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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

ROGER HILLYGUS, et al.,

Plaintiffs,

v.

FRANCIS DOHERTY, et al.,

Defendants.

Case No. 3:18-cv-00212-MMD-WGC

ORDER

I. SUMMARY

Plaintiff Roger Hillygus¹ sued numerous defendants who are people and entities allegedly involved in a long-running dispute surrounding the care of his parents and the administration of his family's trust. Nearly all the named defendants have moved to dismiss the claims Plaintiff asserted against them.² (ECF Nos. 24, 25, 26, 27, 30, 33, 37, 40, 41, 43, 44, 45, 49, 51, 52, 54, 57, 61, 62, 63, 89.) These motions are currently before the Court.³ As explained below, the Court will dismiss Plaintiff's claims to the extent they are

¹Plaintiff also purports to represent other plaintiffs, but cannot because he is proceeding pro se. See LR IA 11-(1-2); see also *Buran v. Riggs*, 5 F. Supp. 3d 1212, 1216 (D. Nev. 2014); *S.E.C. v. Inteligentry, Ltd.*, Case No. 2:13-cv-00344-GMN, 2013 WL 3995272, at *1 (D. Nev. Aug. 5, 2013). For this reason, and because the Court will dismiss Plaintiff's case, the Court only refers to the other purported plaintiffs in this order as necessary. However, this order applies to the other purported plaintiffs because the allegations and claims are the same.

² Defendant Ryan L. Earl filed a motion for a more definite statement. (ECF No. 35.) That motion is also before the Court. Otherwise, only defendant Integrated Behavioral Healthcare did not file a motion to dismiss.

³The Court also reviewed Plaintiff's omnibus response to these motions (ECF No. 68), and Defendants' replies (ECF Nos. 69-86). However, Defendant John Machen's motion (ECF No. 89) was filed on December 6, 2018 and seeks dismissal based on the running of the two-year statute of limitations. (ECF No. 89.) The Court therefore also reviewed Plaintiff's response to that motion. (ECF No. 92.) Plaintiff's response to

1 based on federal law because he fails to state claims upon which the Court may grant
2 relief. The Court will also decline to exercise jurisdiction over Plaintiff's state law claims,
3 and will therefore dismiss Plaintiff's case in its entirety.

4 **II. BACKGROUND**

5 Plaintiff alleges as follows in the operative amended Complaint ("FAC") unless
6 otherwise indicated. (ECF No. 19.) All of these events took place in the Reno, Nevada
7 area, and all parties are resident to, or operate in, that area. Plaintiff's parents, Eugene
8 and Susan Hillygus, put their assets, including their house, in a trust ("the Family Trust").
9 They appointed Plaintiff the successor trustee of the Family Trust. Plaintiff also expected
10 that he would be responsible for caring for his parents as they aged. Plaintiff's father
11 Eugene has passed away, but his mother Susan is still alive and is currently housed in a
12 facility designed to care for people suffering from Alzheimer's disease called Stone Valley
13 Alzheimer's Center.

14 Plaintiff has a sister, now known as Robin Renwick. It appears to the Court from
15 the FAC that Plaintiff and his sister have disagreed about how best to care for their aging
16 parents. This disagreement has apparently led to a series of legal disputes regarding their
17 care and the disposition of the Family Trust's assets. It is also apparent that Plaintiff's
18 dissatisfaction with the outcomes of these legal disputes in Nevada state court led to his
19 filing of this case.

20 Plaintiff was involved in the care of his aging parents and the administration of the
21 Family Trust. For some time, Plaintiff, on behalf of the trust, employed his wife Debbie as
22 a caregiver for his mother, Susan. Plaintiff arranged for the Family Trust to pay his wife
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26 Defendant John Machen's motion greatly exceeds the page limit. See LR 7-3(b).
27 Nonetheless, the Court reviewed it because Plaintiff is pro se, and the Court must afford
28 greater latitude to pro se litigants. Further, to the extent Plaintiff requests that the Court
disqualify the Nevada Attorney General's office from representing Defendant John
Machen (ECF No. 92 at 3-5), the Court declines to do so.

