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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

CARLA HILL,  
  
Plaintiff,  
  
v.  
  
PETERSON, BURNELL, GLUSASER &  
ALLRED, a Professional Corporation,  
RICHARD PETERSON, as an individual,  
DOES 1-10.  
  
Defendants.

Case No.: 3:16-cv-2476-GPC-AGS

**ORDER:**

**1) GRANTING MOTION TO  
PROCEED IN FORMA PAUPERIS**

[Dkt. No. 2]

**2) DISMISSING RICO CLAIM  
PURSUANT TO SUA SPONTE  
SCREENING REQUIRED BY 28  
U.S.C. §§ 1915(e)(2)(B)(ii) and  
DECLINING TO EXERCISE  
SUPPLEMENTAL JURISDICTION**

[Dkt. No. 1]

**3) DENYING PLAINTIFF'S  
REQUEST FOR APPOINTMENT OF  
COUNSEL**

[Dkt. No. 3]

1 Plaintiff Carla Hill, proceeding pro se, has filed a complaint for damages under the  
2 federal Racketeering Influenced and Corrupt Organizations Act (“RICO”) and for  
3 conversion, breach of fiduciary duty, and conspiracy under California law. Dkt. No. 1.  
4 Plaintiff did not prepay the civil filing fee required by 28 U.S.C. § 1914(a) at the time of  
5 filing, but instead filed a Motion to Proceed In Forma Pauperis (“IFP”) pursuant to 28  
6 U.S.C. § 1915. For the following reasons, the Court **GRANTS** Plaintiff’s motion to  
7 proceed IFP, sua sponte **DISMISSES** her federal RICO cause of action for failure to state  
8 a claim, and **DECLINES** to exercise supplemental jurisdiction over Plaintiff’s remaining  
9 state law claims.

### 10 **I. Motion to Proceed In Forma Pauperis**

11 All parties instituting any civil action, suit, or proceeding in a district court of the  
12 United States, except an application for writ of habeas corpus, must pay a filing fee of  
13 \$400. *See* 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff’s failure to  
14 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.  
15 § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v.*  
16 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). A court may authorize the commencement of  
17 a suit without prepayment of fees if the plaintiff submits an affidavit, including a  
18 statement of all of his or her assets, showing that he or she is unable to pay the fees. *See*  
19 28 U.S.C. §1915(a). Such an affidavit must include a complete statement of the  
20 plaintiff’s assets. *See id.*

21 An IFP action is subject to dismissal if the court determines that the complaint is  
22 frivolous or malicious, or fails to state a claim upon which relief may be granted. 28  
23 U.S.C. § 1915(e)(2). When a plaintiff moves to proceed IFP, the court first “grants or  
24 denies IFP status based on the plaintiff’s financial resources alone and then independently  
25 determines whether to dismiss the complaint” pursuant to § 1915(e)(2). *Franklin v.*  
26 *Murphy*, 745 F.2d 1221, 1226 n.5 (9th Cir. 1984).

27 In her declaration, Plaintiff states that she expects to receive \$500 from her  
28 employment, \$450 from self-employment, and \$143 in dividends, for a total monthly

1 income of \$1,093.00. Dkt. No. 2 at 1-2. She adds that she currently has just \$100.00 in  
2 one checking account and that she is owed \$5,400.00 in child support payments that are  
3 currently in arrears. *Id.* at 2-3. Plaintiff’s total monthly expenses, accounting for  
4 amounts owed on her motor vehicle and on credit cards total \$1,947.00. *Id.* at 5.  
5 Plaintiff also owes \$89,000 in attorney bills owed in conjunction with this lawsuit. *See*  
6 *id.* (“but attorney bills I did not list above of currently 89,000 left.”).

7 Because Plaintiff’s monthly expenses far outweigh her monthly income, the Court  
8 **GRANTS** Plaintiff’s Motion to Proceed IFP and declines to “exact” any initial filing fee  
9 because she has no means to pay it.

## 10 **II. Screening Pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii)**

11 Because Plaintiff is proceeding IFP, her complaint requires a pre-answer screening  
12 pursuant to 28 U.S.C. § 1915(e)(2). Under this statute, a court must sua sponte dismiss  
13 an IFP complaint, or any portion of it, which is frivolous, malicious, fails to state a claim,  
14 or seeks damages from defendants who are immune. *See Lopez v. Smith*, 203 F.3d 1122,  
15 1126-27 (9th Cir. 2000) (en banc) (discussing 28 U.S.C. § 1915(e)(2) and explaining that  
16 it applies equally to prisoner and non-prisoner claimants). A pro se complaint should,  
17 moreover, be construed liberally and afford the plaintiff any benefit of the doubt. *See*  
18 *Karim-Panahi v. Los Angeles Police Dep’t*, 839 F.2d 621, 623 (9th Cir. 1988).

