SUSANNE C. WASHINGTON, State Bar No. 176555
PATRICK J. GOODE II, State Bar No. 299697
Superior Court of California, County of San Diego
1100 Union Street
San Diego, California 92101
Telephone: (619) 844-2382

Attorneys for Defendants, the Honorable Katherine Bacal, the Honorable Kevin Enright, and the Honorable Randa Trapp, Judges of the Superior Court of California, County of San Diego

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ANTHONY JOHNSON,

Plaintiff,

v.

DAVID KINNEY, an individual; RICHARD TURNER, an individual; MANUEL ALTAMIRANO, an individual; DAVID HUFFMAN, an individual; DAVID SMILJKOVICH, an individual; PAUL TYRELL, an individual; SEAN SULLIVAN, an individual; MARTY READY, an individual; DAVID AVENI, an individual; MICHAEL MCCLOSKEY, an individual; STORIX INC., a California corporation; JUDGE MARILYN HUFF, an individual; JUDGE RANDA TRAPP, an individual; JUDGE KEVIN ENRIGHT, an individual; JUDGE KATHERINE BACAL, an individual,

Defendants.

Case No. 20-cv-01354-TWR-MSB

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS FIRST AMENDED COMPLAINT WITH PREJUDICE BY DEFENDANTS JUDGE KATHERINE BACAL, JUDGE KEVIN ENRIGHT, AND JUDGE RANDA TRAPP

Date: December 2, 2020
Time: 1:30 p.m.
Crtrm: 3A (Schwartz)
Judge: The Honorable Todd W. Robinson

[NO ORAL ARGUMENT REQUESTED]

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The Honorable Katherine Bacal, the Honorable Kevin Enright, and the Honorable Randa Trapp, Judges of the Superior Court of California, County of San Diego (collectively, the "State Judicial Defendants"), respectfully submit the following memorandum of points and authorities in support of their motion to dismiss the First Amended Complaint ("FAC") filed by Plaintiff Anthony Johnson ("Johnson").

I.
INTRODUCTION

Following multiple state and federal lawsuits and appeals, Johnson, apparently unhappy with the results of the underlying cases, filed the present action against several defendants, including opposing parties and their attorneys in the underlying cases as well as one federal judge and three state court judges that heard the underlying trial court actions.

In the FAC, Johnson alleges that the State Judicial Defendants violated his civil rights when they issued improper rulings in the underlying state actions. Indeed, the only allegations in the FAC against the State Judicial Defendants relate to their alleged conduct, rulings, and judgments in connection with cases that were properly before them. Plaintiff seeks unspecified damages and a declaration that the State Judicial Defendants "exhibited clear bias against Johnson, violated his constitutional rights, and otherwise treated Johnson unfairly as a *pro se* litigant."

However, this Court lacks jurisdiction over this action under the *Rooker-Feldman* doctrine because the FAC is nothing more than an improper attempt to invoke federal judicial intervention in matters already adjudicated in the state court cases. Further, because the FAC is based solely on Johnson's dissatisfaction with the decisions and rulings made by the State Judicial Defendants in the performance of their judicial duties, the claims are barred by judicial and Eleventh Amendment immunity. Finally, the FAC fails to state facts sufficient to state a cognizable claim against the State Judicial Defendants.

For all of these reasons, the State Judicial Defendants respectfully request this Court dismiss the FAC, without leave to amend, and enter a judgment of dismissal, with prejudice, in their favor.

II.

SUMMARY OF RELEVANT ALLEGATIONS OF THE FAC[1]

A. The Parties and Overview of Underlying Litigation.

Johnson was the sole shareholder of Defendant Storix Inc. ("Storix") until 2011 when, due to a terminal cancer prognosis, he gifted controlling interest of the company to Defendants David Huffman, Richard Turner, Manuel Altamirano, and David Kinney, who hired Defendant David Smiljkovich (collectively, "Management"). (FAC at ¶¶ 14-15.) In 2013, Johnson unexpectedly recovered and returned to Storix. (FAC at ¶ 17.) Several disputes arose between Johnson and Management, and a series of lawsuits and appeals followed. (FAC at ¶¶ 17-19, 22, 25, 29, 43, 45, 48, 53, 60-61.)

In October 2014, Johnson filed a copyright infringement lawsuit in federal court against Storix (the "Copyright Suit"), which was assigned to Defendant Judge Marilyn Huff ("Judge Huff"). (FAC at ¶ 19.) The Copyright Suit was appealed twice to the Ninth Circuit. (FAC at ¶¶ 29, 45.)

