCH, LLP, et al.,
16 Defendants.

Case No.: 3:16-cv-01225-BEN-WVG

**ORDER GRANTING MOTIONS TO
DISMISS AND DISMISSING CASE
FOR LACK OF JURISDICTION**

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19 Plaintiff Dr. Juan Bribiesca (“Plaintiff” or “Bribiesca”), proceeding pro se, filed a
20 complaint on the basis of federal question jurisdiction under the Racketeering and
21 Corrupt Organizations (“RICO”) Act of 1970 against twenty-seven (27) defendants
22 related to events that occurred at Plaintiff’s former place of employment, which he has
23 already litigated to final judgment in state court. (Compl., ECF No. 1.) Presently before
24 the Court are nine (9) motions to dismiss:

- 25 (1) Motion to Dismiss for failure to state a claim under Federal Rule of Civil
26 Procedure 12(b)(6), filed by Defendants Chris Van Gorder; Gary Fybel; Lisa
27 Thakur; Brad Ellis; Scripps Health dba Scripps Memorial Hospital, La Jolla;
28 John Spinosa, M.D.; Richard Unger, M.D.; Irma Flores; Steve Peterson; and

1 Aimee Dovidio [hereinafter “Scripps Defendants”] (Scripps MTD, ECF No.
2 5);

3 (2) Motion to Dismiss pursuant to Federal Rules of Civil Procedure 8, 12(b)(1),
4 12(b)(6), and 41(b), filed by Defendant The Honorable Randa Trapp, Judge
5 of the Superior Court of California, County of San Diego (J. Trapp MTD,
6 ECF No. 10);

7 (3) Amended Motion to Dismiss for failure to state a claim under Federal Rule
8 of Civil Procedure 12(b)(6), filed by Defendant Mark Kalish, M.D. (Kalish
9 Am. MTD, ECF No. 11);

10 (4) Amended Motion to Strike Plaintiff’s Complaint under California’s anti-
11 SLAPP statute, filed by Defendant Mark Kalish, M.D. (Kalish Am. Mot. to
12 Strike, ECF No. 12);

13 (5) Motion to Dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and
14 12(b)(6), filed by Defendants County of San Diego, Sheriff William Gore,
15 and Larry Trapp [hereinafter “County Defendants”] (County MTD, ECF No.
16 13);

17 (6) Motion to Dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and
18 12(b)(6), filed by Defendants Procopio, Cory, Hargreaves, & Savitch, LLP;
19 Timothy Salter; and Paul Tyrell [hereinafter the “Procopio Defendants”];
20 Pacific Perfusion, Inc.; Richard Julien; and Holly Colavin [hereinafter the
21 “PPI Defendants”] (Procopio & PPI MTD, ECF No. 15);

22 (7) Motion to Dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and
23 12(b)(6), filed by Defendant Alexander S. Giritsky, M.D. (Giritsky MTD,
24 ECF No. 21);

25 (8) Motion to Dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and
26 12(b)(6), filed by Defendants Michael Meenen and Razorback Perfusion,
27 Inc. (Meenen MTD, ECF No. 23); and
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1 (9) Motion to Dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and
2 12(b)(6), filed by Defendant Kelly Brinkman (Brinkman MTD, ECF No.
3 44).

4 Plaintiff filed an untimely combined opposition to the motions filed by the Scripps
5 Defendants, Kalish, The Honorable Randa Trapp, the County Defendants, the Procopio
6 and PPI Defendants, and Giritsky. (Comb. Opp'n, ECF No. 24.) Two days later,
7 Plaintiff filed a "Corrected Combined Opposition." (Corr. Comb. Opp'n, ECF No. 27.)¹
8 Both of Plaintiff's opposition briefs exceed eighty (80) pages, despite the Local Rules
9 requiring that opposition briefs must not exceed twenty-five (25) pages without leave of
10 Court. *See* CivLR 7.1(h). Plaintiff did not seek leave of Court to file the excess pages.
11 He separately filed an opposition to Defendants Meenen and Razorback Perfusion's
12 motion (Meenen Opp'n, ECF No. 36.), and later, Objections and a Motion to Strike
13 Exhibits from Meenen and Razorback Perfusion's motion (ECF No. 43). He also filed an
14 opposition to Defendant Brinkman's motion to dismiss. (ECF No. 45.)

15 Defendants filed replies. (Scripps Reply, ECF No. 29; Giritsky Reply, ECF No.
16 30; J. Trapp Reply, ECF No. 31; Kalish Am. MTD Reply, ECF No. 32; Kalish Am. Mot.
17 to Strike Reply, ECF No. 33; Procopio & PPI Reply, ECF No. 34; County Reply, ECF
18 No. 35; Meenen Reply, ECF No. 40; Brinkman Reply, ECF No. 46.)

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22 ¹ In connection with Plaintiff's Corrected Combined Opposition, he filed a Request for
23 Judicial Notice. (ECF No. 28.) He asks the Court to take judicial notice of photocopies
24 of diplomas and certificates of completion for educational courses from the 1970s and
25 1980s. Plaintiff proffers these documents in response to the Procopio and PPI
26 Defendants' statement in its motion to dismiss that Plaintiff is not a medical doctor. To
27 take judicial notice of a fact, the fact must "not [be] subject to reasonable dispute because
28 it . . . can be accurately and readily determined from sources whose accuracy cannot
reasonably be questioned." Fed. R. Evid. 201. These photocopied documents are subject
to reasonable dispute. For instance, the Court knows nothing about the schools or
organizations that issued these documents and what they purport to stand for. Therefore,
the Court **DENIES** Plaintiff's Request for Judicial Notice.

1 For the following reasons, the Court **GRANTS** the motions to dismiss and
2 **DISMISSES** the complaint for lack of subject matter jurisdiction.

