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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 AMY R. ERICKSON,

8 Plaintiff,

9 v.

10 ANDREW CHASE; and KEVIN W.
11 MORRIS,

12 Defendants.

NO. 2:22-CV-0033-TOR

ORDER GRANTING DEFENDANT
CHASE'S MOTION TO DISMISS

13 BEFORE THE COURT is Defendant Andrew Chase's Motion to Dismiss
14 (ECF No. 18). This matter was submitted for consideration without oral argument.
15 The Court has reviewed the record and files herein, the completed briefing, and is
16 fully informed. For the reasons discussed below, Defendant's motion is
17 GRANTED.

18 **BACKGROUND**

19 Plaintiff Amy Erickson, proceeding *pro se*, filed this suit on February 25,
20 2022, against the four named parties. ECF No. 1. Defendant Andrew Chase

1 (“Defendant”) is the attorney for Helen Gunderson, the sister of Mark A.
2 Gunderson, Plaintiff’s late husband. *Id.* at 10, ¶ 24. Plaintiff alleges Defendant
3 made false statements in order to deprive her of her late husband’s estate’s assets.
4 *Id.* at 10–13, ¶¶ 23–31. Plaintiff alleges five causes of action against all named
5 defendants: fraud, abuse of process, RICO, violation of the Americans with
6 Disabilities Act, and civil conspiracy. *Id.* at 13–16, ¶¶ 32–40. Plaintiff seeks
7 compensatory and punitive damages. *Id.* at 17.

8 DISCUSSION

9 A. Legal Standard—Motion to Dismiss

10 A motion to dismiss for failure to state a claim “tests the legal sufficiency”
11 of the plaintiff’s claims. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). To
12 withstand dismissal, a complaint must contain “enough facts to state a claim to
13 relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570
14 (2007). “A claim has facial plausibility when the plaintiff pleads factual content
15 that allows the court to draw the reasonable inference that the defendant is liable
16 for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation
17 omitted). This requires the plaintiff to provide “more than labels and conclusions,
18 and a formulaic recitation of the elements.” *Twombly*, 550 U.S. at 555. While a
19 plaintiff need not establish a probability of success on the merits, he or she must
20 demonstrate “more than a sheer possibility that a defendant has acted unlawfully.”

1 *Iqbal*, 556 U.S. at 678.

2 When analyzing whether a claim has been stated, the Court may consider the
3 “complaint, materials incorporated into the complaint by reference, and matters of
4 which the court may take judicial notice.” *Metzler Inv. GMBH v. Corinthian*
5 *Colleges, Inc.*, 540 F.3d 1049, 1061 (9th Cir. 2008) (citing *Tellabs, Inc. v. Makor*
6 *Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007)). A complaint must contain “a
7 short and plain statement of the claim showing that the pleader is entitled to relief.”
8 Fed. R. Civ. P. 8(a)(2). A plaintiff’s “allegations of material fact are taken as true
9 and construed in the light most favorable to the plaintiff[.]” however “conclusory
10 allegations of law and unwarranted inferences are insufficient to defeat a motion to
11 dismiss for failure to state a claim.” *In re Stac Elecs. Sec. Litig.*, 89 F.3d 1399,
12 1403 (9th Cir. 1996) (citation and brackets omitted).

13 The Court “does not require detailed factual allegations, but it demands
14 more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Iqbal*,
15 556 U.S. at 662. “To survive a motion to dismiss, a complaint must contain
16 sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible
17 on its face.’” *Id.* at 678 (citation omitted). A claim may be dismissed only if “it
18 appears beyond doubt that the plaintiff can prove no set of facts in support of his
19 claim which would entitle him to relief.” *Navarro*, 250 F.3d at 732.

20 The Ninth Circuit has repeatedly held that “a district court should grant

1 leave to amend even if no request to amend the pleading was made, unless it
2 determines that the pleading could not possibly be cured by the allegation of other
3 facts.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000). The standard for
4 granting leave to amend is generous. The court considers five factors in assessing
5 the propriety of leave to amend—bad faith, undue delay, prejudice to the opposing
6 party, futility of amendment, and whether the plaintiff has previously amended the
7 complaint. *United States v. Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir.
8 2011).

9 **B. Racketeer Influenced and Corrupt Organization Act (RICO)**

10 Defendant moves to dismiss Plaintiff’s cause of action alleging RICO
11 violations on the grounds that Plaintiff has not alleged a harm to her business or
12 property and because Plaintiff has not sufficiently established the elements of wire
13 fraud, mail fraud, or extortion. ECF No. 18 at 9–12. Plaintiff does not allege any
14 facts in the RICO cause of action but simply outlines the elements of a RICO
15 claim. ECF No. 1 at 15, ¶ 36.