In August 2015, Management filed a lawsuit in state court against Johnson alleging he breached a fiduciary duty to Storix (the "Direct Suit"), which was assigned to Defendant Judge Randa Trapp ("Judge Trapp"). (FAC at ¶ 22.) In October 2015, Johnson and another shareholder, Robin Sassi ("Sassi"), filed a shareholder derivative lawsuit in state court against Management (the "Derivative Suit"). (FAC at ¶ 25.) In April 2016, Johnson filed a cross-complaint to the Direct Suit (the "Cross-Complaint"). (FAC at ¶ 31.) The Direct Suit/Cross-Complaint and the Derivative Suit were consolidated before trial and transferred to Defendant Judge Kevin Enright ("Judge Enright"). (FAC at ¶¶ 33, 35.) At trial, a jury found in favor of Storix on the Direct Suit

[1] The facts set forth are taken from those averred in the FAC and will be accepted as true for purposes of this motion only.

and Cross-Complaint. (FAC at ¶ 38.) Judge Enright held a bench trial on the Derivative Suit and generally found in favor of Management. (FAC at ¶ 39.) Johnson appealed the judgments and orders in the Direct Suit and Cross-Complaint, and the appeal is currently pending. (FAC at ¶ 43.)

In early 2019, Johnson filed a lawsuit in state court against Management for conversion of his retained earnings and malicious prosecution (the "Conversion Suit"), which was assigned to Defendant Judge Katherine Bacal ("Judge Bacal"). (FAC at ¶ 48.) Johnson dismissed the Conversion Suit, but Management was awarded fees and costs on an anti-SLAPP motion that was pending at the time of dismissal. (FAC at ¶¶ 53, 59.) Johnson appealed the award of fees and costs in the Conversion suit, and that appeal was consolidated with the Direct Suit/Cross-Complaint appeal and is also currently pending. (FAC at ¶ 60.)

After dismissing the Conversion Suit, Johnson revised the claims and filed a lawsuit in federal court (the "Federal Conversion Suit"), which was reassigned to Judge Huff. (FAC at ¶¶ 53-54.) After some of his claims were dismissed and the remaining claims were stayed in the Federal Conversion Suit, Johnson filed a lawsuit in state court against Storix for failure to provide compensation for copyrights and retained earnings (the "Common Counts Suit"), which was assigned to Judge Bacal. (FAC at ¶¶ 61, 65.) Johnson voluntarily dismissed the Common Counts Suit before filing the present action. (FAC at ¶ 66.)

B. Johnson's Allegations Against the State Judicial Defendants.

The FAC largely reads like a procedural history of the multiple underlying state and federal actions and appeals. Johnson's factual allegations against the State Judicial Defendants merely consist of official rulings and decisions that the judges made in the underlying actions that were properly before them. Such allegations include the following:

- "Judge Trapp summarily overruled the demurrer" that Johnson filed in the Direct Suit, which argued that allegations of his intending to compete with Storix did not

constitute a cause of action because it stated no harm and that the lawsuit should have been brought as a derivative action. (FAC at ¶ 30.)

- "Judge Trapp denied Johnson's concurrent motion to strike the false allegation of his California residency by finding that judicial notice of the summons served at his home in Florida constituted 'facts outside the pleading.'" (FAC at ¶ 30.)
- Judge Trapp denied Johnson's petition for a writ of mandamus to compel Storix to allow all directors the same inspection rights "based on Procopio's[2] argument that there was a Direct Suit against Johnson for competing, there was a restraining order against Johnson, and because Johnson sent the *2015 Email*,[3]" but these issues had not been litigated or decided. (FAC at ¶ 32, emphasis in original.)
- "Judge Trapp allowed Johnson to only request records through Procopio that they determined could not be 'used against the company.'" (FAC at ¶ 32.)
- "Judge Enright allowed Procopio and Wilson/Elser[4] to sit together at the plaintiff's table at trial, granted their pre-trial motion precluding Johnson from saying he supported Storix or that Storix endorsed the Derivative Suit." (FAC at ¶ 36.)
- Judge Enright "precluded Johnson from presenting evidence of claims affecting other shareholders, thereby removing from the jury trial all but Johnson's claim of being denied employment benefits." (FAC at ¶ 36.)
- "Judge Enright allowed Management an 'at-will employment' jury instruction only applicable to wrongful termination claims against an employer and refused Johnson's instruction that majority shareholders cannot deny a 40% shareholder of