3 **BACKGROUND²**

4 Plaintiff Dr. Juan Bribiesca practiced at Defendant Scripps Memorial Hospital in
5 La Jolla (“Scripps La Jolla”) as a perfusionist from 1990 until April 2009. (Compl. ¶¶
6 32, 34.) A perfusionist is a member of the cardiothoracic surgical team who operates the
7 heart and lung machine during open heart surgery. (*Id.* ¶ 32.) From 1990 until 2003,
8 Bribiesca worked as an independent contractor at Scripps La Jolla. (*Id.* ¶ 35.) From
9 2003 to 2008, Plaintiff performed his work through La Jolla Perfusion, a partnership that
10 he had formed with Defendants Richard Julien and Holly Colavin, pursuant to a five-year
11 contract between La Jolla Perfusion and Scripps La Jolla. (*Id.* ¶ 37.) La Jolla Perfusion
12 was the combination of Julien and Colavin’s partnership, Defendant Pacific Perfusion,
13 and Bribiesca’s business, J.B. Coastal, Inc., which he had incorporated in 2003. (Compl.
14 ¶¶ 36-37.) Colavin withdrew from La Jolla Perfusion at the end of 2008, leaving
15 Bribiesca and Julien as equal co-owners. (*Id.* ¶ 49.)

16 La Jolla Perfusion’s contract with Scripps La Jolla ended in 2008, thereafter the
17 parties began operating under a month-to-month contract. (*Id.* ¶ 38.) In early 2009,
18 Bribiesca and Julien began negotiations with Scripps La Jolla to enter into a longer term
19 contract. (*Id.* ¶ 50.) Scripps La Jolla’s Vice President of Operations, Defendant Lisa
20 Thakur, represented the hospital in the negotiations. (*Id.* ¶ 51.) During negotiations,
21 Thakur mentioned complaints she had heard from two La Jolla Perfusion subcontractors,
22 Defendants Michael Meenen and Kelly Brinkman. (*Id.* ¶ 54.) Bribiesca and Julien
23 assured Thakur that they would address the complaints. (*Id.* ¶ 57.) Bribiesca and Julien
24 then met with Meenen and Brinkman. (*Id.* ¶ 58.) Meenen and Brinkman asked for a
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27 ² The Court is not making any findings of fact, but rather summarizing the relevant
28 allegations of the Complaint and, where applicable, matters of judicial notice for
purposes of evaluating Defendants’ motions.

1 higher salary and a partnership interest, but Bribiesca and Julien explained that they could
2 not negotiate those issues until La Jolla Perfusion had a long term contract in place with
3 Scripps La Jolla. (*Id.*) The parties left the meeting understanding that the personnel
4 issues within La Jolla Perfusion would be placed on hold pending completion of the
5 contract negotiation with Scripps La Jolla. (*Id.* ¶ 59.)

6 Subsequently, Thakur and Julien allegedly schemed to “lock out” Bribiesca from
7 La Jolla Perfusion’s contract opportunity. (*Id.* ¶ 60, 63.) Julien approached Colavin,
8 Meenen, and Brinkman about starting a new partnership to take over La Jolla Perfusion’s
9 contract with Scripps La Jolla. (*Id.* ¶ 61.) Plaintiff alleges that Thakur suggested, and
10 Julien agreed, that Meenen and Brinkman should fabricate false complaints about
11 Bribiesca. (*Id.* ¶¶ 62-64.) Julien and Brinkman thereafter manufactured false statements
12 about Bribiesca, and Julien provided the false statements to Thakur in mid April 2009.
13 (*Id.* ¶¶ 65-67.)

14 Julien and Thakur agreed that Julien and Colavin, who had already left La Jolla
15 Perfusion (*id.* ¶ 49), would dissolve La Jolla Perfusion without Bribiesca’s knowledge or
16 consent. (*Id.* ¶ 68.) Defendant law firm Procopio, Cory, Hargreaves, and Savitch LLP
17 (“Procopio”) and one of its partners, Defendant Timothy Salter, advised Julien and
18 Colavin about the “lock out” plan. (*Id.* ¶ 69.) Plaintiff alleges that Procopio and Salter
19 had previously represented Bribiesca in a medical malpractice insurance dispute in the
20 mid 1990s and thereafter continued to perform various legal work for Bribiesca, Julien,
21 Colavin, and La Jolla Perfusion. (*Id.* ¶¶ 39, 43.)

22 In mid April 2009, Colavin and Julien organized a sham meeting to vote out
23 Bribiesca without his notice. (*Id.* ¶ 70.) Thakur informed Defendant Gary Fybel, CEO of
24 Scripps La Jolla, and Defendant Chris Van Gorder, President and CEO of Defendant
25 Scripps Health, about the sham vote, and Fybel and Van Gorder agreed with it. (*Id.* ¶
26 71.) On April 21, 2009, Julien notified Bribiesca about the partnership dissolution. (*Id.* ¶
27 76.)

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1 Eight days later, on April 29, 2009, Bribiesca was at the hospital and started a
2 conversation with Defendant Aimee Dovidio, a hospital security guard. (*Id.* ¶ 77.) He
3 asked her whether she carried pepper spray and how she would handle an aggressive
4 patient. (*Id.* ¶ 78.) She replied that she did not need pepper spray because she had a
5 radio and backup assistance. (*Id.*) The conversation ended shortly thereafter, and
6 Bribiesca proceeded to his next patient. (*Id.* ¶ 79.)

7 Dovidio informed Defendant Steve Peterson, Director of Security at the hospital,
8 about her conversation with Bribiesca. (*Id.* ¶ 80.) Peterson then spoke to Thakur, who
9 considered the conversation to be inappropriate and decided to immediately evict
10 Bribiesca from hospital property. (*Id.*) Thakur found Bribiesca and began to interrogate
11 him about his conversation with Dovidio. (*Id.* ¶ 82.) Bribiesca was flanked by four
12 security guards that Thakur had brought with her. (*Id.*) Bribiesca cooperated and was
13 confused that anyone would consider his friendly conversation with Dovidio to be
14 threatening. (*Id.*) Thakur informed Bribiesca that she had decided to immediately evict
15 him and that he was not free to return because he was a threat to the hospital. (*Id.* ¶ 83.)
16 Thakur dispatched two security guards to break into Bribiesca's locker and search and
17 seize his property. (*Id.* ¶ 84.) The guards found no weapons or evidence of a crime. (*Id.*)

18 Surrounded by four security guards under Thakur and Peterson's command,
19 Bribiesca was forced off hospital property. (*Id.* ¶ 85.) Thakur told Julien and Defendant
20 John Spinoso, Chief of Medical Staff at Scripps La Jolla, that Bribiesca had been ejected
21 because he was a threat to the hospital. (*Id.* ¶¶ 86-87.) In early May 2009, Bribiesca
22 received a letter from Scripps La Jolla, signed by Spinoso, stating that his privileges at
23 the hospital had been terminated. (*Id.* ¶ 93.) The letter alleged that the termination was
24 because Bribiesca no longer had a staff physician sponsor. (*Id.* ¶ 93.) However,
25 Bribiesca's sponsor, Defendant Dr. Alexander Giritsky, later testified that he never
26 withdrew his sponsorship. (*Id.* ¶ 94.)

