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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ELEANOR BALLESTER,
Plaintiff,
v.
SCOTT FINKBEINER, et al.,
Defendants.

Case Nos.: 3:23-cv-1854-RBM-VET;
3:23-cv-2244-RBM-VET; 3:24-cv-0454-
RBM-VET

**ORDER DISMISSING CASES
WITHOUT LEAVE TO AMEND**

**[Case No. 3:23-cv-1854-RBM-VET
Docs. 10, 13–14, 21–23, 26–27, 30, 32–
33, 35–38]**

ELEANOR BALLESTER,
Plaintiff,
v.
COMMISSIONER LEAH BOUCEK, et
al.,
Defendants.

**[Case No. 3:23-cv-2244-RBM-VET
Docs. 3, 8, 13, 15–21]**

**[Case No. 3:24-cv-0454-RBM-VET
Docs. 7, 16–17]**

ELEANOR BALLESTER,
Plaintiff,
v.
JUDGE LAURA H. MILLER, et al.,
Defendants.

1 Plaintiff Eleanor Ballester, proceeding pro se,¹ has filed five cases under 28 U.S.C.
2 § 1983 alleging violations of her rights under the Fourteenth Amendment. (Case Nos.
3 3:23-cv-1730-RBM-VET (“1730 Case”); 3:23-cv-1839-RBM-VET (“1839 Case”); 3:23-
4 cv-1854-RBM-VET (“1854 Case”); 3:23-cv-2244-RBM-VET (“2244 Case”); 3:24-cv-
5 0454-RBM-VET (“454 Case”).)² The allegations of each case arise out of decisions in
6 Plaintiff’s state court family law case, San Diego County Superior Court Case No.
7 21FL009971C (hereinafter, the “family law case”).

8 On May 14, 2024, the Court issued an Order granting numerous motions in the 1730
9 Case and 1839 Case and dismissing those cases without leave to amend. (1730 Case-Doc.
10 56; 1839 Case-Doc. 34.). This Order addresses the numerous motions and requests for
11 other relief that have been filed in Plaintiff’s additional three cases. (1854 Case-Docs. 10,
12 13–14, 21–23, 26–27, 30, 32–33, 35–38; 2244 Case-Docs. 3, 8, 13, 15–21; 454 Case-Docs.
13 7, 16, 17.) Because these three cases are based on Plaintiff’s challenges to proceedings in
14 the same family law case in state court, name some of the same Defendants, and all
15 challenge decisions issued in Plaintiff’s family law case, the Court addresses the pending
16 motions in these remaining cases in this single Order.

17 For the reasons set forth below, the motions seeking to strike Plaintiff’s amended
18 complaints in the 1854 Case and 2244 Case (1854 Case-Docs. 30, 32–33, 36;³ 2244 Case-
19 Docs. 13, 15) are **GRANTED**. The motions to dismiss in the 1854 Case, 2244 Case, and
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21
22 ¹ The Court notes that while Plaintiff is proceeding pro se, she is not proceeding *in forma*
23 *pauperis*.

24 ² When referring to a specific case or a specific document filed in a particular case, the
25 Court will cite the last three or four digits of the case number followed by “Case” and then
26 reference the specific docket number in that case. Similarly, when referring to a specific
27 complaint, the Court will refer to it by the last three or four digits of the case number
28 followed by Complaint or FAC.

³ Although the docket text identifies this as a Motion to Dismiss, it is a Motion to Strike
Plaintiff’s First Amended Complaint. (Doc. 36 at 1.)

1 454 Case (1854 Case-Docs. 21–23; 2244 Case-Doc. 8; 454 Case-Docs. 16–17)⁴ are
2 **GRANTED** to the extent set forth below and these cases are **DISMISSED WITHOUT**
3 **LEAVE TO AMEND.**

4 I. BACKGROUND

5 A. Complaints

6 The Court briefly summarizes the allegations of the 1730 and 1839 complaints that
7 were dismissed by a separate Order. The Court then summarizes the allegations of the
8 1854 Complaint, 2244 Complaint, and 454 FAC. As with the Court’s prior Order, the
9 Court has considered the entirety of these complaints but has not included every allegation
10 in this summary. All of the complaints contain many paragraphs of allegations that are
11 repeated as to numerous Defendants without any factual distinctions between them. Those
12 repeated paragraphs also tend to be legal conclusions. The Court’s summary of the
13 allegations attempts to identify the facts alleged by Plaintiff sufficiently to fully address
14 the pending motions in the remaining three cases.

15 1. Dismissed Complaints

16 The 1730 Complaint and 1839 Complaint are more fully detailed in the Court’s prior
17 Order dismissing both cases. (1730 Case-Doc. 56 at 3–8.⁵) This summary is only intended
18 to provide context for Plaintiff’s allegations in the 1854 Complaint, 2244 Complaint, and
19 454 FAC.

20 The 1730 and 1839 Complaints both sought to void a state court domestic violence
21 restraining order (“DVRO”) issued by Defendant Commissioner Leah Boucek on June 21,
22 2023 in Plaintiff’s family law case. (1730 Compl. at 102–103, 105–106; 1839 Compl. at
23 59, 61.) Plaintiff alleged the DVRO was invalid and illegal because Defendant
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25
26 ⁴ Additional motions to dismiss were filed and are addressed separately below. (*See infra*
27 II.B.4.a.)

28 ⁵ The Court cites the CM/ECF electronic pagination unless otherwise noted.

1 Commissioner Boucek should have been disqualified from the family law case. (1730
2 Compl. at 8–18, 100–105; 1839 Compl. at 14–16, 33, 51, 55.) Plaintiff asked the Court to
3 void the June 21, 2023 DVRO and stop Defendant Commissioner Boucek from taking any
4 further action in the family law case. (1730 Compl. at 112–13; 1839 Compl. at 61.)

5 The 1730 Complaint alleged Defendant Commissioner Boucek “violated Plaintiff’s
6 Constitutional Right to Liberty of locomotion ... [under] the 14th Amendment” because
7 she did not disqualify herself from hearing Plaintiff’s family law case. (1730 Compl. at
8 10.) More specifically, Plaintiff claimed Defendant Commissioner Boucek issued “a False
9 PERMANENT Restraining Order against Plaintiff, Restraining [Plaintiff] from her
10 children without any evidence of any harm to [Plaintiff’s] children, or to Defendant
11 [Samuel] Martinette” (*Id.* at 15; *see also id.* at 112–13 (Seeking “withdrawal and
12 voiding of the [r]estraining [o]rder issued on June 21, 2023, and a [v]oid of any and all
13 court orders, and findings of fact made by [Defendant Commissioner Boucek]” and “[f]or
14 a preliminary injunction ordering ... Defendants to cease from taking any further action ...
15 in the family law case.”).)

16 The primary variation in the factual allegations of the 1839 Complaint was the
17 assertion that each Defendant participated in, failed to intervene to stop, or was a witness
18 to a September 21, 2023 *ex parte* hearing. (*See* 1839 Compl. at 4, 14–16, 218 (general
19 allegations regarding *ex parte* hearing); *Id.* at 30, 33 (Yip); *Id.* at 41–42 (Sachdev); *Id.* at
20 47 (Heinrich).) Plaintiff sought an order that no further action be taken in the family law
21 case and “a withdrawal and voiding of the Court Order issued on 9/21/2023, and a Void of
22 any and all court orders, and findings of facts made by” Defendant Commissioner Boucek.
23 (*Id.* at 61.) The 1839 Complaint alleged the September 21, 2023 *ex parte* hearing in the
24 family law case “caused an invalid order to be issued against Plaintiff.” (*Id.* at 50.)

