

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 EARLE W. JUDD, II,

11 Plaintiff,

12 v.

13 JACK F. NEVIN, et al.,

14 Defendants.

CASE NO. C20-6128JLR

ORDER GRANTING
DEFENDANTS' MOTIONS TO
DISMISS

15 **I. INTRODUCTION**

16 Before the court are several filings responding to the complaint of *pro se* Plaintiff
17 Earle W. Judd, II. (*See* Compl. (Dkt. # 4).) Defendant the Division of Child Services
18 ("DCS") within the State of Washington's Department of Social and Health Services has
19 filed an answer asserting that this court lacks subject matter jurisdiction over Mr. Judd's
20 claims against it. (DCS Ans. (Dkt. # 13).) Defendants Commissioner Sabrina M.
21 Ahrens, Jerry R. Ford, Commissioner Mark L. Gelman, the Honorable Karena K.
22 Kirkendoll, Wayne Liddy, Dalton McIlwain, and the Honorable Jack F. Nevin

1 (collectively, “Pierce County Defendants”) and Defendant Rose M. Eberhart have filed
2 motions to dismiss Mr. Judd’s claims against them. (1st MTD (Dkt. # 15) (filed by
3 Pierce County Defendants); (2d MTD (Dkt. # 16) (filed by Ms. Eberhart).) Mr. Judd
4 opposes the motions to dismiss. (See 1st Resp. (Dkt. # 18); 2d Resp. (Dkt. # 21); 3d
5 Resp. (Dkt. # 23).)¹ The court has considered the motions, the parties’ submissions in
6 support of and in opposition to the motions, and the applicable law. Being fully advised,²
7 the court GRANTS Defendants’ motions and DISMISSES all claims brought by Mr.
8 Judd with prejudice.

9 II. BACKGROUND

10 Mr. Judd filed suit against all Defendants on November 13, 2020. (See Prop.
11 Compl (Dkt. # 1).) His allegations appear to arise from Superior Court proceedings in
12 Pierce County in which he was ordered to pay child support in a domestic relations
13 matter.³ (See Compl. at 1.) According to Mr. Judd, “Defendants knowingly and willfully
14 used fraud and discrimination to hide the complete absence of jurisdiction and defeat the
15

16 ¹ Mr. Judd’s filings are labelled as “Plaintiff’s Reply to All Answers,” “Plaintiff’s
17 Additional Reply to Defendant Eberhart,” and “Plaintiff’s Third Reply to ALL Defendants”
18 respectively. (See 1st Resp. at 1; 2d Resp. at 1; 3d Resp. at 1.) The court interprets them as filed
19 in response to both motions to dismiss as well as DCS’s answer. Mr. Judd is advised to review
20 the Local Civil Rules, which generally limit a party to filing one response to a motion. See
21 *generally* Local Rules W.D. Wash. LCR 7.

22 ² No party requests oral argument (*see* 1st MTD; 2d MTD; 1st Resp.), and the court finds
that oral argument is unnecessary to its disposition of the motions, *see* Local Rules W.D. Wash.
LCR 7(b)(4).

³ Mr. Judd does not identify the proceedings that form the basis for his claims by docket
number or provide any detailed information about the orders that he alleges violated his rights.
(See *generally* Compl.)

1 Constitution under a veil [sic] of child support.” (*Id.*) He brings claims under 42 U.S.C.
2 § 1983, 42 U.S.C. § 1985, and Washington tort law. (*Id.*)

3 Specifically, Mr. Judd alleges that on June 26, 2018; July 10, 2018; and August 3,
4 2018, Judge Nevin did not have jurisdiction to enter an order of child support that
5 imputed his income to include Veterans’ Administration (“VA”) and Social Security
6 Administration (“SSA”) disability benefits. (*Id.* at 5.) He also alleges that Judge
7 Kirkendoll had a duty to “void” Judge Nevin’s order but did not do so. (*Id.* at 6.) He
8 additionally asserts that Judge Kirkendoll demonstrated gender bias and sex
9 discrimination when making her custody ruling in his case. (*Id.*)