27 Thakur and Peterson reported Bribiesca's conversation with Dovidio to the San
28 Diego Police and Federal Bureau of Investigation ("FBI"), and in June, two FBI agents

1 interviewed Bribiesca. (*Id.* ¶¶ 90-92.) After the interview, the agents informed him that
2 they saw no evidence of a crime and were closing the investigation. (*Id.* ¶ 92.)

3 On June 17, 2009, Bribiesca sued certain present defendants in the Superior Court
4 of California, County of San Diego, for damages arising from the termination of the La
5 Jolla Perfusion partnership and his removal from the hospital (the “State Court Action”).³
6 (*Id.* ¶ 95.) Plaintiff’s Fourth Amended Complaint was the operative pleading at the time
7 of trial, bringing thirteen (13) causes of action against Defendants Pacific Perfusion,
8 Julien, Colavin, Meenen, Brinkman, and Scripps Memorial Hospital. (Judgment in State
9 Court Action, Procopio & PPI Notice of Lodgment (“NOL”) Ex. 1; Fourth Amended
10 Complaint in State Court Action, Procopio & PPI NOL Ex. 2.)⁴

11 Procopio represented present Defendants Pacific Perfusion, Julien, and Colavin,
12 despite Procopio and Salter’s prior representation of Bribiesca. (Compl. ¶ 96.)
13 Procopio’s lead attorney on the case was Defendant Paul Tyrell, but Salter also
14 participated in the representation against Bribiesca. (*Id.* ¶ 97.)

15 Defendant the Honorable Randa Trapp, Judge of the Superior Court, presided over
16 the State Court Action. (*Id.* ¶ 101.) Plaintiff contends Judge Trapp improperly granted
17 motions for discovery, for summary judgment, and in limine against him. (*Id.* ¶¶ 102-
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20 ³ The State Court Action was captioned *Juan Bribiesca, et al. v. Pacific Perfusion, Inc.,*
21 *et al.*, San Diego Superior Court Case No. 37-2012-0000091932.

22 ⁴ The Procopio and PPI Defendants request that the Court take judicial notice of certain
23 court filings from the State Court Action and its related appeals. *See* Request for Judicial
24 Notice, ECF No. 15-5; Request for Judicial Notice, ECF No. 34-4. A court “may take
25 notice of proceedings in other courts, both within and without the federal judicial system,
26 if those proceedings have a direct relation to matters at issue.” *United States ex rel.*
27 *Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992);
28 *see also United States v. S. Cal. Edison Co.*, 300 F. Supp. 2d 964, 974 (E.D. Cal. 2004)
 (“While the authenticity and existence of a particular order, motion, pleading or judicial
 proceeding, which is a matter of public record, is judicially noticeable, veracity and
 validity of its contents (the underlying arguments made by the parties, disputed facts, and
 conclusions of applicable facts or law) are not.”). Accordingly, the Court **GRANTS** the
 requests.

1 104, 107-109.) These prejudicial rulings “polluted” the trial. (*Id.* ¶ 108.) Plaintiff
2 believes Judge Trapp should have recused herself because she had a conflict of interest
3 favoring Scripps La Jolla. (*Id.* ¶ 115.) He contends that Judge Trapp was conflicted
4 because her husband, Defendant Deputy Trapp, “maintained a business relationship with
5 a key defendant in the case, President and CEO of Scripps Health, Mr. Van Gorder.” (*Id.*
6 ¶ 110.) In support of this allegation of a “business relationship” between Deputy Trapp
7 and Van Gorder, Plaintiff attaches a 2014 article stating that Van Gorder “was recently
8 named reserve assistant sheriff of the San Diego County Sheriff’s Department,” a
9 volunteer position. (*Id.* Ex. C.) Van Gorder had been serving as a volunteer deputy
10 sheriff since 2003. (*Id.*) Plaintiff alleges that Van Gorder’s volunteer position makes
11 him a “co-worker with Judge Trapp’s husband, Deputy Trapp.” (*Id.* ¶ 113.) Moreover,
12 Plaintiff contends that Judge Trapp was conflicted because deputies from the San Diego
13 Sheriff’s Department provide security to Judge Trapp in her courtroom. (*Id.* ¶ 114.)
14 Despite this alleged conflict, Judge Trapp did not recuse herself, which Plaintiff alleges
15 deprived him of due process and an impartial tribunal. (*Id.* ¶¶ 116-117.)

16 In August 2011, Plaintiff filed a “Motion for Peremptory Challenge and
17 Disqualification,” requesting that Judge Trapp recuse herself because she is “prejudiced
18 against Plaintiffs and/or their attorney, or the interests of same, so that the Plaintiffs
19 and/or their attorney cannot, or believe that they cannot, have a fair and impartial trial or
20 hearing before said Judge.” (Motion for Peremptory Challenge and Disqualification,
21 County’s Request for Judicial Notice (“RJN”) Ex. B.)⁵ Superior Court Judge Ronald S.
22 Prager denied the motion as being untimely. (Order Denying Motion for Peremptory
23 Challenge and Disqualification, County’s RJN Ex. C.)
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27 ⁵ The County Defendants ask the Court to take judicial notice of certain court filings from
28 the State Court Action and its related appeals. (ECF No. 14.) The Court **GRANTS** their
request.