25 In both cases, Plaintiff claimed that Defendant Judge Michael T. Smyth had
26 knowledge of Defendant Commissioner Boucek’s violation of Plaintiff’s rights in issuing
27 the DVRO and holding the September 21, 2023 hearing and, as her supervisor, had to take
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1 action. (1730 Compl. at 25–26; 1839 Compl. at 18–28.) As to the other named Defendants,
2 Plaintiff asserted they: (1) should have intervened to stop Defendant Commissioner Boucek
3 from issuing the DVRO against Plaintiff, (2) set in motion a series of actions that caused
4 Plaintiff injuries, (3) conspired with Defendant Commissioner Boucek to issue the DVRO,
5 and (4) caused an invalid restraining order to be issued against Plaintiff based on their false
6 testimony. (1730 Compl. at 33–35, 37–38, 44–46, 63, 79, 84, 88, 91–92; 1839 Compl. at
7 28, 32, 37, 46, 50.) The only other allegations in the complaints simply identify these
8 Defendants’ role in the family law, *i.e.*, counsel for a party or presence at the September
9 21, 2023 hearing. (*See e.g.* 1730 Compl. at 29, 54, 71; *see e.g.* 1839 Compl. at 4, 14–16,
10 29–30, 33, 41–42, 47, 218.) The 1839 Complaint also sought an order from this Court to
11 stop any action in the family law case and void the DVRO, the September 21, 2023 Order,
12 and all other orders from Defendant Commissioner Boucek. (1839 Compl. at 61.)

13 **2. 1854 Complaint**

14 Like the 1839 Complaint, Plaintiff argues in the 1854 Complaint that “Defendants
15 conspired to suborn false evidence and testimony in a secret ex parte meeting on September
16 21, 2023.” (1854 Compl. at 4.) The allegations of the 1854 Complaint add a different ex
17 parte hearing held on October 10, 2023. (*Id.* at 11.) Plaintiff alleges that Defendant Judge
18 Christopher S. Morris “had ex parte communication in the courtroom on October 10, 2023”
19 with Defendant “Samuel Martinette, Defendant Attorney Benjamin Yip, Defendant
20 Attorney Pujá Arun Sachdev, and Defendant Mark Heinrich.” (*Id.* at 11–12.) Plaintiff
21 asserts that Judge Morris held “an impromptu ex parte communication and d[i]sguis[ed] it
22 as a lawful hearing, and ma[de] an order, all in violation of the law.” (1854 Compl. at 13.)

23 Allegations as to Judge Smyth are the same as in the prior cases, almost verbatim,
24 and based on his supervision obligations over Defendant Judge Morris. (*Id.* at 15–23.) The
25 only variation in the 1854 Complaint is that the allegations against Judge Smyth concern
26 the supervision of Defendant Judge Morris rather than Defendant Commissioner Boucek
27

1 and it is a different hearing—the October 10, 2023 hearing—that took place without
2 Plaintiff present. (*Id.* at 19–20.)

3 The 1854 Complaint alleges that each other Defendant participated in the October
4 10, 2023 hearing and did not intervene to stop the hearing or stop other Defendants from
5 making false comments about Plaintiff at the hearing. (*Id.* at 23–31 (“Finkbeiner”), 31–40
6 (“Wilkinson”), 40–48 (Yip), 48–57 (Sachdev).) As to Defendant Samuel Martinette,
7 Plaintiff’s ex-husband, she additionally alleges he made false statements about her that
8 were used “to cause an invalid order to be issued against Plaintiff.” (*Id.* at 62.) As to
9 Defendant Yip, Plaintiff also alleges he made disparaging false comments about her “in
10 order to use his influence and relationship with the court appointed temporary judge so that
11 the [f]amily [l]aw case will not be heard on the merits.” (*Id.* at 46.) And as to Defendant
12 Heinrich, he is alleged to have been notified by other Defendants of the hearing and
13 attended. (*Id.* at 58.)

14 Similar to the 1730 and 1839 Complaints, Plaintiff asserts the October 10, 2023
15 order issued in her family law case is unlawful and asks this Court to invalidate and void
16 it and any other orders issued in the family law case. (*Id.* at 67 (asserting the October 10,
17 2023 Order is “in violation of law,” “without lawful justification,” and that Defendants
18 have “caused an invalid restraining order to be issued against Plaintiff”), *id.* at 71
19 (Plaintiff’s request for an order “to refrain from taking any further action in the [family law
20 case] immediately until a final hearing and resolution of this action”).)

21 3. 2244 Complaint

22 The 2244 Complaint repeats many of the allegations of the prior complaints
23 concerning Defendant Commissioner Boucek, including that she should have been
24 disqualified because she lived near Plaintiff’s ex-husband and did not disclose that
25 information. (2244 Compl. at 1–24, 28–30, 43.) Plaintiff repeats the allegations that all
26 the orders issued by Defendant Commissioner Boucek “are void because [she] violated the
27 law ... because of her impropriety, she was disqualified, and without any lawful
28

1 [j]urisdiction.” (*Id.* at 18.) However, the 2244 Complaint appears to additionally focus on
2 Plaintiff’s attempt to withdraw her stipulation to Defendant Commissioner Boucek’s
3 appointment in Plaintiff’s family law case, the striking of that withdrawal of stipulation,
4 and Defendant Commissioner Boucek’s determination on Plaintiff’s withdrawal of
5 stipulation. (*Id.* at 24–28, 31–33, 37, 40–41.) Plaintiff asserts this violated due process.
6 (*Id.* at 25, 32, 34.) Plaintiff alleges that Defendant Commissioner Boucek “violated the
7 law” in issuing every order issued in the family law case. (*Id.* at 18–19 (listing dates of
8 orders issued by Defendant Commissioner Boucek).) Plaintiff asks the Court to void and
9 vacate all the Court orders made by Defendant Commissioner Boucek. (*Id.* at 45.)

10 4. 454 FAC⁶

11 The 454 FAC largely repeats the same conclusory assertions and allegations of her
12 prior complaints, but the 454 FAC varies in that it names different Superior Court judges
13 and one individual identified as a district attorney, Defendant Pena. (454 FAC at 10–17
14 (Miller), 17–24 (Hallahan), 24–29 (Mody), 29–35 (Rosenstein), 35–42 (Pena).)

15 Plaintiff seems to be asking this Court to void all orders issued in her family law
16 case based on the state judges not disqualifying themselves despite Plaintiff having sought
17 it, Defendants not having a public bond on file, and because Plaintiff dismissed her family
18 law case. (*Id.* at 48, 55 (dismissed); 3, 14, 49–51 (disqualification); 52 (public bond).)
19 Plaintiff’s allegations as to Defendants Judge Hallahan, Judge Mody, and Judge Rosenstein
20 are similar to the allegations of her prior complaints against Judge Smyth, *i.e.*, they appear
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22
23 ⁶ The Court summarizes the *operative* complaint in the 454 Case, titled “1st Amended
24 Complaint.” (Doc. 9.) Plaintiff filed the initial Complaint in the 454 Case on March 8,
25 2024. (454 Case-Doc. 1.) A Motion to Dismiss the initial Complaint was filed by five of
26 the Defendants on March 29, 2024. (Doc. 7.) The same day, March 29, 2024, Plaintiff
27 filed the 1st Amended Complaint. (Doc. 9.) The same five Defendants filed a Motion to
28 Dismiss the March 29, 2024 1st Amended Complaint (hereinafter, “454 FAC”). (Doc. 17.)
Two additional Defendants also filed a Motion to Dismiss the 454 FAC. (Doc. 16.)
Accordingly, Defendants’ first Motion to Dismiss (Doc. 7) is **DENIED as MOOT.**

1 to be based entirely on supervision responsibilities without any other allegations against
2 them. (*Id.* at 17–29.)