1 through a series of promissory notes. (Id. at 89-91.) His father having moved out, Plaintiff
2 and his wife moved into his parents' home to care for his mother. (Id. at 88, 92.)

3 In the winter and spring of 2014, Plaintiff's father Eugene sought to replace Plaintiff
4 as successor trustee of the Family Trust. (Id. at 91-92.) Plaintiff opposed this move in legal
5 proceedings that extended from 2014 through 2015. (Id. at 92-93.) Those proceedings did
6 not fully resolve in part because the parties could not agree how much to pay Plaintiff's
7 wife Debbie for caring for Plaintiff's mother. (Id. at 93.)

8 In November of 2015, Plaintiff's sister Robin filed another legal action in Nevada
9 state court to remove Plaintiff as trustee of the Family Trust. (Id. at 94.) It appears Judge
10 Frances Dougherty presided over this case. A court order removed Plaintiff as trustee for
11 the Family Trust in December of 2015 and appointed Plaintiff's sister Robin as acting
12 trustee until another trustee could be appointed by that court. (Id. at 94-95.) A subsequent
13 order of that court appointed Fiduciary Services of Nevada, LLC as trustee of the Family
14 Trust, specifically an individual named Kaycee Zusman. (Id. at 95.) In July 2016, Ms.
15 Zusman filed a petition to set aside the documents through which Plaintiff was attempting
16 to pay his wife—on behalf of the Family Trust—for caring for his mother. (Id.) In May or
17 June 2016, the court also ordered Plaintiff's mother be placed in the Stone Valley
18 Alzheimer's care home, replaced Plaintiff's mother's attorney with another who would
19 better represent her interests, and ordered the sale of Plaintiff's parents' home so that the
20 Family Trust would remain solvent and cover the cost of Plaintiff's mother's care. (Id. at
21 70.)

22 To facilitate the sale of the house, Ms. Zusman, on behalf of the Family Trust, filed
23 another legal action in the summer of 2016 to evict Plaintiff and his wife from Plaintiff's
24 parents' house. (Id. at 70-71.) They had apparently continued to live there—though
25 Plaintiff's mother no longer did—without paying rent. (Id. at 71.) Justice of the Peace David
26 Clifton presided over that action. (Id.) Judge Clifton ordered Plaintiff and his wife be evicted
27 from Plaintiff's parents house. (Id.) Plaintiff filed motions with Judge Clifton to oppose the
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1 eviction. Plaintiff also apparently refused to leave the house when Washoe County
2 Sheriff's department deputies arrived. Judge Clifton eventually issued a lockout order, and
3 ordered that any items found on the property be inventoried and sold to further replenish
4 the money available to the Family Trust. Washoe County Sheriff's department deputies
5 on scene to facilitate the eviction allegedly took guns that belonged to Plaintiff from a truck
6 on the property. (Id. at 46.)

7 Plaintiff generally alleges that the attorneys and judges involved in the legal
8 proceedings briefly described above have wrongfully conspired against him to deprive him
9 of money and property he expected to be entitled to through the Family Trust. He also
10 alleges that his sister is responsible for their father's death, and that his mother's
11 constitutional rights have been violated because she was placed in care facility for people
12 with Alzheimer's disease. He further alleges that the Washoe County Sheriff's Office and
13 the Nevada Attorney General's Office failed to investigate his reports to them that his sister
14 killed his father. (Id. at 9, 118.) The 147-page FAC includes twenty-two causes of action,
15 primarily alleging violations of state law, though seven of them mention either federal
16 statutes or constitutional rights. (Id. at 115-147.)

17 **III. LEGAL STANDARD**

18 A court may dismiss a plaintiff's complaint for "failure to state a claim upon which
19 relief can be granted." Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide "a
20 short and plain statement of the claim showing that the pleader is entitled to relief." Fed.
21 R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8
22 does not require detailed factual allegations, it demands more than "labels and
23 conclusions" or a "formulaic recitation of the elements of a cause of action." *Ashcroft v.*
24 *Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 555.) "Factual allegations
25 must be enough to rise above the speculative level." *Twombly*, 550 U.S. at 555. Thus, to
26 survive a motion to dismiss, a complaint must contain sufficient factual matter to "state a
27 claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678 (internal citation omitted).