1 The case went to trial in August 2012.⁶ (Judgment in State Court Action, Procopio
2 & PPI NOL Ex. 1.) At the close of evidence, the Court ruled in Defendants’ favor on the
3 declaratory relief and breach of contract claims, and the jury returned a verdict in favor of
4 all Defendants on all remaining causes of action. (*Id.*) Later, Judge Trapp awarded
5 Pacific Perfusion, Julien, and Colavin \$370,850 in attorneys’ fees and \$11,616.96 in
6 costs, and awarded Scripps \$78,861.23 in costs.⁷ (*Id.*) Plaintiff appealed to the Fourth
7 Appellate District of the California Court of Appeal, which affirmed the judgment in
8 September 2014. (Opinion of the Fourth Appellate District of the California Court of
9 Appeal dated Sept. 17, 2014, Procopio & PPI NOL Ex. 3.) He then tried without success
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12 ⁶ Before trial, Plaintiff settled with Defendants Meenen and Brinkman, and they were
13 dismissed with prejudice from the State Court Action. (*See* Request for Dismissal Signed
14 by Clerk of Superior Court, Brinkman RJN Ex. 1.)

15 Defendants Meenen and Razorback Perfusion, Inc. and Defendant Brinkman have filed
16 requests for judicial notice. (ECF Nos. 44-3 & 23-2.) Each ask the Court to take judicial
17 notice of the Fourth Amended Complaint in the State Court Action; the Settlements and
18 General Release Agreements between Juan Bribiesca and JB Coastal, Inc., on the one
19 hand, and Meenen and Brinkman on the other hand; and the Request for Dismissal of
20 Meenen and Brinkman from the State Court Action. The Meenen Defendants later
21 refiled the Settlement and General Release Agreement between Bribiesca and Meenen, as
22 they had previously filed Brinkman’s agreement. (ECF No. 40-2.) Bribiesca objects and
23 moves to strike the two settlement agreements filed by the Meenen Defendants, claiming
24 the agreements to be inauthentic and exhibiting forgery. The Court **OVERRULES**
25 Plaintiff’s objections and **GRANTS** Defendants’ requests for judicial notice of the
26 documents. The Meenen agreement is no different from the Brinkman agreement, and
27 Plaintiff does not object to the authenticity of the Brinkman agreement. Nowhere does
28 Plaintiff claim that he did not settle with these Defendants or that the terms of the
settlements are unenforceable. The Meenen Defendants made a mistake when they first
filed the document, which they corrected in filing their Reply. This is not evidence of
bad faith, as Plaintiff contends, and he is not entitled to costs and attorney’s fees for this
mistake.

⁷ Plaintiff alleges that Procopio is now “reprehensibly attempting to collect” these
attorneys’ fees from Bribiesca, which were billed “while representing parties adverse to
Dr. Bribiesca in the” State Court Action. (Compl. ¶ 47.)

1 to petition the California Supreme Court for review. (Notice of California Supreme
2 Court’s denial of Bribiesca’s Petition for Review dated Dec. 10, 2014, Procopio & PPI
3 NOL Ex. 4.)

4 Subsequently, Plaintiff filed documents in state trial and appellate courts seeking to
5 recuse Judge Trapp. On November 20, 2015, Plaintiff filed a Notice of Appeal
6 concerning Judge Trapp’s failure to recuse herself for bias. (Notice of Appeal, J. Trapp
7 RJN Ex. 6.)⁸ A few days later, on December 2, 2015, Plaintiff filed a document in the
8 Superior Court entitled “Notice to stay pending appeal,” in which he alleged that Judge
9 Trapp was prejudiced against him and that he could not have fair and impartial
10 proceedings before her. (Notice to Stay Pending Appeal, J. Trapp RJN Ex. 4.) Judge
11 Trapp treated the notice as a Statement of Disqualification filed under California Code of
12 Civil Procedure sections 170.1 and 170.3 and, on December 7, 2015, issued an order
13 striking the document on the basis that it was untimely and failed to state any legal basis
14 for disqualification. (Order Striking Plaintiff’s Statement of Disqualification of Judge
15 Randa Trapp, J. Trapp RJN Ex. 5.) Later, on February 19, 2016, the Court of Appeal
16 concluded that Plaintiff had not sought review of an appealable order. (Court of Appeal
17 Docket, J. Trapp RJN Ex. 7.) The Court of Appeal exercised its discretion to treat the
18 appeal as a petition for writ of mandate and, upon consideration of the state court hearing
19 transcript and Plaintiff’s appeal brief, denied the petition. (*Id.*)

20 On May 23, 2016, Plaintiff filed the present lawsuit. Plaintiff now brings RICO
21 claims against the Defendants in the State Court Action, as well as several other people
22 and entities tangentially involved in the underlying events. He contends that several
23 criminal enterprises exist. First, he names the “Procopio Criminal Enterprise,” which
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26 ⁸ Defendant Judge Trapp requests that the Court take judicial notice of certain court
27 filings from the State Court Action and related appeals. (ECF No. 10-2.) The Court
28 **GRANTS** her request. Additionally, Defendants Kalish and Giritsky seek judicial notice
of court records from the State Court Action and related appeals. (ECF Nos. 11-1, 12-2,
21-3.) The Court **GRANTS** those requests.

1 consists of Procopio, Salter, Tyrell, Pacific Perfusion, La Jolla Perfusion, Julien, Colavin,
2 Meenen, Brinkman, and Defendant Jennifer Foes.⁹ (Compl. ¶ 121.) The purpose of the
3 Procopio Criminal Enterprise is “to act as or on behalf of Dr. Bribiesca despite having
4 conflicts of interest in being adversarial to Dr. Bribiesca in the” State Court Action. (*Id.*
5 ¶ 122.)