3 There are no factual allegations as to Defendant Pena except the unexplained
4 assertion that he created a criminal claim against Plaintiff. (*Id.* at 35–42, 53.) There are
5 no factual allegations as to all other listed Defendants—San Diego County, City of San
6 Diego, the Superior Court, Municipal Court, San Diego County Sheriff’s Department, and
7 the State of California. (*Id.* at 43–46, 56–58.)

8 Similar to all her prior complaints, Plaintiff asks this Court to enjoin any action in
9 the family law case. (*Id.* at 67.) She additionally requests the disqualification of the named
10 judges and Defendant Pena be disqualified for bias and prejudice. (*Id.* at 67.)

11 **B. Judicial Notice**

12 Judicial notice and incorporation-by-reference are exceptions to the general rule that
13 courts should not consider materials outside the pleading on a motion to dismiss. *Khoja v.*
14 *Orexigen Therapeutics, Inc.*, 899 F.3d 988, 998 (9th Cir. 2018).

15 “Judicial notice under Rule 201 permits a court to notice an adjudicative fact if it is
16 ‘not subject to reasonable dispute.’” *Id.* at 999 (quoting Fed. R. Evid. 201(b)). This means
17 that “a court may take judicial notice of matters of public record without converting a
18 motion to dismiss into a motion for summary judgment,” but “cannot take judicial notice
19 of disputed facts contained in such public records.” *Id.* (quoting *Lee v. City of Los Angeles*,
20 250 F.3d 668, 689 (9th Cir. 2001)).

21 Under the incorporation by reference doctrine, courts may “take into account
22 documents whose contents are alleged in a complaint and whose authenticity no party
23 questions, but which are not physically attached to the [plaintiff’s] pleading.” *Davis v.*
24 *HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1160 (9th Cir. 2012) (internal quotations and
25 citations omitted). “[I]ncorporation-by-reference is a judicially created doctrine that treats
26 certain documents as though they are part of the complaint itself.” *Khoja*, 899 F.3d at
27 1002. It allows a defendant to seek incorporation of “a document into the complaint ‘if the
28

1 plaintiff refers extensively to the document, or the document forms the basis of the
2 plaintiff's claim.” *Id.* (quoting *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

3 Multiple Defendants have filed requests for judicial notice either in conjunction with
4 a motion or as a separate filing. (1854 Case-Docs. 21-2, 23-2, 36-1 (filed with motions),
5 26–27, 35, 38 (separately filed); 2244 Case-Docs. 8-2, 16-2 (filed with motions), 454 Case-
6 Doc. 17-2 (filed with motion).) There is also significant overlap in their requests with
7 multiple Defendants asking the Court to take judicial notice of the same documents.

8 The Court need not rely on many of these documents to address the pending motions
9 and is not inclined to take judicial notice of or incorporate documents by reference when it
10 is not necessary to ruling on the pending motions, particularly when the Court is dismissing
11 these cases without leave to amend. Accordingly, the Court takes judicial notice of the
12 following: (1) the June 21, 2023 Minute Order in the family law case (Ex. 5 to Motion to
13 Dismiss filed by Defendants Yip, Finkbeiner, and Wilkinson (hereinafter “Yip Motion to
14 Dismiss” [1854 Case-Doc. 23-3 at 85–90]); (2) the September 8, 2023 Proposed Statement
15 of Decision (Ex. A to Defendant Sachdev’s Motion to Dismiss [1854 Case-Doc. 21-2 at 5–
16 35]); (3) Order Striking Plaintiff’s Statement of Disqualification of Commissioner Boucek
17 dated September 19, 2023 (Ex. 12 to Yip Motion to Dismiss [1854 Case-Doc. 23-3 at 124–
18 29]); (4) Defendant Commissioner Boucek’s Answer to Plaintiff’s Statement of
19 Disqualification (Ex. 4 to Yip Motion to Dismiss [1854 Case-Doc. 23-3 at 76–86]); (5)
20 Minutes of the September 21, 2023 Hearing (Ex. 11 to Yip Motion to Dismiss [1854 Case-
21 Doc. 23-2 at 121–123]); (6) Plaintiff’s Motion to Withdraw Stipulation to Appointment of
22 Referee dated September 25, 2023 [Ex. F to Defendant Sachdev’s Motion to Dismiss [1854
23 Case-Doc. 21-2 at 49–78]); (7) Ex Parte Order of Judge Morris dated October 9, 2023 (Ex.
24 21 to Yip Motion to Dismiss [1854 Case-Doc. 23-3 at 181–83]); and (8) the December 19,
25 2023 Final Statement of Decision (Ex. 23 to Yip Motion to Dismiss [2244 Case-Doc. 16-
26 3 at 192–221]).

1 The Court takes judicial notice of these public records but does not take judicial
2 notice of any disputed facts within them. *See Khoja*, 899 F.3d at 999. The Defendants’
3 other requests for judicial notice are **DENIED** because the documents are not necessary to
4 the resolution of the pending motions. *Limcaco v. Wynn*, No. 21-56285, 2023 WL 154965,
5 at *2 (9th Cir. Jan. 11, 2023) (finding district court “did not abuse its discretion in denying
6 the motion to take judicial notice of these documents, which it did not rely upon, and which
7 were not necessary to its rulings on the motions to dismiss.”) (citing *Great Basin Mine*
8 *Watch v. Hankins*, 456 F.3d 955, 976 (9th Cir. 2006)).

9 II. DISCUSSION

10 In these three cases, there are more than twenty motions to dismiss or strike pending.
11 (1854 Case-Docs. 10, 14, 21–23 (motions to dismiss), 30, 32–33, 36 (motions to strike
12 untimely pleadings); 2244 Case-Docs. 8, 16–21 (motions to dismiss), 13, 15 (motions to
13 strike untimely pleadings); 454 Case-Docs. 7,⁷ 16–17 (motions to dismiss).) The Court
14 first addresses the motions to strike Plaintiff’s amended complaints filed in the 1854 Case
15 and 2244 Cases and then addresses the motions to dismiss filed in all three cases.⁸

16 A. Motions to Strike Plaintiff’s Amended Complaints

17 Plaintiff has filed numerous documents titled as amended complaints in the 1854
18 Case and 2244 Case. In each, multiple Defendants have moved to strike these filings as
19 untimely. (1854 Case-Docs. 30, 32–33; 2244 Case-Docs. 13, 15.)

20 1. Amending Under Rule 15

21 Rule 15(a)(1) addresses amending as a matter of course and states that:

22 A party may amend its pleading once as a matter of course no later than:

23 (A) 21 days after serving it, or

24
25 ⁷ As noted above, this Motion to Dismiss is denied as moot. (*See supra* n.6.)

26 ⁸ The Court separately addresses the pro se Defendants’ motions to dismiss (1854 Case-
27 Docs. 10, 14; 2244 Case-Docs. 17–21) and Defendants San Diego County Sheriff and the
28 County of San Diego’s motions to dismiss (454 Case-Doc. 16). (*See infra* II.B.4.)

1 (B) if the pleading is one to which a responsive pleading is required, 21
2 days after service of a responsive pleading or 21 days after service of a
3 motion under Rule 12(b), (e), or (f), whichever is earlier.

4 Rule 15(a)(2) addresses other amendments and states, “[i]n all other cases, a party
5 may amend its pleading only with the opposing party’s written consent or the court’s
6 leave.”