19 “The standard for determining whether a plaintiff has failed to state a claim upon  
20 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of  
21 Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*, 668  
22 F.3d 1108, 1112 (9th Cir. 2012). Federal Rule of Civil Procedure 12(b)(6) requires that a  
23 complaint “contain sufficient factual matter, accepted as true, to state a claim to relief that  
24 is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation  
25 marks omitted). Detailed factual allegations are not required, but “[t]hreadbare recitals of  
26 the elements of a cause of action, supported by mere conclusory statements, do not  
27 suffice.” *Id.* “Determining whether a complaint states a plausible claim for relief [is] . . .  
28 a context-specific task that requires the reviewing court to draw on its judicial experience

1 and common sense.” *Id.* The “mere possibility of misconduct” or “unadorned, the  
2 defendant-unlawfully-harmed me accusation[s]” fall short of meeting this plausibility  
3 standard. *Id.*; *see also Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009).

#### 4 **A. RICO Violation**

5 The complaint avers that the Defendants and Ron Hill, her former husband,  
6 violated RICO by defrauding Plaintiff of money and property through a conspiracy aimed  
7 at getting her to sign a marital dissolution agreement to her financial detriment. *See*  
8 Compl. ¶¶ 6-8. More specifically, she alleges that the Defendants “devised a scheme and  
9 artifice with husband Ron Hill to defraud Plaintiff of property and money due under  
10 [California Law] . . . by convincing Plaintiff to enter a mediated Agreement by a Special  
11 Master, for the purpose of allowing Defendant to create attorney fees for themselves  
12 decried from plaintiff’s community property.” *Id.* ¶ 17. In order to carry out their  
13 fraudulent scheme, Plaintiff alleges that Defendants, among other misconduct, denied her  
14 the opportunity to make an informed decision about whether to accept a \$50,000  
15 settlement from her husband, lied about appointing a “special master” to mediate the  
16 divorce, and advanced money to the alleged special master as a “bribe or kickback to  
17 remain complicate [sic] as part of a common scheme to defraud Wife-Plaintiff of her  
18 property.” *Id.* ¶ 8.

19 To state a claim under § 1962 of RICO, a plaintiff must allege the “(1) conduct (2)  
20 of an enterprise (3) through a pattern (4) of racketeering activity (known as ‘predicate  
21 acts’”) (5) causing injury to plaintiff’s ‘business or property.’” *Living Designs, Inc. v. E.I.*  
22 *Dupont de Nemours & Co.*, 431 F.3d 353, 361 (9th Cir. 2005) (citations omitted); *see*  
23 *also Richmond v. Nationwide Cassel L.P.*, 52 F.3d 640, 644 (9th Cir. 1995). A plaintiff  
24 establishes a pattern of racketeering activity by pleading at least two related and  
25 continuous predicate acts that amount to or pose a threat of continued criminal activity.  
26 *See Allwaste, Inc. v. Hecht*, 65 F.3d 1523, 1527 (9th Cir. 1995); *see also H.J. Inc. v. Nw.*  
27 *Bell Tel. Co.*, 492 U.S. 229, 240 (1989).

28 In *H.J. Inc.*, the Supreme Court described the “continuity” requirement as both a

1 “closed- and open-ended concept, referring either to a closed period of repeated conduct,  
2 or to past conduct that by its nature projects into the future with a threat of repetition.”  
3 492 U.S. at 241. “A party alleging a RICO violation may demonstrate continuity over a  
4 closed period by proving a series of related predicates extending over a substantial period  
5 of time.” *Id.* at 242. “Open-ended continuity is the threat that criminal conduct will  
6 continue into the future. It is established by showing either that the predicate acts include  
7 a specific threat of repetition extending indefinitely into the future or that the predicate  
8 acts were part of an ongoing entity’s regular way of doing business.” *Allwaste*, 65 F.3d  
9 at 1527 (citations omitted).

10 Plaintiff argues that the Defendants committed the following predicate acts:  
11 bribery pursuant to § 1961(1)(a), mail fraud in violation of 18 U.S.C. § 1341, wire fraud  
12 under 18 U.S.C. § 1342, and interstate transfer of stolen property in violation of 18  
13 U.S.C. § 2314. Compl. ¶¶ 21, 37, Prayer for Relief. Assuming *arguendo* that Plaintiff  
14 has established two, related predicate acts, she has nonetheless failed to satisfy the *H.J.*  
15 *Inc.* continuity requirement because the facts she alleges do not amount to or pose a threat  
16 of continued criminal activity.