6 The second criminal enterprise is the “Scripps La Jolla-San Diego County-San
7 Diego County Sheriff’s Department Criminal Enterprise” (hereinafter “Scripps-County
8 Criminal Enterprise”). This criminal enterprise consists of Van Gorder, Fybel, Thakur,
9 Defendant Brad Ellis,¹⁰ Defendant Sheriff William D. Gore,¹¹ Deputy Larry Trapp,¹²
10 Judge Trapp, Scripps La Jolla, Scripps Health, Defendant County of San Diego, and the
11 San Diego County Sheriff’s Department. (*Id.* ¶ 123.) He contends that the purpose of
12 this enterprise is “to consolidate and protect the interests of Scripps La Jolla and its
13 enterprise members by use of San Diego County Sheriff’s Department, its Sheriff,
14 [Defendant] Sheriff Gore, and its numerous deputies, including Mr. Van Gorder, and his
15 subordinates, including Mr. Fybel, Ms. Thakur, Mr. Peterson, and each administrative
16 and medical staff employee, agent, or contractor of Scripps” and “to conspire to cover up
17 the fraudulent and wrongful ‘lock out’ scheme and kidnapping of Dr. Bribiesca and
18 wrongful usurpation of business opportunities and decades of goodwill established by Dr.
19 Bribiesca.” (*Id.* ¶¶ 124-125.)
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22 ⁹ Defendant Foes worked as a subcontractor at La Jolla Perfusion. (*Id.* ¶ 29.) Julien
23 allegedly fabricated a written statement by Foes, which he provided to Thakur. (*Id.* ¶¶
24 66-67.) The record contains no proof of service as to Foes, and she has not filed a motion
25 to dismiss.

26 ¹⁰ Defendant Ellis serves as in-house counsel at Scripps Health and Scripps La Jolla. (*Id.*
27 ¶ 10.) The Complaint contains no factual allegations about Ellis.

28 ¹¹ Defendant Sheriff Gore is the Sheriff of the San Diego County Sheriff’s Department.
(*Id.* ¶ 20.) There are no allegations about Gore’s personal involvement in any of the facts
in dispute. He is only mentioned as the head of the Sheriff’s Department.

¹² Deputy Trapp is a Deputy Sheriff in the County of San Diego and Judge Trapp’s
husband. (*Id.* ¶ 22.)

1 Plaintiff also contends that Procopio, Scripps Health, Scripps La Jolla, the County
2 of San Diego, the San Diego County Sheriff's Department, Pacific Perfusion, La Jolla
3 Perfusion, and Defendant Razorback Perfusion, Inc.¹³ constitute enterprises.

4 Plaintiff alleges ten claims for relief. His RICO claims are based on the predicate
5 acts of mail fraud, wire fraud, honest services fraud, kidnapping, and extortion. The
6 Complaint does not specify how the Defendants committed mail, wire, or honest services
7 fraud, but instead merely sets forth boilerplate pleading with a formulaic recitation of
8 some of the elements of the claims for relief. It appears that the kidnapping allegation
9 relates to the events at Scripps La Jolla when Thakur questioned Bribiesca and removed
10 him from the hospital. The extortion allegation relates to the Procopio Criminal
11 Enterprise's attempts to collect attorneys' fees and costs from Bribiesca, fees and costs
12 that were billed and awarded by the state courts despite Procopio's alleged conflict of
13 interest.

14 He seeks damages arising from lost profits and/or lost business opportunities as a
15 result of Defendants' conduct and an order dissolving each identified enterprise. (*Id.* ¶¶
16 186, 189.)

17 LEGAL STANDARD

18 Federal Rule of Civil Procedure 12(b)(1) allows dismissal for "lack of subject
19 matter jurisdiction." Fed. R. Civ. P. 12(b)(1). A plaintiff has the burden to establish that
20 subject matter jurisdiction is proper. *Kokkonen v. Guardian Life Ins., Co.*, 511 U.S. 375,
21 377 (1994).

22 Under Rule 12(b)(1), a jurisdictional attack may be either "facial" or "factual."
23 *Thornhill Publishing Co., Inc. v. Gen. Tel. & Elecs. Corp.*, 594 F.2d 730, 733 (9th Cir.
24 1979). When a defendant challenges jurisdiction "facially," all material allegations in the
25 complaint are assumed true, and the question for the court is whether the lack of federal
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28 ¹³ Defendant Meenen is the President of Defendant Razorback Perfusion, Inc. (*Id.* ¶¶ 27,
30.) The Complaint contains no factual allegations about Razorback Perfusion.

1 jurisdiction appears from the face of the pleading itself. *Id.* In a factual attack, the
2 “defendant disputes the truth of the allegations that, by themselves, would otherwise
3 invoke federal jurisdiction.” *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th
4 Cir. 2004). In considering a factual attack, the “court may look beyond the complaint to
5 matters of public record without having to convert the motion into one for summary
6 judgment.” *White v. Lee*, 227 F.3d 1213, 1242 (9th Cir. 2000). The court “need not
7 presume the truthfulness of the plaintiff’s allegations.” *Id.* Once the moving party has
8 converted the motion to dismiss into a factual motion by presenting affidavits or other
9 evidence properly brought before the court, the party opposing the motion must furnish
10 affidavits or other evidence necessary to satisfy its burden of establishing subject matter
11 jurisdiction. *Safe Air for Everyone*, 373 F.3d at 1039.

12 **DISCUSSION**

13 Plaintiff’s Complaint contains rambling allegations of an implausible conspiracy
14 and the wrongs done to him by the twenty-seven Defendants. His Complaint is replete
15 with pleading deficiencies and fatal legal flaws. He has sued defendants he has alleged
16 no facts regarding, he has sued defendants immune from suit, and he fails to state non-
17 conclusory facts to support his claims, among other problems. Having failed to win in
18 state court in an action based on the same underlying facts, Plaintiff now alleges a vast
19 conspiracy against him, unsupported by facts. Plaintiff’s Complaint is an improper
20 attempt to relitigate issues he lost on in the State Court Action. Accordingly, this Court
21 lacks subject matter jurisdiction to hear such a de facto appeal. Because the Court
22 concludes it lacks jurisdiction, it need not address the other arguments raised by
23 Defendants.