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1 In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to
2 apply when considering motions to dismiss. First, a district court must accept as true all
3 well-pled factual allegations in the complaint; however, legal conclusions are not entitled
4 to the assumption of truth. See *id.* at 678-79. Mere recitals of the elements of a cause of
5 action, supported only by conclusory statements, do not suffice. See *id.* at 678. Second,
6 a district court must consider whether the factual allegations in the complaint allege a
7 plausible claim for relief. See *id.* at 679. A claim is facially plausible when the plaintiff's
8 complaint alleges facts that allow a court to draw a reasonable inference that the
9 defendant is liable for the alleged misconduct. See *id.* at 678. Where the complaint does
10 not permit the court to infer more than the mere possibility of misconduct, the complaint
11 has "alleged—but it has not show[n]—that the pleader is entitled to relief." *Id.* at 679
12 (internal quotation marks omitted). When the claims in a complaint have not crossed the
13 line from conceivable to plausible, the complaint must be dismissed. See *Twombly*, 550
14 U.S. at 570.

15 The Court takes particular care in reviewing the pleadings of a pro se party, for a
16 more forgiving standard applies to litigants not represented by counsel. See *Hebbe v.*
17 *Pliler*, 627 F.3d 338, 342 (9th Cir. 2010). Still, a liberal construction may not be used to
18 supply an essential element of the claim not initially pled. See *Ross v. Williams*, 896 F.3d
19 958, 969 (9th Cir. 2018) (citation omitted).

20 **IV. DISCUSSION**

21 As noted above, nearly all the defendants named in the FAC have moved to dismiss
22 Plaintiff's claims against them. These motions to dismiss make overlapping arguments.
23 Further, the FAC is so unclear that it is difficult for the Court to determine which claims are
24 asserted against which defendants, not to mention the full scope of Plaintiff's claims. In
25 addition, Plaintiff mostly alleges violations of state law in the FAC. This Court does not
26 have original jurisdiction over those claims. In general, the Court finds that the FAC fails
27 to state any federal claims against any of the named defendants. For these reasons, the
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1 Court's analysis below is organized in terms of Plaintiff's claims against groups of
2 defendants, and does not specifically address each of the numerous motions to dismiss.
3 The Court first discusses below Plaintiff's non-constitutional federal claims, his
4 constitutional claims, and then finally addresses his state law claims.

5 **A. Plaintiff's Non-Constitutional Alleged Federal Claims**

6 Plaintiff alleges violations of three federal statutes, but has not stated a claim for
7 various defendants' purported violations of them.

8 First, and while he does not plead it as an explicit cause of action, Plaintiff alleges
9 throughout the FAC that various named defendants are liable to him under the Racketeer
10 Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-1968. (See
11 generally ECF No. 19). "The elements of a civil RICO claim are simple enough: (1) conduct
12 (2) of an enterprise (3) through a pattern (4) of racketeering activity (known as 'predicate
13 acts') (5) causing injury to the plaintiff's 'business or property.'" *Grimmett v. Brown*, 75
14 F.3d 506, 510 (9th Cir. 1996) (citations omitted). But the FAC does not allege a plausible
15 RICO claim. Plaintiff does not allege any predicate acts or resulting injury to his business
16 or property, nor does Plaintiff make any attempt to match the elements of a civil RICO
17 claim to any of the misconduct alleged in the FAC. To the extent the RICO claim is that all
18 attorneys, judges and courts involved in the state court litigation surrounding the Family
19 Trust and the care of his parents are engaged in a conspiracy simply because Plaintiff
20 disagrees with their decisions—that is beyond implausible. The RICO claim must therefore
21 be dismissed. See *Pugh v. City of Bakersfield*, 166 F.3d 343 (Table), 1998 WL 895252, at
22 *1 (9th Cir. 1998) (affirming district court's dismissal of pro se Plaintiff's RICO claim where
23 "the complaint is devoid of any facts whatsoever from which it could be inferred that any
24 of the defendants violated RICO or that [plaintiff] suffered a cognizable injury.").