16 “The elements of a civil Racketeer Influenced and Corrupt Organization Act
17 (“RICO”) claim are as follows: (1) conduct (2) of an enterprise (3) through a
18 pattern (4) of racketeering activity (known as ‘predicate acts’) (5) causing injury to
19 plaintiff’s business or property.” *United Bhd. of Carpenters & Joiners of Am. v.*
20 *Bldg. & Const. Trades Dep’t, AFL-CIO*, 770 F.3d 834, 837 (9th Cir. 2014).

1 Defendant argues Plaintiff has failed to allege an injury to her business or property.
2 ECF No. 18 at 10–11. Even taking all of the factual allegations in the Complaint
3 as true, the Court agrees with Defendant. Plaintiff complains generally of the
4 probate proceedings for her deceased husband’s estate and her perceived
5 mistreatment throughout the proceedings. *See generally*, ECF No. 1. As to
6 Defendant Chase, Plaintiff alleges that he made false statements during a probate
7 proceeding, which he then used to “make a larger claim on the estate than is
8 provided for” by Washington law. *Id.* at 10–11, ¶ 24. Plaintiff does not allege
9 what harm, if any, actually occurred. Plaintiff also fails to identify a business or
10 property that could be subject to harm under her RICO claim.

11 Regarding the remaining elements of a RICO claim, Plaintiff’s Complaint
12 falls well short of the pleading requirements of Rule 8, much less the heightened
13 requirements of Rule 9. *See* Fed. R. Civ. P. 8(a); Fed. R. Civ. P. 9(b). First,
14 Plaintiff does not allege sufficient factual allegations to establish the existence of
15 an enterprise. There are two types of associations that meet the definition of
16 “enterprise” for the purposes of a RICO claim. *Shaw v. Nissan North America,*
17 *Inc.*, 220 F. Supp. 3d 1046, 1053 (C.D. Cal. 2016). The first is comprised of legal
18 entities, such as corporations and partnerships. *Id.* The second is an “associated-
19 in-fact enterprise,” which is defined as “any union or group of individuals
20 associated in fact although not a legal entity.” *Id.* (quoting *United States v.*

1 *Turkette*, 452 U.S. 576, 581–82 (1981)). The existence of such an enterprise is
2 established with “evidence of an ongoing organization, formal or informal, and by
3 evidence that the various associates function as a continuing unit.” *Id.* (quoting
4 *Boyle v. United States*, 556 U.S. 938, 946 (2009)). “An association-in-fact
5 enterprise must have at least three structural features: a purpose, relationships
6 among those associated within the enterprise, and longevity sufficient to permit
7 these associates to pursue the enterprise’s purpose.” *Id.* at 1053–54.

8 Plaintiff has failed to make a showing of an association-in-fact enterprise.
9 Again, the Complaint alleges Plaintiff’s general grievances with the probate
10 proceedings and her belief that Defendant made false statements for the purpose of
11 depriving her of her late husband’s estate. Plaintiff does not tie Defendant’s
12 actions to those of any other defendants, such that the Court could infer the
13 existence of a relationship with sufficient longevity necessary to sustain a RICO
14 claim.

15 Moreover, Rule 9 requires a party to “state with particularity the
16 circumstances constituting fraud or mistake.” Fed. R. Civ. P. 9(b). The allegations
17 of fraud must “be specific enough to give defendants notice of the particular
18 misconduct so that they can defend against the charge and not just deny that they
19 have done anything wrong.” *Vess v. CibaGeigy Corp. USA*, 317 F.3d 1097, 1106
20 (9th Cir. 2003) (quotation and citation omitted). Thus, “[a]verments of fraud must

1 be accompanied by the who, what, when, where, and how of the misconduct
2 charged.” *Id.* (quotation and citation omitted). Here, Plaintiff provides only a
3 general accusation that Defendant made false statements during the state court
4 proceeding. *See* ECF No. 1 at 10–13; at 15. Plaintiff’s pleading does not satisfy
5 the particularity requirement of Rule 9.

6 Accordingly, Plaintiff has failed to plead a RICO claim upon which relief
7 may be granted. The claim is dismissed without leave to amend because
8 amendment would be futile, as Plaintiff’s claim would fail as a matter of law.