10 Mr. Judd’s allegations do not stop with Judges Nevin and Kirkendoll. He asserts
11 that Ms. Eberhart, his ex-wife’s court-appointed attorney, used disability discrimination,
12 gender discrimination, and fraud upon the court “to help Judges Nevin and Kirkendoll
13 deprive [Mr. Judd] of his [r]ights and benefits.” (*Id.*) He also alleges that Commissioner
14 Mark Gelman violated his rights by ruling that Mr. Judd was employable on March 12,
15 2017, and that Deputy Prosecuting Attorney Dalton McIlwain and Legal Assistant Wayne
16 Liddy “helped” in this process. (*Id.* at 7.) He alleges that on November 11, 2017,
17 Commissioner Sabrina Ahrens deprived him of his rights through “veteran specific
18 disability discrimination and threat of incarceration.” (*Id.*) He claims that Prosecuting
19 Attorney McIlwain violated his rights through using fraud upon the court by citing the
20 case *Rose v. Rose* and using biased statements from Assistant Prosecuting Attorney Ford
21 and Mr. Liddy. (*Id.* at 8.) He alleges that Mr. Ford lied to the court about the status of
22 Mr. Judd’s child support payments and that Mr. Liddy wrote a letter on March 7, 2017,

1 | which contained “ignorant misinformation.” (*Id.*) Mr. Judd’s complaint does not contain
2 | specific allegations against DCS. (*See generally id.* at 5-8.)

3 | Mr. Judd seeks relief in the form of declaratory judgments that state jurisdiction
4 | over his federal disability benefits is federally preempted and that the state has “no
5 | authority to dissolve or ignore” his rights. (*Id.* at 4.) He also seeks “prospective
6 | injunctive relief” in the form of a ruling that the state has “no authority to assign VA or
7 | SSA benefits, even for child support” and ordering the state to audit his case and abide by
8 | federal law in all future proceedings. (*Id.*) Finally, he seeks a jury trial to determine
9 | punitive damages against Defendants in their personal capacity and any other relief
10 | deemed appropriate by the jury and the court. (*Id.*)

11 | On March 16, 2021, DCS filed its answer to Mr. Judd’s complaint. (*See DCS*
12 | *Ans.*) The agency raises nine affirmative defenses including that Mr. Judd’s claims
13 | against it are barred by the Eleventh Amendment, *Rooker-Feldman* doctrine, the statute
14 | of limitations, and res judicata and/or collateral estoppel. (*Id.* at 5-6.) It asks that Mr.
15 | Judd’s complaint be dismissed with prejudice. (*Id.* at 6.)

16 | Pierce County Defendants filed a motion to dismiss for failure to state claim on
17 | March 18, 2021. (*See 1st MTD.*) They argue this court does not have subject matter
18 | jurisdiction to hear a challenge to state court decisions and that judicial and prosecutorial
19 | immunity bar any claims against them. (*Id.* at 2-4.) They also argue that the statute of
20 | limitations bars any claims arising before November 13, 2017 and that Mr. Judd has
21 | failed to allege a constitution violation under 42 U.S.C. § 1983. (*Id.* at 7-10.)
22 |

1 Ms. Eberhart filed her motion to dismiss on March 25, 2020. (*See* 2d MTD.) She
2 argues that Mr. Judd failed to state a claim against her and that his claims against her are
3 barred by the litigation privilege. (*See generally id.*)