25 Further, Plaintiff appears to allege a violation of federal, criminal wire fraud laws.
26 (ECF No. 19 at 128.) But no such claim is cognizable because the laws Plaintiff appears
27 to be attempting to reference do not confer private rights of action. See *Ateser v. Bopp*,

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1 29 F.3d 630 (Table), 1994 WL 377872, at *2 (9th Cir. 1994) (“Courts have consistently
2 found that the mail and wire fraud statutes do not confer private rights of action.”) This
3 claim is therefore dismissed with prejudice.

4 Plaintiff also alleges violations of the Americans with Disabilities Act (“ADA”), 42
5 U.S.C. § 12101, et seq. Plaintiff appears to assert this claim on his mother’s behalf. (ECF
6 No. 19 at 144.) Plaintiff cannot assert this claim on her behalf because he cannot represent
7 her. See LR IA 11-(1-2); see also Buran, 5 F. Supp. 3d at 1216; Inteligentry, 2013 WL
8 3995272, at *1. Further, even if Plaintiff could represent his mother in this case, his vague
9 and conclusory allegations of ADA violations fail to state a claim. See Thurston v. U.S.
10 Behavioral Health, 124 F.3d 212 (Table), 1997 WL 577429 (9th Cir. 1997) (affirming
11 district court’s dismissal of pro se plaintiff’s ADA claim where his complaint contained only
12 vague and conclusory allegations).

13 **B. Plaintiff’s Alleged Federal Constitutional Claims**

14 Plaintiff also alleges violations of his constitutional rights against various named
15 defendants. While the link is unclear in the FAC, Plaintiff’s mechanism for alleging violation
16 of his constitutional rights is 42 U.S.C. § 1983 (“Section 1983”). To state a claim under
17 Section 1983, a plaintiff must allege two essential elements: (1) the violation of a right
18 secured by the Constitution or laws of the United States, and (2) that the alleged violation
19 was committed by a person acting under color of state law. See West v. Atkins, 487 U.S.
20 42, 48 (1988). Plaintiff cannot state a claim against the defendants whom he appears to
21 allege violated his constitutional rights for the reasons explained below.

22 **1. Against Judges**

23 First, Plaintiff appears to allege various judges violated his constitutional rights. His
24 allegations are against Judge Doherty, who presides or presided over one or several
25 cases regarding the administration of the Family Trust and guardianship over his parents
26 (ECF No. 19 at 5-6), and Justice of the Peace David Clifton, who presided over the judicial
27 foreclosure that resulted in Plaintiff and Plaintiff’s wife being force to vacate his parents’
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1 house (Id. at 5, 7). Plaintiff also named in the FAC Scott Freeman, Chief Judge of the
2 Washoe County District Court, because he allegedly has oversight responsibility over
3 Judge Doherty (id. at 6.), and deceased Judge Patrick Flanagan (id. at 1). The Court will
4 collectively refer to these judges as “the Judges.”

5 It is well established that judges who perform judicial functions are immune from
6 suit. See *Mireles v. Waco*, 502 U.S. 9, 9-10 (1991) (per curiam). “Accordingly, judicial
7 immunity is not overcome by allegations of bad faith or malice, the existence of which
8 ordinarily cannot be resolved without engaging in discovery and eventual trial.” Id. at 11
9 (citing *Pierson v. Ray*, 386 U.S. 547, 554 (1967)). In *Mireles*, the United States Supreme
10 Court explained the rationale for giving judicial officers absolute immunity:

11 Although unfairness and injustice to a litigant may result on occasion, “it is a
12 general principle of the highest importance to the proper administration of
13 justice that a judicial officer, in exercising the authority vested in him, shall
be free to act upon his own convictions, without apprehension of personal
consequences to himself.”

14 Id. at 10 (quoting *Bradley v. Fisher*, 13 Wall. 335, 347, 20 L. Ed. 646 (1872)).

15 Plaintiff’s claims against the Judges are based on challenges to their performance
16 of judicial functions in the handling of Plaintiff’s state court cases. The FAC contains no
17 factual allegations to support his contention that they somehow acted in a non-judicial
18 capacity. Further, it does not appear from the FAC that Judge Freeman or the deceased
19 Judge Flanagan were involved in any way with Plaintiff’s state court cases. The Judges
20 are therefore entitled to judicial immunity even if they harbored actual prejudice against
21 Plaintiff. See *Mireles*, 502 U.S. at 11. Thus, the Court will dismiss the Section 1983 claims
22 against the Judges with prejudice.