[2] As used in the FAC, "Procopio" consists of Defendants Paul Tyrell and Sean Sullivan who are attorneys with the firm Procopio, Cory, Hargreaves, Savitch, LLP. (FAC at ¶ 9.)
[3] The *2015 Email* is an email that Johnson sent to Management after the Direct Suit was filed threatening counterclaims and to instruct Storix's customers not to buy software until after Johnson's copyright ownership was confirmed. (FAC at ¶ 23.)
[4] As used in the FAC, "Wilson/Elser" consists of Defendants Marty Ready, David Aveni, and Michael McCloskey who are attorneys with the firm Wilson, Elser, Moskowitz, Edelman & Disker LLP. (FAC at ¶ 10.)

a close corporation a position in the company if he had a reasonable expectation commensurate with his stock ownership." (FAC at ¶ 37.)

- "Judge Enright refused Johnson's jury instruction that Storix had no authority to bring the Direct Suit against him unless it was approved or ratified by a disinterested shareholder or board majority." (FAC at ¶ 38.)
- In denying Johnson's motion for directed verdict based on his argument that the Direct Suit was not approved by a majority of disinterested directors, Judge Enright refused to acknowledge that Management was that majority. (FAC at ¶ 39.)
- "Minutes before the bench trial on the Derivative Suit, Judge Enright granted Wilson/Elser's motion to dismiss Johnson as a derivative plaintiff because he couldn't fairly and adequately represent the interests of the Management shareholder based on the *2015 Email* claim." (FAC at ¶ 39.)
- Judge Enright proceeded with the bench trial in the Derivative Suit with the remaining derivative plaintiff, Sassi, "but ignored all Johnson's testimony and evidence and generally found in favor of Management on all Storix's claims." (FAC at ¶ 39.)
- Judge Enright denied Johnson's motion for a new trial without responding to Johnson's arguments. (FAC at ¶ 41.)
- Judge Enright ignored all of Johnson's arguments and awarded fees and costs in the consolidated actions. (FAC at ¶ 42.)
- Judge Bacal rejected Johnson's request for a default judgment in the Conversion Suit after Management failed to answer because there was a motion to stay on file; however, a stay motion was not a responsive pleading. (FAC at ¶ 50.)
- At a status conference, Judge Bacal informed Johnson she would be rejecting his refiled request to enter default because Management had filed a demurrer; however, the demurrer had been filed the day before the conference, which was 28 days late without a request for an extension. (FAC at ¶ 51.) "Judge Bacal said she

granted Management an extension without a request, and they were free to file their demurrer as long as Johnson's request for default was still pending." (*Id.*) "Judge Bacal denied Johnson's request for default the next day because there was a demurrer on file." (*Id.*)

- Judge Bacal denied Johnson's peremptory challenge as untimely after previously stating that the status conference constituted Johnson's first appearance. (FAC at ¶ 52.) At an ex parte hearing regarding the denial, Judge Bacal[5] stated that Johnson was confused as to when the 15-day default deadline began. (*Id.*)
- "Johnson voluntarily dismissed the Conversion Suit without prejudice because Judge Bacal's procedural tactics prevented him from amending his complaint before or after Wilson/Elser filed their concurrent demurrer and special motion to strike (anti-SLAPP motion)." (FAC at ¶ 53.)
- Judge Bacal granted Management attorney's fees in the Conversion Suit finding they would have prevailed on their anti-SLAPP motion had Johnson not dismissed the case. (FAC at ¶ 59.) Judge Bacal echoed Judge Huff's order in the Federal Conversion Suit, "reciting the same irrelevant and misquoted cases cited by Wilson/Elser and similarly ignoring all well-published authority to the contrary." (*Id.*)
- Judge Bacal awarded Management costs after denying Johnson's motion to strike or tax costs "by ignoring and misapprehending all statues [sic] and case law contrary to her decisions." (FAC at ¶ 60.) "Judge Bacal refused Johnson's request to stay her ruling pending the appeal of the Direct Suit, wherein Johnson challenged Judge Enright's order granting costs to the same defendants by ignoring and misquoting the same statutes and cases." (*Id.*)
- After Johnson's Common Counts Suit filing was rejected because his name appeared on the vexatious litigants list, Judge Trapp denied his request for filing by

[5] This allegation in the FAC is directed at Judge Huff; however, the State Judicial Defendants believe this to be typographical error given the context of the paragraph.

a vexatious litigant despite Johnson indicating he was not the same Anthony Johnson on the list. (FAC at ¶¶ 62-63.)