7 **2. 1854 Case**

8 Plaintiff’s Complaint in the 1854 Case was filed on October 10, 2023 (1854 Case-
9 Doc. 1), allegedly served between October 10, 2023 and October 11, 2023 (1854 Case-
10 Docs. 3–11), and the Defendants’ motions to dismiss followed from October 12, 2023 to
11 November 1, 2023 (1854 Case-Docs. 10, 14, 21, 22, 23). Plaintiff filed a document titled
12 “1st Amended Complaint” on January 23, 2024. (1854 Case-Doc. 29.) Numerous
13 Defendants moved to strike this filing as untimely on February 1, 2024 (1854 Case-Doc.
14 30) and February 27, 2024 (1854 Case-Doc. 36). On February 1, 2024, Plaintiff filed
15 another document titled “1st Amended Complaint.” (1854 Case-Doc. 31.) Numerous
16 Defendants then filed motions to strike this filing as untimely. (1854 Case-Docs. 32–33.)

17 Plaintiff’s attempts to amend her complaint in the 1854 Case were untimely under
18 Rule 15(a)(1)(A). The 1st Amended Complaints, filed on January 23, 2024 (1854 Case-
19 Doc. 29) and February 1, 2024 (1854 Case-Doc. 31) were filed well more than 21 days
20 after Plaintiff claims to have served her initial Complaint. Plaintiff asserts she served the
21 Complaint on Defendants on October 10, 2023 or October 11, 2023, depending on the
22 Defendant. (1854 Case-Docs. 3–11.) These filings on January 23, 2024 and February 1,
23 2024 were also not filed within 21 days of Defendants’ motions to dismiss, filed between
24 October 12, 2023 and November 1, 2023.

25 Plaintiff’s filings were untimely as amendments as a matter of right under Federal
26 Rule of Civil Procedure (“Rule”) 15(a)(1) and Plaintiff failed to obtain the stipulation of
27

1 Defendants or permission from the Court to amend under Rule 15(a)(2). Accordingly, the
2 motions to strike these filings (1854 Case-Docs. 30, 32–33, 36) are **GRANTED**.⁹

3 **3. 2244 Case**

4 Plaintiff filed the 2244 Complaint (2244 Case-Doc. 1) on December 7, 2023 and
5 served the only named Defendant in the 2244 Complaint, Defendant Commissioner
6 Boucek, on the same day. (2244 Case-Doc. 1-4.) Defendant Commissioner Boucek filed
7 a Motion to Dismiss this Complaint on December 28, 2023. (2244 Case-Doc. 8.) On
8 January 23, 2024, Plaintiff filed a document titled “1st Amended Complaint” that named
9 eleven new Defendants, most of whom were the same Defendants named in Plaintiff’s
10 1730 Case.¹⁰ (2244 Case-Doc. 10.) Defendant Commissioner Boucek moved to strike this
11 filing as untimely. (2244 Case-Doc. 13.) Then, on February 1, 2024, Plaintiff filed a
12 document titled “2nd Amended Complaint.” (2244 Case-Doc. 14.) That filing only names
13 Commissioner Boucek as a defendant. (2244 Case-Doc. 14 at 1.) Defendant
14 Commissioner Boucek filed a motion to strike this filing as well. (2244 Case-Doc. 15.)

15 Plaintiff’s attempts to amend in the 2244 Case were also untimely as amendments
16 as a matter of right under Rule 15(a)(1)(A). The January 23, 2024 1st Amended Complaint
17 (2244 Case-Doc. 10) and February 1, 2024 2nd Amended Complaint (2244 Case-Doc. 14)
18 were both were filed well more than 21 days after Plaintiff claims to have served her initial
19 Complaint, December 7, 2023 (2244 Case-Doc. 1-4). These filings were also not filed
20

21
22
23 ⁹ These motions to strike these pleadings are also granted for lack of opposition. CivLR
24 7.1.f.c) (“Waiver: If an opposing party fails to file the papers in the manner required by
25 Civil Local Rule 7.1e.2, that failure may constitute a consent to the granting of a motion or
26 other request for ruling by the Court.”)

27 ¹⁰ In addition to the ten Defendants listed on the caption of Plaintiff’s 1st Amended
28 Complaint, there is an additional individual named in the filing, Benjamin Garret. (2244
Case-Doc. 10 at 98–101.) This January 23, 2024 filing appears to largely duplicate the
allegations of the 1730 Complaint. (2244 Case-Doc. 10.)

1 within 21 days of Defendant Commissioner Boucek’s Motion to Dismiss, filed on
2 December 28, 2023.

3 Plaintiff’s filings were untimely as amendments as a matter of right under Rule
4 15(a)(1) and Plaintiff failed to obtain the stipulation of Defendants or permission from the
5 Court to amend under Rule 15(a)(2). Accordingly, the motions to strike these filings (2244
6 Case-Docs. 13, 15) are **GRANTED**.

7 **B. Motions to Dismiss**

8 **1. Federal Rules of Civil Procedure**

9 Defendants in all three cases seek dismissal under: Rule 12(b)(1) based on lack of
10 subject-matter jurisdiction; Rule 12(b)(6) for failure to state claim; and Rule 8 for failing
11 to provide a short and plain statement of each claim. (1854 Case-Docs. 21–23; 2244 Case-
12 Docs. 8, 16;¹¹ 454 Case-Docs. 16–17.) The Court does not address whether the allegations
13 of the complaints fail to comply with Rule 8 because the Court finds the complaints must
14 be dismissed under Rule 12(b)(1) and 12(b)(6).

15 **a) Rule 12(b)(1)**

16 Rule 12(b)(1) allows a defendant to move to dismiss a complaint based on a lack of
17 subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). “When subject matter jurisdiction is
18 challenged under Federal Rule of Procedure 12(b)(1), the plaintiff has the burden of
19 proving jurisdiction in order to survive the motion.” *Tosco Corp. v. Cmtys. for a Better*
20 *Env.*, 236 F.3d 495, 499 (9th Cir. 2001), *overruled on other grounds by Hertz Corp. v.*
21 *Friend*, 559 U.S. 77 (2010). “A Rule 12(b)(1) jurisdictional attack may be facial or
22 factual.” *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004) (quoting
23 *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000)). “In a facial attack, the challenger
24 asserts that the allegations contained in a complaint are insufficient on their face to invoke
25

26
27 ¹¹ Numerous pro se Defendants have also filed motions to dismiss that are addressed below.
28 (1854 Case-Docs. 10, 14; 2244 Case-Docs. 17–21.)

1 federal jurisdiction. By contrast, in a factual attack, the challenger disputes the truth of the
2 allegations that, by themselves, would otherwise invoke federal jurisdiction.” *Id.* (citation
3 omitted).

4 **b) Rule 12(b)(6)**

5 Pursuant to Rule 12(b)(6), an action may be dismissed for failure to allege “enough
6 facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550
7 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads factual
8 content that allows the court to draw the reasonable inference that the defendant is liable
9 for the misconduct alleged. The plausibility standard is not akin to a
10 probability requirement, but it asks for more than a sheer possibility that a defendant acted
11 unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks and
12 citations omitted). For purposes of ruling on a Rule 12(b)(6) motion, the Court “accept[s]
13 factual allegations in the complaint as true and construe[s] the pleadings in the light most
14 favorable to the nonmoving party.” *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d
15 1025, 1031 (9th Cir. 2008).

16 However, the Court is “not bound to accept as true a legal conclusion couched as a
17 factual allegation.” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). Nor is the
18 Court “required to accept as true allegations that contradict exhibits attached to the
19 Complaint or matters properly subject to judicial notice, or allegations that are merely
20 conclusory, unwarranted deductions of fact, or unreasonable inferences.” *Daniels-Hall v.*
21 *Nat’l Educ. Ass’n*, 629 F.3d 992, 998 (9th Cir. 2010). “In sum, for a complaint to survive
22 a motion to dismiss, the non-conclusory factual content, and reasonable inferences from
23 that content, must be plausibly suggestive of a claim entitling the plaintiff to relief.” *Moss*
24 *v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (quotation marks omitted).