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1 **I. This Court Lacks Subject Matter Jurisdiction**

2 **A. The *Rooker-Feldman* Doctrine**

3 The *Rooker-Feldman* doctrine¹⁴ prevents federal district courts from exercising
4 subject matter jurisdiction over cases “brought by state-court losers complaining of
5 injuries caused by state-court judgments rendered before the district court proceedings
6 commence and inviting district court review and rejection of those judgments.” *Exxon*
7 *Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). The doctrine bars a
8 district court from exercising jurisdiction not only over an action explicitly styled as a
9 direct appeal, but also over de facto appeals. *Cooper v. Ramos*, 704 F.3d 772, 777 (9th
10 Cir. 2012). “It is a forbidden de facto appeal under *Rooker-Feldman* when the plaintiff in
11 federal district court complains of a legal wrong allegedly committed by the state court,
12 and seeks relief from the judgment of that court.” *Noel v. Hall*, 341 F.3d 1148, 1163 (9th
13 Cir. 2003).

14 Once a federal plaintiff seeks to bring a forbidden de facto appeal, the federal
15 plaintiff may not seek to litigate an issue that is “inextricably intertwined” with the state
16 court judicial decision from which the de facto appeal is brought. *Id.* at 1158. “[C]laims
17 raised in the federal court action are ‘inextricably intertwined’ with the state court’s
18 decision” when “adjudication of the federal claims would undercut the state ruling or
19 require the district court to interpret the application of state laws or procedural rules.”
20 *Bianchi v. Rylaarsdam*, 334 F.3d 895, 898 (9th Cir. 2003); *see also Cooper*, 704 F.3d at
21 779 (“[W]e have found claims inextricably intertwined where the relief requested in the
22 federal action would effectively reverse the state court decision or void its ruling.”).
23 Under such circumstances, “the federal complaint must be dismissed for lack of subject
24 matter jurisdiction.” *Bianchi*, 334 F.3d at 898.

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27 ¹⁴ The *Rooker-Feldman* doctrines takes its name from the Supreme Court’s decisions in
28 *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and *District of Columbia Court of*
Appeals v. Feldman, 460 U.S. 462 (1983).

1 **B. Application of *Rooker-Feldman***

2 Plaintiff has brought a forbidden de facto appeal and claims that are “inextricably
3 intertwined” with the state court’s judgment. He seeks a federal court “win” on the same
4 issues that he already lost on in state court. The *Rooker-Feldman* bars such claims.

5 Plaintiff’s claims against Judge Trapp are a “pure horizontal appeal of the state
6 court’s decision.” *Cooper*, 704 F.3d at 779. Both of the elements of a de facto appeal are
7 present. First, it is clear that Plaintiff “complains of a legal wrong allegedly committed
8 by the state court.” *Noel*, 341 F.3d at 1163. Throughout his Complaint, Plaintiff
9 explicitly attacks Judge Trapp’s rulings, contending, for example, that she “granted many
10 of [Defendants’] motions improperly,” “inexplicably denied [Plaintiff’s] motion in
11 limine, . . . depriving [Plaintiff] of an ability to call . . . a witness at trial, placing highly-
12 relevant, corroborative testimony out of reach of [Plaintiff],” “inexplicably denied
13 [Plaintiff’s] motion in limine despite the clear-inadmissibility of . . . ‘statements’ and
14 unavailability of [a witness] for cross-examination” and granted Defendants’ motions in
15 limine that “impacted [Plaintiff’s] opportunity to present evidence which would have
16 greatly improved his chances to prevail at trial.” (Compl. ¶¶ 102, 107, 109.) Plaintiff
17 pleads that, because of these improper rulings, “the trial was polluted by oceans of highly
18 prejudicial double and triple hearsay, rumor, innuendo, and inauthentic ‘evidence’ at trial.
19 Such highly-irregular evidentiary decisions greatly prejudiced [Plaintiff’s] case before the
20 jury, leading to an unfavorable outcome.” (*Id.* ¶ 108.) He alleges that Judge Trapp was
21 conflicted and should have recused herself, but did not, instead “making the biased
22 rulings . . . , depriving [Plaintiff] of due process and impartial tribunal.” (*Id.* ¶¶ 116,
23 117.) At heart, Plaintiff’s claimed injury is that he was denied an impartial trial because
24 of Judge Trapp’s, as well as Procopio’s, conflicts of interest. (*See* Corr. Comb. Opp’n at
25 15 (admitting that the Complaint is “focused primarily on (1) Procopio, Salter, and
26 Tyrell’s breach of fiduciary duty based on the plain conflict of interest in representing a
27 party adverse to their own client, and (2) Judge Trapp’s similar breach of fiduciary duty
28 and deprivation of due process by presiding over a trial in which her husband’s

1 employer—the County/Sheriff’s Department—was closely integrated with to [sic] a
2 party-defendant—Van Gorder/Scripps.”))

3 Second, Plaintiff seeks relief from the state court judgment. *Noel*, 341 F.3d at
4 1163. In the State Court Action, Plaintiff sought damages for past and future lost
5 earnings. (Procopio & PPI NOL, Ex. 2.) But, he was denied all relief and ordered to pay
6 attorneys’ fees and costs to the prevailing defendants. Here, Plaintiff seeks to escape
7 those obligations and to overturn the state court judgment. He asks this Court to review
8 the same facts litigated in the State Court Action and to award him damages “arising
9 from lost profits and/or lost business opportunities attributable to the activities engaged in
10 by defendants.” (Compl. ¶ 186.) His RICO claim based on extortion is aimed at
11 avoiding paying the attorneys’ fees and costs awarded in the State Court Action.