23 **2. Against Jacqueline Bryant, Washoe County Clerk**

24 Next, Plaintiff alleges that the Washoe County Court Clerk Jacqueline Bryant
25 violated his rights by allegedly preventing him from filing certain documents and failing to
26 seal certain documents. (ECF No. 19 at 8.) Quasi-judicial immunity protects those
27 performing functions “closely associated with the judicial process.” *Duvall v. County of*
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1 Kitsap, 260 F.3d 1124, 1133 (9th Cir. 2001) (quoting Moore v. Brewster, 96 F.3d 1240,
2 1244 (9th Cir. 1996)). In determining whether an official is entitled to absolute immunity,
3 the court must look at the nature of the function performed as opposed to the identity of
4 the official performing it. See *In re Castillo*, 297 F.3d 940, 948 (9th Cir. 2002). Officials are
5 entitled to immunity where their judgments are “functionally comparable” to those of
6 judges. See *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 435-36 (1993).

7 The Ninth Circuit has held that “court clerks have absolute quasi-judicial immunity
8 from damages for civil rights violations when they perform tasks that are an integral part
9 of the judicial process . . . unless [the] acts were done in the clear absence of all
10 jurisdiction.” *Mullis v. U.S. Bankr. Court*, 828 F.2d 1385, 1390 (9th Cir. 1987). This includes
11 merely administrative acts that are a part of the judicial function, including a clerks’ filing
12 or refusing to file documents with the court. See *id.*; *In re Castillo*, 297 F.3d at 952. The
13 FAC does not allege that Jacqueline Bryant did anything beyond the scope of her job,
14 much less provide any factual allegations suggesting that Jacqueline Bryant is not entitled
15 to immunity here. Therefore, the Court finds that Jacqueline Bryant is immune from the
16 Section 1983 claims asserted in this case because she is entitled to quasi-judicial
17 immunity, and will dismiss the Section 1983 claims against her with prejudice.

18 **3. Against Nevada Attorney General Adam Laxalt**

19 Plaintiff also added a claim against Nevada Attorney General Adam Laxalt to the
20 FAC. (ECF No. 19 at 9.) Plaintiff alleges Laxalt failed to investigate complaints and crimes
21 reported to him, and that Laxalt’s office’s defense of the Judges in this case creates a
22 conflict of interest. (*Id.*) But these claims against Laxalt are not cognizable. Again, Plaintiff
23 has made no allegation that Laxalt’s office has done anything beyond its job in
24 representing the Judges in this case—and has made no allegations Laxalt has personally
25 done anything in this case. Under the circumstances presented here, Nevada Attorney
26 General Adam Laxalt is entitled to absolute immunity. See *Fry v. Melaragno*, 939 F.2d
27 832, 837 (9th Cir. 1991) (stating that where the “government attorney is performing acts
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1 'intimately associated with the judicial phase' of the litigation, that attorney is entitled to
2 absolute immunity from damage liability."). Thus, the Section 1983 claim against Laxalt
3 will be dismissed with prejudice.

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5 **4. Against Individual Commissioners of the Washoe County
Board of Commissioners**

6 Plaintiff also sued individual Commissioners of the Washoe County Board of
7 Commissioners: Kitty Jung, Bob Lucy, Jeanne Herman, Vaughn Hartung, and Marsha
8 Berkbigler. (ECF No. 19 at 8-9.) Plaintiff appears to seek to hold these individual county
9 commissioners responsible for the decisions of the Judges he disagrees with on a type of
10 respondeat superior theory, and vaguely alleges they failed to comply with public records
11 requests. (Id.) The FAC contains no specific factual allegations regarding allegedly
12 deficient responses to public records requests, or how these individual defendants were
13 personally involved in responding to any public records requests. In fact, the FAC contains
14 no specific factual allegations against the individual county commissioners, much less any
15 allegations that any of them interacted with the Plaintiff, any allegations that they acted
16 outside their official capacities, or any allegations that they violated Plaintiff's constitutional
17 rights. Under these circumstances, the individual county commissioners cannot be liable
18 to Plaintiff under Section 1983. See *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).
19 Thus, the Court will dismiss the Section 1983 claims against them.