4 III. ANALYSIS

5 The court first lays out the appropriate legal standard before analyzing Mr. Judd’s
6 claims against the Defendants.

7 A. Legal Standard

8 Dismissal is appropriate under Rule 12(b)(6) when a plaintiff fails to allege “a
9 cognizable legal theory” or when there is an “absence of sufficient facts alleged” to
10 sustain that legal theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir.
11 1988); *see also* Fed. R. Civ. P. 12(b)(6). A complaint is not sufficient if it tenders
12 “‘naked assertion[s]’ devoid of ‘further factual enhancement.’” *Ashcroft v. Iqbal*, 556
13 U.S. 662, 677 (2009) (alteration in original) (quoting *Bell Atl. Corp. v. Twombly*, 550
14 U.S. 544, 555 (2007)). Although the court is required on a Rule 12(b)(6) motion to
15 dismiss to accept facts alleged in the complaint as true, the court is not “bound to accept
16 as true a legal conclusion couched as a factual allegation.” *Id.* at 678; *Twombly*, 550 U.S.
17 at 555. Further, although *pro se* complaints are to be construed liberally, even a *pro se*
18 plaintiff “must allege with at least some degree of particularity overt acts which
19 defendants engaged in that support the plaintiff’s claim.” *Jones v. Cmty. Redev. Agency*,
20 733 F.2d 646, 649 (9th Cir. 1984) (internal quotation marks and citation omitted).

1 **B. Claims Related to State Court Decision**

2 Federal district courts “do not have jurisdiction . . . over challenges to state court
3 decisions in particular cases arising out of judicial proceedings even if those challenges
4 allege that the state court’s action was unconstitutional.” *D.C. Ct. of Appeals v. Feldman*,
5 460 U.S. 462, 486 (1983); *see also Rooker v. Fidelity Tr. Co.*, 263 U.S. 413 (1923).
6 “Stated simply, the *Rooker-Feldman* doctrine bars suits ‘brought by state-court losers
7 complaining of injuries caused by state-court judgments rendered before the district court
8 proceedings commenced and inviting district court review and rejection of those
9 judgments.’” *Carmona v. Carmona*, 603 F.3d 1041, 1050 (9th Cir. 2008) (quoting *Exxon*
10 *Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005)).

11 Mr. Judd claims that the *Rooker-Feldman* doctrine does not bar his suit because it
12 “does not apply in federal cases that merely attack the legal conclusions of the state court
13 without seeking relief from the state court judgment.” (Compl. at 10 (citing *Hageman v.*
14 *Barton*, 817 F.3d 611, 615 (8th Cir. 2016)).) But the first three forms of relief that Mr.
15 Judd seeks are declaratory judgements and an injunction undoing the result of state court
16 proceedings in which he was ordered to pay child support after the state court imputed
17 income to Mr. Judd that included his VA and SSA benefits. (*See id.* at 4.) In essence,
18 Mr. Judd is asking this court to overturn the decisions of the Pierce County Superior
19 Court related to imputing his income and entering an order of child support. (*See id.*)
20 This is a de facto appeal and precisely the sort of claim barred under the *Rooker-Feldman*
21 doctrine. *See Noel v. Hart*, 343 F.3d 1148, 1163 (9th Cir. 2003) (“It is a forbidden de
22 facto appeal under *Rooker-Feldman* when the plaintiff in federal district court complains

1 of a legal wrong allegedly committed by the state court, and seeks relief from the
2 judgment of that court.”) Accordingly, the court grants the Pierce County Defendants’
3 motion to dismiss Mr. Judd’s claims to the extent they seek to have this court issue a
4 declaratory judgement or injunction overturning the decisions of the state court. As
5 attempts to amend these claims would be futile, they are dismissed with prejudice. *See*
6 *Ecological Rights Found. v. Pac. Gas & Elec. Co.*, 713 F.3d 502, 520 (9th Cir. 2013)
7 (explaining district court’s discretion in dismissing complaint without leave to amend
8 may include analysis of whether amendment would be futile).

9 The *Rooker-Feldman* doctrine, however, does not bar Mr. Judd’s claims in their
10 entirety. He also seeks to bring claims for damages against individuals involved in the
11 state court process. (*See* Compl. at 4-8.) These claims are not de facto appeals of the
12 state court proceeding and thus do not implicate *Rooker-Feldman*. The court addresses
13 them below.

14 **C. Claims Against DCS**

15 Mr. Judd names DCS as a Defendant, but he does not describe any actions taken
16 by DCS in detail, nor how they relate to his claims. (*See generally* Compl.)
17 Accordingly, the court interprets his claims against DCS as related to the declaratory and
18 injunctive relief that he seeks, because all other claims are related to suits against
19 individuals in their personal capacity. (*See id.* at 4.) But the court has determined that
20 these claims are de facto appeals of the state court proceedings and should be dismissed.
21 *See supra* § III.B. Thus, the court DISMISSES with prejudice Mr. Judd’s claims against
22 DCS.