25 **2. Specific Grounds for Dismissal Raised in Motions to Dismiss**

26 Defendants’ motions to dismiss assert numerous grounds for dismissing all three
27 complaints without leave to amend and with prejudice: (1) the *Rooker-Feldman* doctrine;

1 (2) judicial immunity; (3) Defendants not being state actors; (4) failing to allege a plausible
2 constitutional violation; (5) the domestic relations exception; (6) *Younger* abstention; (7)
3 the *Noerr-Pennington* doctrine; (8) Eleventh Amendment Immunity; (9) failing to comply
4 with Rule 8; and (10) the frivolity of the complaints. (1854 Case-Docs. 21–23; 2244 Case-
5 Docs. 8, 16; 454 Case-Docs. 16, 17.) Most of these issues are raised by multiple
6 Defendants.

7 The Court need not reach every basis argued because the *Rooker-Feldman* doctrine,
8 judicial immunity, and Defendants not being state actors require dismissal of all three cases
9 without leave to amend. Rather than addressing each individual motion, the Court
10 addresses these issues collectively because of the significant overlap in the arguments in
11 the motions and volume of motions before the Court.

12 **a) *Rooker-Feldman* Doctrine**

13 “Under *Rooker–Feldman*, a federal district court does not have subject matter
14 jurisdiction to hear a direct appeal from the final judgment of a state court. The United
15 States Supreme Court is the only federal court with jurisdiction to hear such an appeal.”
16 *Noel v. Hall*, 341 F.3d 1148, 1154 (9th Cir. 2003). The “doctrine bars a district court from
17 exercising jurisdiction ... over an action explicitly styled as a direct appeal, but also over
18 the ‘de facto equivalent’ of such an appeal.” *Cooper v. Ramos*, 704 F.3d 772, 777 (9th Cir.
19 2012) (quoting *Noel*, 341 F.3d at 1155). A case presents “a forbidden de facto appeal under
20 *Rooker-Feldman* when the plaintiff in federal district court complains of a legal wrong
21 allegedly committed by the state court and seeks relief from the judgment of that court.”
22 *Id.* at 777–78 (explaining that in “determin[ing] whether an action functions as a de facto
23 appeal, we ‘pay close attention to the *relief* sought by the federal-court plaintiff.”) (quoting
24 *Bianchi v. Rylaarsdam*, 334 F.3d 895, 900 (9th Cir. 2003) (emphasis in original)). “If a
25 federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court
26 and seeks relief from a state court judgment based on that decision, *Rooker–Feldman* bars
27 subject matter jurisdiction in federal district court. If, on the other hand, a federal plaintiff
28

1 asserts as a legal wrong an allegedly illegal act or omission by an adverse party, *Rooker–*
2 *Feldman* does not bar jurisdiction.” *Noel*, 341 F.3d at 1164.

3 “*Rooker–Feldman* ‘is confined to cases ... brought by state-court losers ... inviting
4 district court review and rejection of [the state court’s] judgments. *Skinner v. Switzer*, 562
5 U.S. 521, 532 (2011) (quoting *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S.
6 280, 284 (2005)); *see also Reed v. Goertz*, 598 U.S. 230, 235 (2023) (distinguishing federal
7 challenges to state statutes or rules and reiterating that *Rooker–Feldman* “prohibits federal
8 courts from adjudicating cases brought by state-court losing parties challenging state-court
9 judgments.”) (citations omitted).

10 “A federal district court dealing with a suit that is, in part, a forbidden de facto appeal
11 from a judicial decision of a state court must refuse to hear the forbidden appeal. As part
12 of that refusal, it must also refuse to decide any issue raised in the suit that is ‘inextricably
13 intertwined’ with an issue resolved by the state court in its judicial decision.” *Noel*, 341
14 F.3d at 1158. “[C]laims [are] inextricably intertwined where the relief requested in the
15 federal action would effectively reverse the state court decision or void its ruling.” *Cooper*,
16 704 F.3d at 779 (internal quotation marks and citations omitted). Or stated another way,
17 “the federal claim is inextricably intertwined with the state-court judgment if the federal
18 claim succeeds only to the extent that the state court wrongly decided the issues before it.
19 Where federal relief can only be predicated up upon a conviction that the state court was
20 wrong, it is difficult to conceive the federal proceeding as, in substance, anything other
21 than a prohibited appeal of the state court judgment.” *Id.* (quoting *Pennzoil Co. v. Texaco*,
22 *Inc.*, 481 U.S. 1 (1987)).

23 Plaintiff does not “explicitly style[] [her claims] as a direct appeal,” however, the
24 1854 and 2244 Complaints and the 454 FAC are “the ‘de facto equivalent’ of such an
25 appeal.” *Cooper*, 704 F.3d at 777. Plaintiff asserts that numerous decisions in the state
26 family law case are in violation of the law and requests this Court invalidate and void those
27 decisions. (See 1854 Compl. at 67 (asserting the October 10, 2023 Order is “in violation
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1 of law,” “without lawful justification,” and that Defendants have “caused an invalid
2 restraining order to be issued against Plaintiff”), 71 (Plaintiff’s related request for an order
3 “to refrain from taking any further action in the [family law case] immediately until a final
4 hearing and resolution of this action”); 2244 Compl. at 18–19 (alleging Defendant
5 Commissioner Boucek “violated the law” in issuing every order in the family law case),
6 45 (asking the Court to void and vacate all the court orders made by Defendant
7 Commissioner Boucek); 454 FAC at 49–51 (alleging the court orders of numerous judges
8 are void), 67 (requesting the Court order Defendants not to take any further action in her
9 family law case and disqualify Defendants.) Plaintiff’s claims are based on her continuing
10 assertion that all of Defendant Commissioner Boucek’s decisions against Plaintiff have
11 been unlawful or invalid because she should have disqualified herself from the family law
12 case. (See 2244 Compl. at 1–24, 28–30, 43.) As summarized above (*see supra* I.A.2 (1854
13 Compl.), I.A.3 (2244 Compl.), I.A.4 (454 FAC)), while there is some variation in
14 Plaintiff’s allegations against the newly named judges, *i.e.*, different basis for
15 disqualification of the judges, Plaintiff continues to seek invalidation of every decision
16 made against her in the family law case because, she alleges, they have all been in violation
17 of the law. (See 1854 Compl. at 76, 71; 2244 Compl. at 18–19, 45; 454 FAC at 67.)

18 Plaintiff’s claims fall within *Rooker-Feldman*’s jurisdictional bar because they are
19 de facto appeals of decisions issued in her family law case. While her prior cases focused
20 more exclusively on the DVRO issued against her, the volume of state court decisions she
21 challenges does not change that she is complaining of “a legal wrong committed by the
22 state court”—essentially every decision issued against her in the family law case—and
23 “seeks relief from the judgment of that court”—invalidation of each of those decisions.
24 *Cooper*, 704 F.3d at 778. Plaintiff has lost in state court repeatedly and is asking this Court
25 to review and reject the state court’s decisions. *Skinner*, 562 U.S. at 532 (“*Rooker–*
26 *Feldman* is confined to cases ... brought by state-court losers ... inviting district court
27 review and rejection of [the state court’s] judgments.”) (citations omitted).