12 Plaintiff’s remaining claims against the other Defendants are inextricably
13 intertwined with the state court’s decision. Plaintiff alleges, based on Judge Trapp’s
14 conflict involving Scripps and the Sheriff’s Department that allegedly prejudiced her
15 against him, that the Scripps-County Criminal Enterprise¹⁵ “conspired to cover up the
16 fraudulent and wrongful ‘lock out’ scheme and kidnapping of [Plaintiff] and wrongful
17 usurpation of business opportunities.” (Compl. ¶ 125.) However, the state courts have
18 already decided the issues underlying the claims against the Scripps-County Enterprise.
19 Plaintiff has twice sought to recuse Judge Trapp based on allegations of bias towards
20 him, and both attempts have been unsuccessful. Further, the state courts ruled against
21 Plaintiff on the issues that he alleges are at the heart of the enterprise: the lock-out
22 scheme, kidnapping, and usurpation of business opportunities. Plaintiff’s first, second,
23 third, fourth, eighth, ninth, tenth, eleventh, twelfth, and thirteenth claims in the State
24 Court Action were based on the lock-out scheme. (Procopio & PPI NOL, Ex. 2.)

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27 ¹⁵ As a reminder, the Scripps-County Criminal Enterprise consists of Defendants Van
28 Gorder, Fybel, Thakur, Ellis, Gore, Deputy Trapp, Judge Trapp, Scripps La Jolla, Scripps
Health, County of San Diego, and non-defendant San Diego County Sheriff’s
Department. (Compl. ¶ 123.)

1 Plaintiff admits that the lock out scheme allegations proceeded to trial in the State Court
2 Action. (Compl. ¶ 104.) The kidnapping allegation also arose in the State Court Action.
3 The trial court denied Plaintiff leave to amend to add a false imprisonment claim,¹⁶ and
4 the Court of Appeal affirmed that decision. (Procopio & PPI NOL, Ex. 3.) Finally,
5 Plaintiff’s allegation of usurped business opportunities (*i.e.*, his lost contract with Scripps
6 La Jolla) was litigated in the eleventh and twelfth claims in the State Court Action.
7 (Procopio & PPI NOL, Ex. 2.) As noted, Plaintiff lost on all claims in the State Court
8 Action and the judgment was affirmed by the Court of Appeal. To credit Plaintiff’s new
9 RICO claims based on the same allegations litigated and rejected by state trial and
10 appellate courts is just another way of saying that “the state court wrongly decided the
11 issues before it.” *Cooper*, 704 F.3d at 783 (quoting other case).

12 The claims related to the Procopio Criminal Enterprise¹⁷ are also inextricably
13 intertwined with the Superior Court’s decisions. The Procopio Criminal Enterprise is
14 based on Procopio’s alleged conflicts of interest. (Compl. ¶ 122.) But Plaintiff alleges
15 no injury from this conflict beyond his loss at trial and attendant court-ordered obligation
16 to pay attorneys’ fees and costs. To consider the RICO claims against the Procopio
17 Criminal Enterprise and assess Plaintiff’s injury, the Court would have to revisit and
18 reverse Judge Trapp’s rulings on pre-trial and post-trial motions and at trial.
19 Accordingly, the RICO claims are inextricably intertwined with the merits of the state
20 court’s decision and are effectively a prohibited appeal of the state court judgment.

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23 ¹⁶ Under California law, the proper civil claim for relief for “kidnapping” is the tort claim
24 for false imprisonment. *Chipman v. Nelson*, No. 2:11-cv-2770, 2013 WL 1007285, at
25 *17 n.8 (E.D. Cal. Mar. 13, 2013.)

26 ¹⁷ The Procopio Criminal Enterprise consists of Procopio, Salter, Tyrell, Pacific
27 Perfusion, La Jolla Perfusion, Julien, Colavin, Meenen, Brinkman, and Foes. (Compl. ¶
28 121.) Notably, the Enterprise includes non-attorneys and Defendants who played no role
in Procopio’s representation of the PPI Defendants. Nowhere does Plaintiff explain how
such individuals could plausibly have participated in such an enterprise, the purpose of
which was “to act as or on behalf of Dr. Bribiesca despite having conflicts of interest in
being adversarial to Dr. Bribiesca” in the State Court Action. (*Id.* 122.)

1 Perhaps realizing that the *Rooker-Feldman* doctrine bars the review he seeks,
2 Plaintiff relies on *Kougasian v. TMSL, Inc.*, 359 F.3d 1136 (9th Cir. 2004), and argues
3 that *Rooker-Feldman* is inapplicable because he asserts new claims based on extrinsic
4 fraud. *Kougasian* explained that *Rooker-Feldman* bars subject matter jurisdiction when
5 “a federal plaintiff both asserts as her injury legal error or errors by the state court *and*
6 seeks as her remedy relief from the state court judgment.” 359 F.3d at 1140 (emphasis in
7 original). In *Kougasian*, the Ninth Circuit held that *Rooker-Feldman* did not apply
8 because the plaintiff did not allege that she had been harmed by legal errors made by the
9 state court. *See id.* at 1140-41. Rather, the plaintiff alleged extrinsic fraud on the state
10 court—specifically, defendants submitted a false declaration in state court and refused to
11 supply contact information for the declarant, preventing plaintiff from challenging the
12 declaration, and the court based its judgment on the declaration. *See id.* at 1138-39. The
13 Ninth Circuit explained that “[e]xtrinsic fraud is conduct which prevents a party from
14 presenting his claim in court.” *Id.* at 1140. With regard to the *Rooker-Feldman* doctrine,
15 the court reasoned that a “plaintiff alleging extrinsic fraud on a state court is not alleging
16 a legal error by the state court; rather, he or she is alleging a wrongful act by the adverse
17 party.” *Id.* at 1140-41.

18 Despite Plaintiff’s protests, *Kougasian* is consistent with the Court’s conclusion
19 that it lacks jurisdiction. In this case, unlike in *Kougasian*, Plaintiff claims injury from
20 errors committed by the state court and seeks relief from that judgment. That is,
21 Bribiesca brings a de facto appeal, unlike the plaintiff in *Kougasian*. Thus, *Kougasian* is
22 inapposite.