1 **D. Claims Against Judicial Defendants**

2 Judges and those performing judge-like functions are absolutely immune from
3 liability for acts performed in their official capacities. *See Ashelman v. Pope*, 793 F.2d
4 1072, 1075 (9th Cir. 1986) (en banc). Judicial immunity applies no matter how
5 “erroneous the [judge’s] act may have been, and however injurious in its consequence
6 [the act] may have proved to the plaintiff.” *Id.* (internal quotation marks omitted) (citing
7 *Cleavinger v. Saxner*, 474 U.S. 193, 199-200 (1985)). Judges lack immunity, however,
8 when they act in the clear absence of all jurisdiction or perform acts not judicial in nature.
9 *Ashelman*, 793 F.2d at 1075; *see also Stump v. Sparkman*, 435 U.S. 349, 360 (1978). “To
10 determine if the judge acted with jurisdiction, courts focus on whether the judge was
11 acting clearly beyond the scope of subject matter jurisdiction in contrast to personal
12 jurisdiction.” *Ashelman*, 793 F.2d at 1076.

13 Mr. Judd’s claims against Judges Nevin and Kirkendoll and Commissioners
14 Gelman and Ahrens are based on actions taken in their official capacities. His allegations
15 against Judge Nevin stem from the judge’s decision regarding his order of child support.
16 (*See Compl.* at 5.) His allegations against Judge Kirkendoll stem from her denial of his
17 appeal. (*See id.* at 6.) He alleges that Judge Nevin acted without jurisdiction when he
18 used VA and SSA benefits in the process of issuing an order of child support.⁴ (*Id.* at 5.)

19
20 _____
21 ⁴ The court surmises that Mr. Judd’s challenge is to subject matter jurisdiction, as he
22 admits that “Judge Nevin certainly had jurisdiction to make a child support order” and does not
allege any facts supporting an argument that Judges Nevin or Kirkendoll lacked personal
jurisdiction over him. (*See Compl.* at 5.)

1 But the Supreme Court of the United States has held that state courts have jurisdiction to
2 issue orders like Judge Nevin’s. *See Rose v. Rose*, 481 U.S. 619, 636 (1987) (holding
3 state court order of child support relying on VA benefits was not pre-empted under
4 Supremacy Clause).⁵ Thus, Judge Nevin was not acting clearly outside the scope of
5 subject matter jurisdiction. *See Ashelman*, 793 F.2d at 1076. The same is true for Judge
6 Kirkendoll, whom Mr. Judd claims “repeated and reinforced all the deprivation of
7 [r]ights” committed by Judge Nevin. (Compl. at 6.)

8 Mr. Judd raises similar arguments against Commissioners Gelman and Ahrens.
9 He contends that Commissioner Gelman deprived him of his rights by determining that
10 he was employable “in the complete absence of all jurisdiction on the subject matter of
11 VA benefits and ‘disability’ established by VA decisions.” (*Id.* at 7.) Mr. Judd does not
12 provide any arguments to support the claim that Commissioner Gelman, tasked with
13 determining whether Mr. Judd was employable, had jurisdiction to do. (*See generally*
14 Compl.) He makes similar allegations against Commissioner Ahrens, though he does
15 not specifically allege that she lacked jurisdiction. (*See id.* at 7.) At base, Mr. Judd’s
16 allegations are that Commissioners Gelman and Ahrens reached the wrong conclusion in
17 proceedings involving Mr. Judd. This is precisely the type of claim that is barred by

18
19 ⁵ Mr. Judd claims that after *Rose*, Congress amended the law in question to explicitly pre-
20 empt state court jurisdiction over VA and SSA funds. (*See* Compl. at 15-18.) But subsequent
21 amendment of the statute has not altered the Supreme Court’s holding that it does not pre-empt
22 state laws. *See, e.g., Paylor v. Allegheny Cty. Fam. Div./Domestic Rels.*, No. 2:16CV1071, 2017
WL 4235944, at *8 (W.D. Pa. Sept. 25, 2017) (applying *Rose*’s finding of no pre-emption in
2017). Mr. Judd’s argument to the alternative does not demonstrate the clear lack of jurisdiction
that is required to circumvent judicial immunity from official acts. *See Ashelman*, 793 F.2d at
1076.