17 For one, Plaintiff’s complaint is devoid of any allegations from which the Court  
18 can reasonably conclude or infer that any predicate acts occurred over a “substantial  
19 period of time,” as is required for closed-concept continuity. *See Allwaste*, 65 F.3d at  
20 1528 (noting that the plaintiff should have, but did not, specify the dates of the first and  
21 last alleged predicate acts in order to satisfy the “substantial period of time” requirement).  
22 In *Allwaste*, the Ninth Circuit provided some guidance as to what constitutes a  
23 “substantial period of time” when it observed that “a pattern of activity lasting only a few  
24 months does not reflect the long term criminal conduct to which RICO was intended to  
25 apply” and that, generally speaking, the requirement will not “be satisfied by a pattern of  
26 activity lasting less than year.” *Id.* (internal quotations omitted). Here, Plaintiff has not  
27 provided the Court with the dates of the first and last predicate acts. There are also no  
28 facts in the complaint that suggest that Defendants’ conduct occurred over a prolonged

1 period of time. As such, Plaintiff has failed to demonstrate that the criminal activity she  
2 complains of occurred over a “substantial period of time.”

3 Plaintiff also cannot show open-ended continuity because the alleged predicate acts  
4 do not pose a threat of continuing criminal activity. The misconduct that Plaintiff  
5 complains of all pertain to the dissolution of her marriage to her husband, Ron Hill.  
6 There is, therefore, no threat that Defendants will continue to engage in similar predicate  
7 acts moving forward because the alleged fraudulent acts pertained only, and specifically,  
8 to the dissolution of Plaintiff’s marriage. *See Sun Sav. & Loan Ass’n v. Dierdorff*, 825  
9 F.2d 187, 194 (9th Cir. 1987) (concluding that predicate acts do not pose a threat of  
10 continuing activity when they further a single diversion and when defendants have no  
11 more need to commit predicate acts once the diversion is completed). Thus, absent any  
12 allegations demonstrating that Defendants’ alleged racketeering activities extend beyond  
13 the context of Plaintiff’s divorce, Plaintiff has not satisfied the requirement that the  
14 predicate acts pose a threat of continued criminal activity.

### 15 **III. Pendent Jurisdiction**

16 Pursuant to 28 U.S.C. § 1367(a), “in any civil action of which the district courts  
17 have original jurisdiction, the district courts shall have supplemental jurisdiction over all  
18 other claims that are so related to claims in the action within such original jurisdiction  
19 that they form part of the same case or controversy under Article III of the United States  
20 Constitution.” Yet even “once judicial power exists under § 1367(a), retention of  
21 supplemental jurisdiction over state law claims under 1367(c) is discretionary.” *Acri v.*  
22 *Varian Assoc., Inc.*, 114 F.3d 999, 1000 (9th Cir. 1997). “The district court may decline  
23 to exercise supplemental jurisdiction over a claim under subsection (a) if . . . the district  
24 court has dismissed all claims over which it has original jurisdiction.” 28 U.S.C.  
25 § 1367(c)(3). The Supreme Court has cautioned that “if the federal claims are dismissed  
26 before trial, . . . the state claims should be dismissed as well.” *United Mine Workers of*  
27 *Am. v. Gibbs*, 383 U.S. 715, 726 (1966); *see also Townsend v. Columbia Operations*, 667  
28 F.2d 844, 850 (9th Cir. 1982). In the event that all federal law claims are eliminated

1 before trial, a district court must weigh the following factors before declining or choosing  
2 to exercise pendent jurisdiction: judicial economy, comity, convenience, and fairness.  
3 *See Bryant v. Adventist Health System/W.*, 289 F.3d 1162, 1169 (9th Cir. 2002) (quoting  
4 *Carnegie—Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7, 108 S. Ct. 614, 98 L. ED. 2d  
5 720 (1988)).

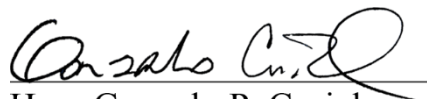
6 Because the Court has dismissed the only federal cause of action apparent in the  
7 complaint, the Court declines to exercise supplemental jurisdiction over Plaintiff's  
8 remaining state law claims. The remaining claims are state tort claims governed by  
9 California law and have no nexus to questions of federal policy. Thus, there is no federal  
10 interest served by proceeding with the state law causes of action in federal court, and the  
11 interest of comity would be served by permitting the state court to decide issues relating  
12 to the remaining state law claims and defenses. As for convenience to the litigants and  
13 fairness, the Court concludes that neither factor weighs against declining to exercise  
14 supplemental jurisdiction as the case is in its infancy, and no answer has yet been filed.

### 15 CONCLUSION

16 For the foregoing reasons the Court **GRANTS** Plaintiff's IFP motion,  
17 **DISMISSES** Plaintiff's RICO cause of action for failure to state a claim on which relief  
18 can be granted, and **DECLINES** to exercise supplemental jurisdiction over the remaining  
19 state law claims. As such, the Court also **DENIES** Plaintiff's pending request for  
20 appointment of counsel as moot. The Plaintiff may refile her California causes of action  
21 in state court.

22 **IT IS SO ORDERED.**

23  
24 Dated: January 4, 2017

25   
26 Hon. Gonzalo P. Curiel  
27 United States District Judge  
28