23 Moreover, Plaintiff has not stated any claim for extrinsic fraud. Plaintiff alleges
24 extrinsic fraud based on Procopio and Judge Trapp’s conflicts. (Comb. Corr. Opp’n at
25 15.) As noted, “[e]xtrinsic fraud is conduct which prevents a party from presenting his
26 claim in court.” *Kougasian*, 359 F.3d at 1140. The “essential characteristic” of extrinsic
27 fraud is that the “successful party has by inequitable conduct, either direct or insidious in
28 nature, lulled the other party into a state of false security, thus causing the latter to refrain

1 from appearing in court or asserting legal rights” or “from fully participating in the
2 proceeding.” *Gibble v. Car-Lene Research, Inc.*, 67 Cal. App. 4th 295, 314 (1998)
3 (citation omitted). “Examples of extrinsic fraud are: concealment of the existence of a
4 community property asset, failure to give notice of the action to the other party,
5 convincing the other party not to obtain counsel because the matter will not proceed (and
6 it does proceed).” *Id.* at 315 (citation omitted). “On the other hand, [f]raud is intrinsic
7 and not a valid ground for setting aside a judgment when the party has been given notice
8 of the action and has had an opportunity to present his case and to protect himself from
9 any mistake or fraud of his adversary, but has unreasonably neglected to do so.” *Id.*
10 (citation omitted).

11 Here, Plaintiff fully participated in the proceedings in the state courts. He fails to
12 state that he was prevented from presenting any claims or defenses in the State Court
13 Action because of the alleged conflicts of Judge Trapp and Procopio. By Plaintiff’s own
14 allegations, he was aware that Procopio was adverse to him during the State Court
15 Action, yet he did nothing to question or contest its representation of certain Defendants.
16 At most, he raises issues of intrinsic fraud.¹⁸ As to Judge Trapp’s alleged conflict,
17 Plaintiff *did* seek to recuse her for being prejudiced against him, but failed. When
18 extrinsic fraud allegations are separately litigated in state court, the extrinsic fraud
19 exception to the *Rooker-Feldman* doctrine does not apply. *See Reusser v. Wachovia*
20 *Bank, N.A.*, 525 F.3d 855, 859-60 (9th Cir. 2008).

21 Plaintiff also seeks to avoid *Rooker-Feldman* by arguing that the state court
22 judgment was void due to Judge Trapp’s undisclosed conflict. He cites noncontrolling
23 authority in support of his argument that void judgments are not subject to the *Rooker-*
24 *Feldman* doctrine. Plaintiff is wrong. “*Rooker–Feldman* applies [even] where the
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27 ¹⁸ Even if Plaintiff raises plausible issues of a conflict of interest involving Procopio—
28 which this Court does not decide—the proper avenue to make such allegations is a state
court claim, not a federal RICO claim.

1 plaintiff in federal court claims that the state court did not have jurisdiction to render a
2 judgment.” *Doe v. Mann*, 415 F.3d 1038, 1042 (9th Cir. 2005); *see Fletcher v. Gilbert*,
3 262 F. App’x 791, 791 (9th Cir. 2007) (rejecting plaintiff’s argument that “the *Rooker–*
4 *Feldman* doctrine should not apply because the state court lacked subject matter
5 jurisdiction and rendered a void judgment”).

6 Finally, Plaintiff argues that his new federal RICO claims, unlitigated state law
7 claims, and attorney misconduct claims are not subject to *Rooker-Feldman*. They are.
8 All of Plaintiff’s claims are barred because they are inextricably intertwined with his *de*
9 *facto* appeal of the state court’s judgment.¹⁹

10 Artful pleading will not save Plaintiff’s federal complaint. However Plaintiff
11 attempts to characterize his claims now, the Complaint and history of the State Court
12 Action make clear that his Complaint is grounded on claims of legal error with which he
13 disagrees. This Court could not rule on any of Plaintiff’s RICO claims without implicitly
14 overruling Judge Trapp, the state court jury, and the California Court of Appeal.²⁰
15 Plaintiff has not carried his burden to demonstrate this Court has subject matter
16 jurisdiction. Therefore, the entire action is dismissed.

17 CONCLUSION

18 The Court lacks subject matter jurisdiction under the *Rooker-Feldman* doctrine.
19 Accordingly, the Court **GRANTS** Defendants’ motions to dismiss and **DISMISSES** the
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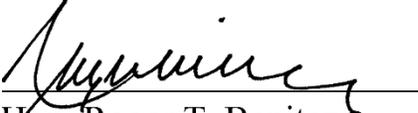
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22 ¹⁹ Additionally, the unlitigated state law claim that Plaintiff raises—one for kidnapping—
23 was litigated in the State Court Action. The Superior Court denied Plaintiff leave to
24 amend to add a claim for false imprisonment, and the Court of Appeal affirmed that
25 decision.

26 ²⁰ Unsurprisingly, other plaintiffs have brought RICO claims in federal court, alleging
27 that defendants defrauded them in state court. Federal courts have held that those RICO
28 claims are barred by the *Rooker-Feldman* doctrine. *See, e.g., McDowell v. California*,
No. C 11-02569 CRB, 2011 WL 6141045, at *3-4 (N.D. Cal. Dec. 9, 2011) (“RICO
claims constitute a *de facto* appeal of state court decision and are barred by the *Rooker-*
Feldman doctrine.”); *Bounds v. Wells Fargo Bank Minnesota*, No. 02 C 9010, 2003 WL
21466939, at *2-3 (N.D. Ill. June 25, 2003).

1 action. (ECF Nos. 5, 10, 11, 13, 15, 21, 23, and 44.) The Court **DENIES** Defendant
2 Kalish's request for attorneys' fees under his anti-SLAPP motion to strike (ECF No. 12)
3 because it lacks jurisdiction to consider the issue. *See Stahl Law Firm v. Judicate West*,
4 No. C13-1668 TEH, 2013 WL 6200245, at *7 (N.D. Cal. Nov. 27, 2013) (denying
5 defendants' motions for prevailing party anti-SLAPP attorneys' fees because court lacked
6 subject matter jurisdiction). The Court **OVERRULES** and **DENIES** Plaintiff's
7 Objections and Motion to Strike Exhibits to Meenen Defendants' Motion to Dismiss and
8 Reply. (ECF No. 43.)

9 **IT IS SO ORDERED.**

10 Dated: January 10, 2017

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12 Hon. Roger T. Benitez
13 United States District Judge
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