1 judicially immunity, and Mr. Judd has not demonstrated why that immunity should not
2 apply here. *See Ashelman*, 793 F.2d at 1076.

3 Accordingly, the court finds that Judges Nevin and Kirkendoll and Commissioners
4 Gelman and Ahrens are immune from the claims Mr. Judd seeks to bring against them.
5 The court dismisses Mr. Judd’s claims against these four Defendants with prejudice. *See*
6 *Ecological Rights Found.*, 713 F.3d at 520.

7 **E. Claims Against Prosecutor Defendants**

8 “Prosecutors performing their official prosecutorial functions are entitled to
9 absolute immunity against constitutional torts.” *Lacey v. Maricopa Cnty.*, 693 F.3d 896,
10 912 (9th Cir. 2012); *see also Imbler v. Pachtman*, 424 U.S. 409, 430 (1976) (holding that
11 prosecutorial immunity protects eligible government officials when they perform
12 functions “intimately associated with the judicial phase of the criminal process”).
13 Prosecutorial immunity extends to “those functions in which the prosecutor acts as an
14 ‘advocate for the State,’ even if they ‘involve actions preliminary to the initiation of a
15 prosecution and actions apart from the courtroom.’” *Lacey*, 693 F.3d at 912 (quoting
16 *Burns v. Reed*, 500 U.S. 478, 486 (1991)).

17 Mr. Judd’s claims against Prosecuting Attorney McIlwain are based on the
18 attorney’s use of the case *Rose v. Rose* and “biased statements” of Deputy Prosecuting
19 Attorney Ford and Mr. Liddy in a proceeding where Mr. Judd was a party. (Compl. at 8.)
20 Mr. Judd’s claims against Deputy Prosecuting Attorney Ford are based on his alleged lies

21 //

22 //

1 to the court.⁶ (*Id.*) Even construing Mr. Judd’s complaint liberally, his allegations
2 against Prosecuting Attorney McIlwain and Deputy Prosecuting Attorney Ford are based
3 on their use, or alleged misuse, of case law and evidence in court. These are actions they
4 took while serving as advocates for the state and in their official capacities as
5 prosecutors. Thus, the court determines that these Defendants are subject to prosecutorial
6 immunity and dismisses Mr. Judd’s claims against them with prejudice. *See Ecological*
7 *Rights Found.*, 713 F.3d at 520.

8 **F. Claims Arising Before November 13, 2017**

9 Mr. Judd brings claims under 42 U.S.C. § 1983 and Washington tort law. Section
10 1983 provides a federal cause of action, but the limitations period in a § 1983 suit is the
11 same as that which the forum state provides for personal injury torts. *Wallace v. Kato*,
12 549 U.S. 384, 387 (2007) (citing *Owens v. Okure*, 488 U.S. 235, 249-50 (1989) (holding
13 that “where state law provides multiple statutes of limitations for personal injury actions,
14 courts considering § 1983 claims should borrow the general or residual statute for
15 personal injury actions”)). In Washington, the statute of limitations for personal injury
16 actions is three years, *see* RCW 4.16.080(2), and this three-year period therefore applies
17 to Mr. Judd’s § 1983 claims. *See Hays v. City of Spokane*, No. CV-11-0010-LRS, 2011
18 WL 4852311, at *2 (E.D. Wash. Oct. 13, 2011) (citing *Robinson v. City of Seattle*, 830
19 P.2d 318, 347 (Wash. 1992)).

20
21
22

⁶ Mr. Judd does not allege any particulars of how, when, or what Mr. Ford lied about, let
alone how this violated Mr. Judd’s constitutional rights. (*See generally* Compl.)