1 The 1854 Complaint, 2244 Complaint, and 454 FAC are **DISMISSED** for lack of
2 subject-matter jurisdiction based on the *Rooker-Feldman* bar. This is a sufficient basis for
3 dismissal of all three complaints against all Defendants. However, given the Court’s
4 obligation to consider whether leave to amend should be granted, the Court addresses two
5 additional issues that require dismissal of these cases.

6 **b) Judicial Immunity**

7 Defendants Commissioner Boucek, Judge Smyth, Judge Morris, Judge Hallahan,
8 Judge Miller, Judge Mody, and Judge Rosenstein (hereinafter, “Judicial Defendants”)
9 move to dismiss Plaintiff’s claims without leave to amend based on judicial immunity.
10 (1854 Case-Doc. 22-1 at 4–7; 2244 Case-Doc. 8-1 at 5–7; 454 Case-Doc. 17-1 at 15–18.)
11 Defendants argue they are entitled to absolute judicial immunity because Plaintiff’s claims
12 arise from actions they took as state judicial officers. (1854 Case-Doc. 22-1 at 7; 2244
13 Case-Doc. 8-1 at 6–7; 454 Case-Doc. 17-1 at 17–18.) Similarly, Judge Smyth and Judge
14 Hallahan argue the conduct alleged against them—that they failed to properly supervise or
15 correct other judges—are based on supervisory responsibilities that were “very much a
16 function of [their] judicial office[s].” (1854 Case-Doc. 22-1 at 7; 454 Case-Doc. 17-1 at
17 17–18.)

18 State judges and commissioners of the superior courts are entitled to immunity for
19 their judicial acts. *Swift v. California*, 384 F.3d 1184, 1188 (9th Cir. 2004) (“It is well
20 established that state judges are entitled to absolute immunity for their judicial acts.”)
21 (citations omitted); *Franchesi v. Schwartz*, 57 F.3d 828, 831 (9th Cir. 1995) (finding
22 Commissioner was immune “performing judge-like functions that were not clearly outside
23 the scope of his jurisdiction”) (quotations omitted); *see also Ricotta v. State of California*,
24 4 F. Supp. 2d 961, 973 (S.D. Cal. 1998) (“Judicial immunity extends to municipal court
25 commissioners.”). “The primary policy of extending immunity to judges ... is to ensure
26 independent and disinterested judicial ... decisionmaking.” *Ashelman v. Pope*, 793 F.2d
27 1072, 1078 (9th Cir. 1986) (citations omitted).

1 Judicial immunity applies in cases brought under § 1983. *Stump v. Sparkman*, 435
2 U.S. 349, 356 (1978) (citation omitted). “A judge will not be deprived of immunity
3 because the action he took was in error, was done maliciously, or was in excess of his
4 authority; rather, he will be subject to liability only when he has acted in the ‘clear absence
5 of all jurisdiction.’” *Id.* at 356–57. Additionally, “allegations that a conspiracy produced
6 a certain decision should no more pierce the actor’s immunity than allegations of bad faith,
7 personal interest or outright malevolence.” *Ashelman*, 793 F.2d at 1078 (citations omitted).

8 Plaintiff’s claims against all the Judicial Defendants clearly fall within the Judicial
9 Defendants’ jurisdiction. *See Stump*, 435 U.S. at 356; *Ashelman*, 793 F.2d at 1075. They
10 were acting in a judicial capacity in holding hearings, issuing decisions, or supervising
11 other judicial officers. The Judicial Defendants are all entitled to absolute judicial
12 immunity. Accordingly, Plaintiff’s claims against the Judicial Defendants are additionally
13 **DISMISSED** based on judicial immunity.

14 **c) Non-Judicial Defendants – State Actor Requirement**

15 The other Defendants named in the 1854, 2244, and 454 cases are not judges—
16 Defendants Finkbeiner, Yip, Sachdev, Heinrich, Samuel Martinette, Wilkinson, Sherman,
17 Wise, Black, Willmore, Louis Martinette, and Marie Martinette¹² (hereinafter, “Non-
18 Judicial Defendants”). Numerous Non-Judicial Defendants move to dismiss based on the
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21 ¹² Defendants Sherman, Wise, Black, Willmore, Louis Martinette, and Marie Martinette
22 are only named in the January 23, 2024 1st Amended Complaint in the 2244 Case (2244
23 Case-Doc. 10) that the Court has stricken as untimely (*see supra* II.A.3). However, the
24 analysis that follows would apply equally to the claims asserted against them in that
25 untimely filing. They are all private actors, and their conduct could not be attributable to
26 the state. Defendant Pena, named in the 454 FAC, might conceivably be considered a state
27 actor, however there are no *factual*, as opposed to conclusory, allegations as to what he
28 did. It also appears that he was never served. In this respect, even if the claims were not
barred by *Rooper-Feldman*, any claims against Defendant Pena in the 454 Case would also
not survive dismissal.

1 Non-Judicial Defendants not being state actors as required for a § 1983 claim. (1854 Case-
2 Doc. 21-1 at 14–15; 1854 Case-Doc. 23-1 at 19–20.)

3 “A § 1983 plaintiff must demonstrate a deprivation of a right secured by the
4 Constitution or laws of the United States, *and that the defendant acted under color of state*
5 *law.*” *Kirtley v. Rainey*, 326 F.3d 1088, 1092 (9th Cir. 2003) (citing *West v. Atkins*, 487
6 U.S. 42, 48 (1988) (emphasis added)). “In order to recover under § 1983 for conduct by
7 the defendant, a plaintiff must show ‘that the conduct allegedly causing the deprivation of
8 a federal right *be fairly attributable to the State.*’” *Caviness v. Horizon Cmty. Learning*
9 *Ctr., Inc.*, 590 F.3d 806, 812 (9th Cir. 2010) (emphasis added) (quoting *Lugar v.*
10 *Edmondson Oil Co.*, 457 U.S. 922, 937 (1982) (citations omitted)). “The state-action
11 element in § 1983 ‘excludes from its reach merely private conduct, no matter how
12 discriminatory or wrongful.’” *Id.* (quoting *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S.
13 40, 50 (1999)).

14 The factual allegations in the 1854 Complaint indicate that the Non-Judicial
15 Defendants were private actors. To the extent these Defendants’ connection to the family
16 law case is identified at all, the role alleged makes clear they were not state actors. As
17 summarized above, they are alleged to have been present for hearings in the family law
18 case, not intervened to stop hearings or false comments from being made, or made false
19 comments in a hearing. (*See* 1854 Compl. at 23–58, 62.) To the extent their connection to
20 the proceedings is identified, they appear to be either attorneys for a party in the family law
21 case or present at a hearing in the family law case. These factual allegations do not even
22 suggest the conduct of the Non-Judicial Defendants could “be fairly attributable to the
23 State.” *Caviness*, 590 F.3d at 812 (explaining that “a plaintiff must show that the conduct
24 allegedly causing the deprivation of a federal right be fairly attributable to the State.”).