20
21 **5. Against Individuals Employed by the Washoe County Sherriff's
Office**

22 Plaintiff also sued individuals employed by the Washoe County Sherriff's Office—
23 its chief, Chuck Allen, and individual Sheriff's deputies Plaintiff interacted with, Jerry
24 Baldrige, Greg L. Herrera, and John Machen—primarily for their involvement in the
25 judicial foreclosure that resulted in Plaintiff and his wife being ejected from his parents'
26 house. (ECF No. 19 at 17-19.) But Plaintiff cannot state a claim under Section 1983
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1 against the individuals associated with the Washoe County Sherriff's Office he sued, as
2 further explained below.

3 **a. Sheriff Chuck Allen**

4 Plaintiff includes allegations against Washoe County Sherriff's Office Chief Chuck
5 Allen in the FAC. (ECF No. 19 at 17-18.) But none of his allegations against Chuck Allen
6 include any purported constitutional violations, much less that Chuck Allen personally
7 participated in or directed any alleged constitutional violations committed by the Washoe
8 County Sherriff's Office or anyone it employs. Therefore, Chuck Allen cannot be liable to
9 Plaintiff under Section 1983. See Taylor, 880 F.2d at 1045. The Section 1983 claims
10 against Chuck Allen must be dismissed.

11 **b. Jerry Baldrige and Greg L. Herrera**

12 Plaintiff further alleges that Washoe County Sheriff's Office deputies Jerry
13 Baldrige and Greg Herrera committed misconduct and violated his constitutional rights
14 when they appeared at his parents' house in August and September 2016 to enforce the
15 lockout order, and related orders, issued by Judge Clifton. (ECF No. 19 at 17-19.) But he
16 offers no factual allegations against them to suggest they were doing anything beyond
17 executing valid court orders. Therefore, Washoe County Sheriff's Office deputies Jerry
18 Baldrige and Greg Herrera are entitled to absolute immunity for their actions. See *Dahlz*
19 *v. Cty. of San Mateo*, 6 Fed. App'x 575, 576 (9th Cir. 2001) ("The arresting officers were
20 executing a valid court order and are entitled to absolute immunity for their actions.") (citing
21 *Coverdell v. Dep't of Soc. & Health Servs.*, 834 F.2d 758, 764-65 (9th Cir.1987)). The
22 Court will also dismiss the Section 1983 claims against them with prejudice.

23 **c. John Machen⁴**

24 Plaintiff also alleges that former Washoe County Sherriff's Deputy John Machen
25 engaged in misconduct at Plaintiff's parents' house "in the fall of 2013 and 2014." (ECF
26

27 ⁴While his name is spelled "Macken" in the FAC, apparently the correct spelling is
28 "Machen." (ECF No. 89 at 1.)

1 No. 19 at 19). Plaintiff filed the FAC on June 6, 2018, which named John Machen as a
2 defendant for the first time. (Id.) Thus, more than three years elapsed between John
3 Machen’s alleged wrongdoing and the date Plaintiff sued him. Plaintiff does not appear to
4 allege that John Machen violated his constitutional rights. But to the extent that Plaintiff is
5 claiming John Machen violated his constitutional rights, Plaintiff cannot state a claim
6 against him because the applicable statute of limitations elapsed before Plaintiff added
7 John Machen as a defendant to this case. See *Owens v. Okure*, 488 U.S. 235, 249-50
8 (1989) (holding “that where state law provides multiple statutes of limitations for personal
9 injury actions, courts considering § 1983 claims should borrow the general or residual
10 statute for personal injury actions.”); see also *Perez v. Seevers*, 869 F.2d 425, 426 (9th
11 Cir. 1989) (holding that applicable statute of limitations under Nevada law is two years and
12 affirming dismissal of Section 1983 claim on this basis). The Court is not persuaded by
13 Plaintiff’s arguments to the contrary. (ECF No. 92 at 17-27.) Thus, the Court will also
14 dismiss any Section 1983 claim Plaintiff is attempting to allege against John Machen with
15 prejudice.