1 Although the length of the statutory period is governed by state law, “the accrual
2 date of a § 1983 cause of action is a question of federal law that is *not* resolved by
3 reference to state law.” *Wallace*, 549 U.S. at 388 (italics in original). “A federal claim
4 accrues when the plaintiff knows or has reason to know of the injury which is the basis of
5 the action.” *Bagley v. CMC Real Est. Corp.*, 923 F.2d 758, 760 (9th Cir. 1991) (quoting
6 *Norco Constr., Inc. v. King Cnty.*, 801 F.2d 1143, 1145 (9th Cir. 1986)) (internal
7 quotation marks omitted). “The cause of action accrues even though the full extent of the
8 injury is not then known or predictable” because “otherwise, the statute would begin to
9 run only after a plaintiff became satisfied that he had been harmed enough”
10 *Wallace*, 549 U.S. at 391.

11 The entirety of Mr. Judd’s claims against Wayne Liddy are based on alleged
12 injuries that occurred before November 13, 2017. (See Compl. at 7-8 (alleging that
13 Defendants’ actions on March 17, 2017 and November 11, 2017 injured Mr. Judd). Mr.
14 Judd filed his proposed complaint on November 13, 2020. (See Proposed Compl.)
15 Accordingly, Mr. Judd’s claims against these Defendants are barred by the statute of
16 limitations and the court dismisses them with prejudice.⁷ See *Ecological Rights Found.*,
17 713 F.3d at 520.

18
19
20 ⁷ Mr. Judd’s claims against Commissioners Gelman and Aherns and Prosecuting
21 Attorney McIlwain are also based on alleged injuries that occurred before November 13, 2017.
22 (See Compl. at 7-8.) The court has already determined that these Defendants enjoy immunity
against Mr. Judd’s claims, *see supra* §§ III.D-E, but finds that, to the extent they are based on
injuries that occurred before November 13, 2017, they are also barred by the statute of
limitations.

1 **G. Claims Against Ms. Eberhart**

2 Mr. Judd alleges that Ms. Eberhart, who served as his ex-wife’s court-appointed
3 attorney, “used disability discrimination, gender discrimination, along with outright
4 [f]raud upon the [c]ourt to help Judges Nevin and Kirkendoll” deprive Mr. Judd of his
5 rights. (Compl. at 6-7.) He also asserts that if Ms. Eberhart is not liable as a state actor
6 under § 1983, she “is still liable for her professional misconduct by fraud upon the court
7 and by veteran specific discrimination” (*Id.* at 7.) Accordingly, the court interprets
8 Mr. Judd’s claims against Ms. Eberhart as being divided into two categories: those
9 stemming from § 1983 and those stemming from common law torts. (*See id.* at 1.) The
10 court addresses each category in turn.

11 To state a claim under 42 U.S.C. § 1983, a plaintiff “must allege the violation of a
12 right secured by the Constitution and laws of the United States, and must show that the
13 alleged deprivation was committed by a person acting under color of state law.” *West v.*
14 *Atkins*, 487 U.S. 42, 48 (1988). When publicly-appointed counsel are performing as
15 advocates, *i.e.*, meeting with clients, investigating possible defenses, presenting evidence
16 at trial and arguing to the jury or judge, they do not act under color of state law for 42
17 U.S.C. § 1983 purposes. *See Georgia v. McCollum*, 505 U.S. 42, 53 (1992); *Miranda v.*
18 *Clark Cnty.*, 319 F.3d 465, 468 (9th Cir. 2003) (en banc) (finding that public defender
19 defendant was not state actor subject to suit under § 1983 because, so long as he performs
20 a traditional role of attorney for client, “his function,” no matter how ineffective, is “to
21 represent his client, not the interests of the state or county”). Mr. Judd’s accusations
22 against Ms. Eberhart all stem from actions she took while serving, in court, as his ex-

1 wife's appointed counsel. (*See* Compl. at 6-7). Accordingly, she was not acting under
2 the color of state law for the purposes of § 1983. The court dismisses these claims
3 against Ms. Eberhart with prejudice. *See Ecological Rights Found.*, 713 F.3d at 520.