25 Plaintiff’s allegations that the Non-Judicial Defendants conspired with others in
26 attending and not stopping the hearings are also insufficient to meet the state actor
27 requirement of § 1983. For example, Plaintiff alleges that Defendant Finkbeiner “furthered
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1 the conspiracy by participating in the unlawful hearing,” that Defendant Yip “failed to
2 intervene to stop the violation and furthered the conspiracy to deprive Plaintiff of her
3 fundamental right to liberty,” and that Defendant Sachdev “furthered the conspiracy by
4 refusing to stop the ex-parte communication, and instead added additional derogatory and
5 inflammatory information about [Plaintiff] with the intent to support further deprivations
6 of liberty of Plaintiff.” (See 1854 Compl. at 28 (Finkbeiner), 44 (Yip); 54 (Sachdev).)
7 “[M]erely resorting to the courts ... does not make a party a co-conspirator or a joint actor
8 with the judge.” *Price v. State of Hawaii*, 939 F.2d 702, 708 (1991) (citation omitted);
9 *Schucker v. Rockwood*, 846 F.2d 1202, 1205 (9th Cir. 1988) (“[C]onclusory allegations
10 that [a Judge] conspired with [attorneys] are insufficient to support [a] section 1983
11 claim.”) (citing *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980)). (per curiam). And
12 “[i]nvoking state legal procedures does not constitute ‘joint participation or ‘conspiracy’
13 with state officials sufficient to satisfy section 1983’s state action requirement.” *Schucker*,
14 846 F.2d at 1205 (citing *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 939 n.21 (1982)).

15 Plaintiff also alleges Defendants were “acting under color of law because [they were]
16 judicial officer[s] of the court who subjected Plaintiff to a deprivation of her liberty, and
17 by [their] conduct, under State Law, deprived Plaintiff of her liberty without due process.”
18 (See e.g. 1854 Compl. at 29.) However, most of the Non-Judicial Defendants are attorneys
19 whose only connection to the family law case is serving as private counsel for one of the
20 parties. As examples, Defendants Finkbeiner, Wilkinson, and Yip are alleged to be
21 attorneys representing Plaintiff’s ex-husband (See 1854 Compl. at 24, 32, 41) and
22 Defendant Sachdev is alleged to be an attorney for Plaintiff’s minor children. (See 1854
23 Compl. at 49, 53.) Generally, private attorneys are not state actors. *Briley v. California*,
24 564 F.2d 849, 855 (9th Cir. 1977) (“We have repeatedly held that a privately-retained
25 attorney does not act under color of state law for purposes of actions brought under the
26 Civil Rights Act.”). In family law cases, like this one, courts regularly reject attempts to
27 label an attorney for an opposing party as a state actor under § 1983. See *Plasola v.*

1 *California*, Case No. CV 19-5592 JAK (SS), 2019 WL 8013107, at *2 (C.D. Cal. Nov. 8,
2 2019) (collecting cases).

3 The Non-Judicial Defendants are either private attorneys¹³ or private individuals and
4 there are no factual allegations from which the Court could even infer they were acting
5 under color of state law. Accordingly, the claims against the Non-Judicial Defendants must
6 also be **DISMISSED** for failing to meet the state actor requirement for a § 1983 claim.

7 In summary, the 1854, 2244, and 454 Cases are **DISMISSED** based on lack of
8 subject matter jurisdiction under *Rooker-Feldman*, judicial immunity for the Judicial
9 Defendants, and not meeting the state actor requirement as to the Non-Judicial Defendants.

10 3. Leave to Amend

11 “[A] district court should grant leave to amend even if no request to amend the
12 pleading was made, unless it determines that the pleading could not possibly be cured by
13 the allegation of other facts.” *Cook, Perkiss & Liehe v. N. Cal. Collection Serv.*, 911 F.2d
14 242, 247 (9th Cir. 1990) (citations omitted). Here, in addition to not seeking leave to amend
15 or explaining how she could, Plaintiff did not file oppositions to any of the motions to
16 dismiss or strike filed in any of these cases.

17 When determining whether to grant leave to amend, courts generally consider five
18 factors, known as the *Foman* factors as stated by the Supreme Court in *Foman v. Davis*,
19 371 U.S. 178, 182 (1962). These factors include: (1) undue delay; (2) bad faith on the part
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22 ¹³ The Motion to Dismiss filed by Defendants Yip, Finkbeiner, and Wilkinson in the 1854
23 Case includes a request for sanctions under the Court’s inherent powers based on Plaintiff
24 filing the 1854 Case, as well as the preceding 1730 and 1839 Cases under § 1983 despite
25 Plaintiff admitting that they are private individuals. (1854 Case Doc. 23-1 at 23–24.)
26 While Plaintiff’s state actor allegations against the Non-Judicial Defendants are, at best,
27 insufficient legal conclusions that cannot be cured by amendment, the Court is not
28 persuaded that sanctions based on bad faith are warranted on this basis at this point. The
request for sanctions under the Court’s inherent powers based on Plaintiff’s state actor
allegations is **DENIED** without prejudice.

1 of the party seeking leave to amend; (3) undue prejudice to the non-moving party; (4)
2 futility of amendment; and (5) whether the plaintiff has previously amended the complaint.
3 *Id.* “Dismissal of a complaint without leave to amend is proper where it is clear that the
4 complaint could not be saved by amendment,” *i.e.*, amendment would be futile. *Cooper*,
5 704 F.3d at 783.

6 The Court finds Plaintiff should not be granted leave to amend her claims. Plaintiff
7 has only previously amended the claims in the 454 Case and has not engaged in undue
8 delay in these particular cases. However, she has not responded to any of the many motions
9 filed by Defendants in these cases or the motions filed by Defendants in her prior cases.
10 And based on the record in these three cases and the two cases previously dismissed
11 without leave to amend, it appears Plaintiff may be attempting to obstruct the proceedings
12 in the family law case and harass or be a nuisance to the Defendant attorneys and witnesses
13 in the family law case because she is displeased with the decisions in her family law case.
14 This Court would be enabling or extending that harassment and risk undue prejudice to
15 these Defendants in having to file another round of motions to dismiss an amended
16 pleading when Plaintiff did not even respond to their first set of motions.

17 Additionally, any amendment would be futile. The Court lacks subject-matter
18 jurisdiction under *Rooker-Feldman* and that is not an issue that could be cured under the
19 circumstances of this case. Plaintiff’s claims in these three cases raise challenges to state
20 court decisions in her family law case. That cannot be cured by amendment. When claims
21 are barred by *Rooker-Feldman* and there is no basis for finding the claims could be cured,
22 dismissal without leave to amend is permissible. *See Boudette*, 2024 WL 1342613, at * 2
23 (explaining that when “there is no basis to conclude [a plaintiff] could replead [their] claims
24 to avoid the *Rooker-Feldman* jurisdictional bar, there is no prejudicial error in the district
25 court’s refusal to grant leave to amend.”) (citing *Cervantes v. Countrywide Home Loans*,
26 656 F.3d 1034, 1041 (9th Cir. 2011)).

27 ///

1 Even if the claims were not barred by *Rooker-Feldman*, Plaintiff’s claims could still
2 not be cured by amendment because, as discussed above, the Defendants are either not state
3 actors or entitled to judicial immunity. “If judicial ... immunity bar[s] recovery, no
4 amendment could cure the deficiency and the action [is] properly terminated on a motion
5 to dismiss.” *Ashelman*, 793 F.2d at 1075. Any amendment would be futile and allowing
6 Plaintiff to amend would be unduly prejudicial to the Defendants. Accordingly, the Court
7 **DENIES** leave to amend.

8 **4. Other Motions Filed**

9 **a) Additional Motions to Dismiss**

10 Pro se Defendants Heinrich, Wise, Marie Martinette, Louis Martinette, and Samuel
11 Martinette have filed motions seeking dismissal under Rule 12(b)(5) for failure to serve
12 and Rule 12(b)(6). (1854 Case-Docs. 10, 14; 2244 Case-Docs. 17–21.) Defendants San
13 Diego County Sheriff and the County of San Diego also filed a Motion to Dismiss based
14 on failure to properly serve. (454 Case-Doc. 16.) Given the Court’s dismissal of all three
15 cases without leave to amend, these motions are moot. Additionally, the pro se motions to
16 dismiss in the 2244 Case (2244 Case-Docs. 17–21) are also moot because the Court has
17 stricken the amended complaints those motions seek to dismiss.¹⁴ The Court **DENIES**
18 these Motions (1854 Case-Docs. 10, 14; 2244 Case-Docs. 17–21; 454 Case-Doc. 16) as
19 **MOOT**.