9 **C. Americans with Disabilities Act (ADA)**

10 Defendant moves to dismiss Plaintiff’s ADA claim on the grounds that
11 Plaintiff has not sufficiently alleged disability discrimination. ECF No. 18 at 15–
12 16. First, it is difficult to ascertain what ADA cause of action Plaintiff is
13 attempting to advance. *See* ECF No. 1 at 16, ¶¶ 37–39. She is clearly not alleging
14 discrimination against an employer; thus, her claims do not arise under Title I.
15 However, Plaintiff has not alleged any facts indicating she was denied public
16 services or accommodation under Title II or III, or that she faced retaliation for
17 opposition to unlawful acts under the ADA, in violation of Title V. *See*
18 *Zimmerman v. Oregon Dept. of Justice*, 170 F.3d 1169, 1172 (9th Cir. 1999);
19 *Strojnik v. State Bar of Arizona*, 446 F. Supp. 3d 566, 574–75 (D. Ariz. Mar. 17,
20 2020).

1 Further, it is unclear whether Plaintiff is a qualified individual under the
2 ADA. Plaintiff's ADA cause of action simply asserts that Plaintiff has PTSD
3 without any additional context. ECF No. 1 at 16, ¶ 37–39. Finally, Plaintiff does
4 not allege Defendant specifically discriminated against her because of her claimed
5 disability; the ADA cause of action refers only to Judge Huber, who has previously
6 been dismissed from this action. *Id.* The facts alleged against Defendant do not
7 provide any additional clarity. *See id.* at 10–13, ¶¶ 23–31.

8 As such, Plaintiff has failed to state an ADA claim upon which relief may be
9 granted. The claim is dismissed without leave to amend because amendment
10 would be futile, as Plaintiff's claim would fail as a matter of law.

11 **D. State Law Claims**

12 Plaintiff alleges state law claims for fraud, abuse of process, and civil
13 conspiracy. ECF No. 1 at 13–15, ¶¶ 32–35; at 16, ¶ 40. A federal court has
14 supplemental jurisdiction over pendent state law claims to the extent they are “so
15 related to claims in the action within [the court's] original jurisdiction that they
16 form part of the same case or controversy” 28 U.S.C. § 1367(a). “A state law
17 claim is part of the same case or controversy when it shares a ‘common nucleus of
18 operative fact’ with the federal claims and the state and federal claims would
19 normally be tried together.” *Bahrampour v. Lampert*, 356 F.3d 969, 978 (9th Cir.
20 2004) (citation omitted). Once the court acquires supplemental jurisdiction over

1 state law claims, § 1367(c) provides that the court may decline to exercise
2 jurisdiction if (1) the claim raises a novel or complex issue of State law, (2) the
3 claim substantially predominates over the claim or claims over which the district
4 court has original jurisdiction, (3) the district court has dismissed all claims over
5 which it has original jurisdiction, or (4) in exceptional circumstances, there are
6 other compelling reasons for declining jurisdiction. 28 U.S.C. § 1367(c). Indeed,
7 “[i]n the usual case in which all federal-law claims are eliminated before trial, the
8 balance of factors . . . will point toward declining to exercise jurisdiction over the
9 remaining state-law claims.” *Carnegie–Mellon Univ. v. Cohill*, 484 U.S. 343, 350
10 n.7 (1988), superseded on other grounds by statute as stated in *Sanford v.*
11 *MemberWorks, Inc.*, 625 F.3d 550, 561 (9th Cir. 2010); *see also Acri v. Varian*
12 *Assocs., Inc.*, 114 F.3d 999, 1001 (9th Cir. 1997) (en banc).

13 Having dismissed all federal law claims asserted against Defendant Chase,
14 the Court declines to exercise jurisdiction over the remaining state law claims
15 asserted against him. 28 U.S.C. § 1367(c)(3); *Ove v. Gwinn*, 264 F.3d 817, 826
16 (9th Cir. 2001) (finding that a district court did not abuse its discretion by declining
17 to exercise supplemental jurisdiction over the remaining state law claims when
18 federal claims were dismissed). The parties will not be prejudiced by the Court’s
19 decision to decline jurisdiction. Formal discovery in this federal case has not
20 begun, so if Plaintiff chooses to refile her state law claims in state court, she will

1 not be prejudiced. Further, the period of limitation for Plaintiff's remaining state
2 law claims is tolled for thirty days after the claims are dismissed unless
3 Washington law provides for a longer tolling period. *See* 28 U.S.C. § 1367(d).

4 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 5 1. Defendant Chase's Motion to Dismiss (ECF No. 18) is **GRANTED**.
- 6 2. All Plaintiff's federal claims against Defendant Andrew Chase are
7 **DISMISSED with prejudice and all state claims against him are**
8 **dismissed without prejudice.**
- 9 3. Defendant Andrew Chase shall be terminated from the docket.

10 The District Court Executive is directed to enter this Order and furnish
11 copies to the parties.

12 DATED July 30, 2022.



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A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE
United States District Judge