- Judge Trapp held Johnson's ex parte hearing to address the vexatious litigant issue apart from the other hearings that day, and her "clear hostility toward Johnson increased during the half hour she spent looking for a reason to reject his filing." (FAC at ¶¶ 63-64.) However, Judge Trapp ultimately permitted the filing. (FAC at ¶ 64.)
- Judge Bacal, who the Common Counts Suit had been assigned to, denied Johnson's peremptory challenge as untimely. (FAC at ¶ 65.)

C. Causes of Action Against the State Judicial Defendants.

Johnson asserts three causes of action against the State Judicial Defendants in the FAC: (1) Deprivation of Civil Rights (42 U.S.C. § 1983); (2) Conspiracy to Interfere with Civil Rights (42 U.S.C. § 1985(2)); and (3) Neglect to Prevent Conspiracy to Interfere (42 U.S.C. § 1986).

III.
ARGUMENT

A. Legal Standard.

Federal Rule of Civil Procedure 12(b)(1) allows for a motion to dismiss based on lack of subject matter jurisdiction. *See* Fed. R. Civ. P. 12(b)(1). Such a motion may be facial, where the inquiry is confined to the allegations in the complaint, or factual, where the court looks beyond the complaint to extrinsic evidence. *Wolfe v. Strankman*, 392 F.3d 358, 362 (9th Cir. 2004). A "facial attack" accepts the truth of plaintiff's allegations but asserts that they are "insufficient on their face to invoke federal jurisdiction." *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). The plaintiff bears the burden of establishing subject matter jurisdiction. *Takhar v Kessler*, 76 F.3d 995, 1000 (9th Cir. 1996); *In re Dynamic Random Access Memory Antitrust Litig.*, 546 F.3d 981, 984 (9th Cir. 2008).

A motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure is a challenge to the sufficiency of the pleadings set forth in the complaint. A dismissal is proper under Rule 12(b)(6) where there is either a "lack of a cognizable legal theory" or "the absence of sufficient facts alleged under a cognizable legal theory" or "the absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990). A Rule 12(b)(6) motion for failure to state a claim may also challenge defenses disclosed on the face of the complaint or which are apparent from matters subject to judicial notice. *Weisbuch v. County of Los Angeles*, 119 F.3d 778, 783 n.1 (9th Cir. 1997); *MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986); *Mack v. South Bay Beer Distributors, Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986), *overruled on other grounds by Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104 (1991).

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). "While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." *Id.* at 679. A court is "free to ignore legal conclusions, unsupported conclusions, unwarranted inferences and sweeping legal conclusions cast in the form of factual allegations." *Farm Credit Servs. v. Am. State Bank*, 339 F.3d 764, 767 (8th Cir. 2003) (citation omitted).

B. This Action is Barred by the *Rooker-Feldman* Doctrine.

The *Rooker-Feldman* doctrine precludes an unsuccessful state court litigant from suing in federal court to establish that the state court judgment violated the litigant's federal rights. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005); *see also Dist. of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415 (1923). "*Rooker-Feldman* is a powerful doctrine that prevents federal courts from second-guessing state court decisions by barring the lower federal courts from hearing de facto appeals from state-court

judgments[.]" *Bianchi v. Rylaarsdam*, 334 F.3d 895, 898 (9th Cir. 2003). "A suit brought in federal district court is a 'de facto appeal' forbidden by *Rooker–Feldman* when 'a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and seeks relief from a state court judgment based on that decision.'" *Carmona v. Carmona,* 603 F.3d 1041, 1050 (9th Cir. 2010), citing *Noel v. Hall*, 341 F.3d 1148, 1164 (9th Cir. 2003).

Rooker-Feldman bars federal adjudication of any claim whether a plaintiff alleges an injury based on a state court judgment or directly appeals a state court's decision. *Bianchi,* 334 F.3d at 900 n.4. The district court lacks subject matter jurisdiction either to conduct a direct review of a state court judgment or to scrutinize the state court's application of various rules and procedures pertaining to the state case. *Samuel v. Michaud*, 980 F. Supp. 1381, 1411-12 (D. Idaho 1996), *aff'd*, 129 F.3d 127 (9th Cir. 1997). "If claims raised in the federal court action are 'inextricably intertwined' with the state court's decision such that the adjudication of the federal claims would undercut the state ruling or require the district court to interpret the application of state laws or procedural rules, then the federal complaint must be dismissed for lack of subject matter jurisdiction." *Bianchi,* 334 F.3d at 898. A claim is inextricably intertwined "if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it." *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 25 (1987) (Marshall, J., concurring).