20 **b) Pro Se Defendant Samuel Martinette’s Motion to Declare**
21 **Plaintiff a Vexatious Litigant**

22 Pro se Defendant Samuel Martinette has filed a Motion to Declare Plaintiff a
23 Vexatious Litigant. (1854 Case-Doc. 37.)
24
25

26
27 ¹⁴ As explained above, Plaintiff’s filing on January 23, 2024—that names these
28 Defendants—was untimely. (*See supra* II.A.)

1 “Federal courts can ‘regulate the activities of abusive litigant by imposing carefully
2 tailored restrictions under ...appropriate circumstances.’” *Ringgold-Lockhart v. County of*
3 *Los Angeles*, 761 F.3d 1057, 1061 (9th Cir. 2014) (quoting *De Long v. Hennessey*, 912
4 F.2d 1144, 1147 (9th Cir. 1990). “[P]refiling orders should rarely be filed,’ and only if
5 courts comply with certain procedural and substantive requirements.” *Id.* at 1062 (quoting
6 *De Long*, 912 F.2d at 1147). “When district courts seek to impose pre-filing restrictions,
7 they must: (1) give litigants notice and ‘an opportunity to oppose the order before it is
8 entered;’ (2) compile an adequate record for appellate review, including ‘a listing of all the
9 cases and motions that led the district court to conclude that a vexatious litigant order was
10 needed;’ (3) make substantive findings of frivolousness or harassment; and (4) tailor the
11 order narrowly so as ‘to closely fit the specific vice encountered.’” *Id.* (quoting *DeLong*,
12 912 F.2d at 1147–48). In making findings as to the two substantive factors, courts must
13 consider an additional five considerations: “(1) the litigant’s history of litigation and in
14 particular whether it entailed vexatious, harassing or duplicative lawsuits; (2) the litigant’s
15 motive in pursuing the litigation, e.g., does the litigant have an objective good faith
16 expectation of prevailing?; (3) whether the litigant is represented by counsel; (4) whether
17 the litigant has caused needless expense to other parties or has posed an unnecessary burden
18 on the courts and their personnel; and (5) whether other sanctions would be adequate to
19 protect the courts and other parties.” *Id.* “The final consideration ... is particularly
20 important.” *Id.*

21 Plaintiff’s conduct in filing these five cases, particularly naming many defendants
22 without any factual allegations, suggests an intent to harass the defendants. Additionally
23 her filings have caused needless expense to the parties and burden on the Court. However,
24 Plaintiff has not filed any motions in any of her cases and appears to have ceased filing
25 new cases in this Court. *See id.* at 1065 (noting two cases were far from an inordinate
26 number and collecting cases finding litigants vexatious based on the filing of 35, 50, and
27 600 frivolous cases) (citations omitted). In particular, the Court notes she has not filed any
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1 new cases since the Court dismissed the two earliest-filed cases. Accordingly, the Court
2 is not inclined to enter a pre-filing restriction on Plaintiff at this time. Pro se Defendant
3 Samuel Martinette’s Motion to Declare Plaintiff a Vexatious Litigant (1854 Case-Doc. 37)
4 is **DENIED** without prejudice. However, the Court notes that if Plaintiff continues to file
5 cases in this Court challenging decisions in the state family law proceedings, the Court will
6 consider a motion to impose a pre-filing requirement.

7 III. CONCLUSION

8 For the foregoing reasons and as set forth above, the Court **DISMISSES** the 1854
9 Case, the 2244 Case, and the 454 Case **WITHOUT LEAVE TO AMEND**. The requests
10 for judicial notice are **GRANTED in part** as set forth above (*see supra* I.B) and otherwise
11 **DENIED**.

12 As set forth in detail above, the Court rules as follows in the **1854 Case**:

- 13 • Defendant Sachdev’s Motion to Dismiss (1854 Case-Doc. 21) is **GRANTED**;
- 14 • Defendants Judge Morris and Judge Smyth’s Motion to Dismiss (1854 Case-Doc.
15 22) is **GRANTED**;
- 16 • Defendants Yip, Finkbeiner, and Wilkinson’s Motion to Dismiss (1854 Case-Doc.
17 23) is **GRANTED** as to dismissal and **DENIED** as to sanctions;
- 18 • Defendants Judge Morris and Judge Smyth’s Ex Parte Motions to Strike Plaintiff’s
19 January 23, 2024 and February 1, 2024 “1st Amended Complaint[s]” (1854 Case-
20 Docs. 30, 32) are **GRANTED**;
- 21 • Defendants Yip, Finkbeiner, and Wilkinson’s Ex Parte Motion to Strike Plaintiff’s
22 February 1, 2024 “1st Amended Complaint” (1854 Case-Doc. 33) is **GRANTED**;
- 23 • Defendant Sachdev’s Motion to Strike Plaintiff’s January 23, 2024 “1st Amended
24 Complaint” (1854 Case-Doc. 36) is **GRANTED**;
- 25 • Pro se Defendants’ motions to dismiss (1854 Case-Docs. 10, 14) are **DENIED** as
26 **MOOT**;

- 1 • Pro se Defendant’s request to declare Plaintiff a vexatious litigant (1854 Case-Doc.
2 37) is **DENIED**;
- 3 • Plaintiff’s Request to Electronically File (1854 Case-Doc. 13) is **DENIED** as
4 **MOOT**.

5
6 For the foregoing reasons and as set forth in detail above, the Court rules as follows
7 in the 2244 Case:

- 8 • Defendant Commissioner Boucek’s Motion to Dismiss (2244 Case-Doc. 8) is
9 **GRANTED**;
- 10 • Defendant Commissioner Boucek’s Ex Parte Motions to Strike Plaintiff’s January
11 23, 2024 “1st Amended Complaint” (2244 Case-Doc. 13) and Plaintiff’s February
12 1, 2024 “1st Amended Complaint” (2244 Case-Doc. 15) are **GRANTED**;
- 13 • Defendant Yip’s Motion to Dismiss (2244 Case-Doc. 16) is **DENIED** as **MOOT**;
- 14 • Pro se Defendants’ motions to dismiss (2244 Case-Docs. 17–21) are **DENIED** as
15 **MOOT**;
- 16 • Plaintiff’s Request to Electronically File (2244 Case-Doc. 3) is **DENIED** as
17 **MOOT**;

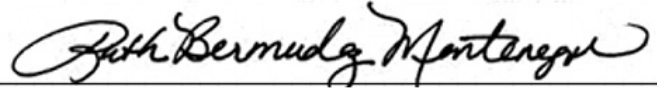
18
19 For the foregoing reasons and as set forth in detail above, the Court rules as follows
20 in the 454 Case:

- 21 • Defendants’ Motion to Dismiss the 454 FAC (454 Case-Doc. 17) is **GRANTED**;
- 22 • Defendants’ Motion to Dismiss Plaintiff’s initial Complaint (454 Case-Doc. 7) is
23 **DENIED** as **MOOT**;
- 24 • Defendants’ Motion to Dismiss based on improper service (454 Case-Doc. 16) is
25 **DENIED** as **MOOT**.

1 The Clerk shall enter judgment dismissing the 1854 Case, the 2244 Case, and 454
2 Case without leave to amend and close those cases.

3 **IT IS SO ORDERED.**

4 Dated: July 8, 2024



HON. RUTH BERMUDEZ MONTENEGRO
UNITED STATES DISTRICT JUDGE

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