16 **6. Against City and County Entities**

17 Plaintiff also alleges that a number of city and county entities are liable to him for
18 constitutional violations related to the events outlined supra in Section II. Specifically,
19 Plaintiff sued the Washoe County Board of Commissioners, Washoe County District Court,
20 the City of Reno, the Reno City Council, and the Washoe County Sheriff’s Office
21 (collectively, the “County Defendants”).⁵ (ECF No. 19 at 5-17.)

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23 ⁵The Court assumes without deciding that the County Defendants are properly
24 named, and may be sued under Section 1983—and therefore proceeds to address their
25 lack of liability under Monell. While state agencies or departments are not “persons” under
26 42 U.S.C. § 1983, municipalities are “persons” and may be sued under § 1983. See *Monell*
27 *v. Dep’t of Soc. Servs.*, 436 U.S. 658, 690 (1978); *Howlett v. Rose*, 496 U.S. 356, 365
28 (1990); *Flint v. Dennison*, 488 F.3d 816, 824-25 (9th Cir. 2007). Further, Sheriff’s
departments may be sued under Section 1983, but their liability also depends on the
Monell analysis. See *Streit v. Cty. of Los Angeles*, 236 F.3d 552, 566 (9th Cir. 2001); see
also *Roe v. Cty. of Lake*, 107 F. Supp. 2d 1146, 1148 (N.D. Cal. 2000) (“the Ninth Circuit
has considered a California sheriff a local law enforcement agent for purposes of
establishing section 1983 liability under Monell.”).

1 “Congress did not intend municipalities to be held liable unless action pursuant to
2 official municipal policy of some nature caused a constitutional tort.” See *Monell*, 436 U.S.
3 at 691. *Monell* instructs that in order to impose liability on a county, municipality, or a
4 subdivision of the municipality under Section 1983, a plaintiff must “identify a municipal
5 ‘policy’ or ‘custom’ that caused the plaintiff’s injury.” *Bd. of Cnty. Com’rs of Bryan County,*
6 *Okl. v. Brown*, 520 U.S. 397, 403 (1997). “Locating a ‘policy’ ensures that a municipality is
7 held liable only for those deprivations resulting from the decisions of its duly constituted
8 legislative body or of those officials whose acts may fairly be said to be those of the
9 municipality.” *Id.* at 403-04 (citations omitted). “Similarly, an act performed pursuant to a
10 ‘custom’ that has not been formally approved by an appropriate decision maker may fairly
11 subject a municipality to liability on the theory that the relevant practice is so widespread
12 as to have the force of law.” *Id.* at 404 (citations omitted).

13 Plaintiff includes no factual allegations in the FAC against any of the County
14 Defendants suggesting that any of them have a policy or custom that causes constitutional
15 torts. Plaintiff has not pointed to any policies, nor has he explained any potentially
16 applicable customs. Lacking such allegations, the FAC fails to state a claim against the
17 County Defendants for any alleged violations of Plaintiff’s constitutional rights. Thus, the
18 Court will dismiss the Section 1983 claims against the County Defendants.

19 **7. Against Private Parties**

20 In addition, Plaintiff named many private parties in the FAC, and appears to attempt
21 to allege constitutional claims against them because some of his constitutional claims are
22 directed generally at “defendants.” (See, e.g., ECF No. 19 at 134.) Specifically, he sued
23 Washoe Legal Services, Washoe Legal Services Board of Directors, Washoe Legal
24 Services President Austin K. Sweet and employee David Spitzer, Todd L. Torvinen, Robin
25 R. Renwick, Kaycee Zusman, Robert Zusman, Fiduciary Services of Nevada, LLC, Lund
26 Enterprises LLC, Kelly K. Lund of Lund Enterprises LLC, Daniel Lund of Lund Enterprises