4 Mr. Judd also brings claims against Ms. Eberhart under common law torts based
5 on professional misconduct, fraud upon the court, and veteran-specific discrimination.
6 (Compl. at 7.) Mr. Judd, however, alleges few specific facts regarding what actions of
7 Ms. Eberhart were allegedly tortious. (*See generally id.*) He states that she “insisted he
8 was not disabled because he has not opened his medical records to the [c]ourt,” “attacked
9 him with derogatory and defamatory remarks,” and “accused him of a crime.” (*Id.* at 7.)
10 While the court construes Mr. Judd's complaint liberally, he must still “allege with at
11 least some degree of particularity overt acts which defendants engaged in that support
12 [his] claim.” *Jones*, 733 F.2d at 649. In his response to Ms. Eberhart's motion, Mr. Judd
13 does not argue that his complaint contains sufficient factual allegations to support these
14 claims, but instead attempts to add a claim of malicious prosecution. (1st Resp. at 7.)⁸
15 He further admits that Ms. Eberhart's arguments against his claims “might be valid under
16 other circumstances, but the Supremacy Clause brings Federal Preemption to the
17 foreground and that determines whether [Mr. Judd] has made a valid [c]omplaint”
18 (*Id.*) But, as described above, Mr. Judd's claims based on federal pre-emption are de
19 facto challenges to the state court's ruling, and this court does not have subject matter

20
21 ⁸ Mr. Judd does not attempt to amend his complaint to include a claim of malicious
22 prosecution (*see generally* Dkt.), nor does he attempt to factually explain how Ms. Eberhart,
serving as court-appointed counsel for his ex-wife, could have engaged in malicious prosecution
against him (*see generally* 1st Resp.; 2d Resp.).

1 jurisdiction over them. *See supra* § III.B. Mr. Judd makes no attempt to explain how
2 federal pre-emption provides a basis for his state law tort claims against Ms. Eberhart.
3 (*See generally* 1st Resp.)

4 Even construed liberally, Mr. Judd's alleged common law tort claims against Ms.
5 Eberhart appear to amount to accusations that she represented his ex-wife in state court
6 proceedings where he did not obtain his desired result. This reading is bolstered by Mr.
7 Judd's consistent references to federal pre-emption in relation to his tort claims against
8 Ms. Eberhart, rather than any attempt to provide a factual context that would support his
9 tort claims. (*See* 1st Resp. at 7.) Mr. Judd has failed to support his accusations against
10 Ms. Eberhart with sufficient facts. Accordingly, the court grants Ms. Eberhart's motion
11 to dismiss Mr. Judd's tort claims against her.

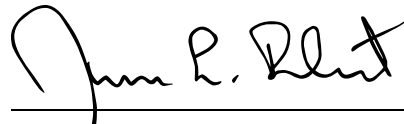
12 Unlike Mr. Judd's other claims, however, his tort claims against Ms. Eberhart are
13 deficient because of his failure to allege sufficient facts to support them. Accordingly,
14 the court dismisses these claims without prejudice and with leave to amend. *See Lucas v.*
15 *Dep't of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995) (noting *pro se* litigants are entitled to an
16 opportunity to amend prior to dismissal if it is not clear that no amendment could cure the
17 deficient complaint). Mr. Judd may file an amended complaint to address the
18 deficiencies in his tort claims against Ms. Eberhart within 14 days of the filing of this
19 order. If Mr. Judd fails to file an amended complaint that remedies the deficiencies
20 identified herein, the court will dismiss the remainder of his complaint without leave to
21 amend.

22 //

1 **IV. CONCLUSION**

2 For the foregoing reasons, the court GRANTS Defendants' motions to dismiss
3 (Dkt. ## 15, 16). The court DISMISSES Mr. Judd's common law tort claims against Ms.
4 Eberhart without prejudice and with leave to amend to include more factual support for
5 his allegations. Mr. Judd shall file an amended complaint, if any, rectifying the
6 deficiencies in these claims against Ms. Eberhart within 14 days of the filing of this
7 order. The court DISMISSES all of Mr. Judd's other claims against the Defendants,
8 including all pre-emption related claims with prejudice and without leave to amend.

9 Dated this 4th day of May, 2021.

10 

11
12 JAMES L. ROBART
United States District Judge