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1 LLC, JEA Senior Living d/b/a Stone Valley Alzheimer’s Center, Dr. Debra A. Fredricks,
2 Integrated Behavioral Healthcare, Ryan L. Earl Esq., Gordon Muir Esq., Hawkins Folsom
3 and Muir, Don Leslie Ross Esq., Michael W. Keane Esq., Woodburn & Wedge Chtd. PC,
4 Stephen Craig Moss Esq., Michael B. Springer Esq., Silver State Law LLC, The Barber
5 Law Group, Joel Bennett Barber and Ryan J. McElhinney (part of Barber Law Group),
6 Gunderson Law Group, Mark A. Gunderson, and John R. Funk (collectively, the “Private
7 Party Defendants”). (ECF No. 19 at 9-26.)

8 Private individuals may only enforce rights guaranteed by the Fourteenth
9 Amendment through Section 1983. However, Plaintiff has failed to state a claim even
10 under Section 1983 because Plaintiff has not alleged facts to show that the Private Party
11 Defendants—private actors—were involved in state action.

12 The Ninth Circuit has identified four different tests for determining when private
13 actors may be involved in a state action: “(1) public function; (2) joint action; (3)
14 governmental compulsion or coercion; and (4) governmental nexus.” *Kirtley v. Rainey*, 326
15 F.3d 1088, 1092 (9th Cir. 2003) (quoting *Sutton v. Providence St. Joseph Med. Ctr.*, 192
16 F.3d 826, 835-36 (9th Cir. 1999)). Under the public function test, a defendant would be a
17 state actor if it were “endowed by the State with powers or functions governmental in
18 nature.” *Kirtley*, 326 F.3d at 1093. Under the joint action test, a defendant would be a state
19 actor if the state insinuated itself into a position of interdependence with the private entity
20 such that it became a joint participant in the challenged activity. *Id.* Under the compulsion
21 test, defendant would be a state actor if it acted under the coercive influence or significant
22 encouragement of the state. *Id.* at 1093. Under the nexus test, defendant would be a state
23 actor if there was a close nexus between the state and the challenged action. *Id.* at 1094-
24 95.

25 Plaintiff’s allegations in the FAC satisfy none of these tests. The Private Party
26 Defendants are not state actors. Plaintiff therefore cannot state a claim against the Private
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1 Party Defendants under Section 1983. Thus, the Court will also dismiss the purported
2 Section 1983 claims against the Private Party Defendants.

3 **C. Plaintiff's State Law Claims**

4 Having dismissed all of Plaintiff's claims based on federal law, the Court declines
5 to exercise supplemental jurisdiction over the remaining state law claims. See 28 U.S.C.
6 § 1367(c)(3).

7 **V. CONCLUSION**

8 The Court notes that the parties made several arguments and cited to several cases
9 not discussed above. The Court has reviewed these arguments and cases and determines
10 that they do not warrant discussion as they do not affect the outcome the motions pending
11 before the Court.

12 It is therefore ordered that the city, county, and alleged state actors' motions to
13 dismiss (ECF Nos. 24, 25, 26, 30, 33, 40, 62, 89) are granted.

14 It is further ordered that the remaining pending motions (ECF Nos. 27, 35, 37, 41,
15 43, 44, 45, 49, 51, 52, 54, 57, 61, 63) are denied as moot.

16 The Court dismisses the FAC's Section 1983 claims against the following
17 defendants with prejudice: Judge Francis Doherty, Justice of the Peace David Clifton,
18 Judge Scott Freeman, deceased Judge Patrick Flanagan, Washoe County Court Clerk
19 Jacqueline Bryant, Nevada Attorney General Adam Laxalt, and Washoe County Sheriff's
20 Office deputies Jerry Baldrige, Greg Herrera, and John Machen. The remaining Section
21 1983 claims are dismissed without prejudice.

22 The Court declines to exercise supplemental jurisdiction over the remaining state
23 law claims in the FAC and therefore dismisses those claims without prejudice.

24 The Clerk of the Court is directed to enter judgment accordingly and close this case.

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DATED THIS 21st day of December 2018.



MIRANDA M. DU
UNITED STATES DISTRICT JUDGE