"[A] party losing in state court is barred from seeking what in substance would be appellate review of the state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights." *Johnson v. De Grandy*, 512 U.S. 997, 1005–1006 (1994). That is what Plaintiff seeks here.

Here, the FAC alleges an injury based on the State Judicial Defendants' decisions and judgments in the state court actions and asks this Court to scrutinize both the state trial judges' rulings and application of various state procedural rules to determine that Johnson was deprived of his civil rights. Plainly, Johnson's claims are inextricably

intertwined because a determination by this Court in favor of Johnson would unquestionably undercut the decisions and judgments in the state court actions. In other words, Johnson would not have suffered any injury but for the decisions and judgments in the state court actions. Regardless of how Johnson attempts to characterize the source of his alleged injury, this is exactly the type of action that the *Rooker-Feldman* doctrine precludes. Therefore, this Court lacks subject matter jurisdiction under the *Rooker-Feldman* doctrine, and the FAC should be dismissed against the State Judicial Defendants without leave to amend.

C. The State Judicial Defendants Enjoy Absolute Judicial Immunity Against Plaintiff's Claims.

"Judges and those performing judge-like functions are absolutely immune from damage liability for acts performed in their official capacities." *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986) (en banc). "This absolute immunity insulates judges from charges of erroneous acts or irregular action, even when it is alleged that such action was driven by malicious or corrupt motives, [citation], or when the exercise of judicial authority is 'flawed by the commission of grave procedural errors.'" *In re Castillo*, 297 F.3d 940, 952 (9th Cir. 2002). "Judicial immunity applies however erroneous the act may have been, and however injurious in its consequences it may have proved to the plaintiff." *Ashelman*, 793 F.2d at 1075 (internal quotation marks omitted).

A judicial officer's purported participation in a criminal conspiracy is also insufficient to circumvent judicial immunity. *Ashelman*, 793 F.2d at 1078 ("a conspiracy between a judge and prosecutor to predetermine the outcome of a judicial proceeding … does not pierce the immunity extended to judges and prosecutors"); *Moore v. Brewster*, 96 F.3d 1240, 1243 (9th Cir. 1996) (superseded by statute on other grounds) (judicial immunity is not "lost by allegations that a judge conspired with one party to rule against another party[]").

The only two instances in which immunity is overcome is where the judge "acts in the 'clear absence of all jurisdiction,' [citation], or performs an act that is not 'judicial' in

nature. [Citation.]" *Ashelman*, 793 F.2d at 1075. When determining whether judicial immunity applies, jurisdiction is construed broadly. *Crooks v. Maynard*, 913 F.2d 699, 701 (9th Cir. 1990) (holding immunity applied where judicial officer had "colorable authority" to hold parties in contempt). A judge is not deprived of immunity for "[g]rave procedural errors or acts in excess of judicial authority" or if the judge "misinterpret[s] a statute and erroneously exercise[s] jurisdiction and thereby act[s] in excess of his jurisdiction." *Schucker v. Rockwood*, 846 F.2d 1202, 1204 (9th Cir. 1988). In *Schucker*, the Ninth Circuit held that even assuming the judge had acted in excess of his jurisdiction, judicial immunity applied because the alleged conduct by the judge "was not done 'in the clear absence of jurisdiction.'" *Id.* (quoting *Stump v. Sparkman*, 435 U.S. 349, 357 n.7 (1978)).

"The factors relevant in determining whether an act is judicial 'relate to the nature of the act itself, i.e., whether it is a function normally performed by a judge, and to the expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity.'" *Ashelman*, 793 F.2d at 1075 (quoting *Stump*, 435 U.S. at 362). The inquiry focuses on whether the "nature and function of the act" is normally performed by a judge, "not the act itself." *Mireles v. Waco*, 502 U.S. 9, 13 (1991). Additional factors to be considered include whether the events occurred in the judge's chambers, and whether the controversy centered around a case then pending before the judge. *Duvall v. County of Kitsap*, 260 F.3d 1124, 1133 (9th Cir. 2001).

"Judicial immunity discourages collateral attacks on final judgments through civil suits, and thus promotes the use of 'appellate procedures as the standard system for correcting judicial error.'" *Castillo*, 297 F.3d at 947 (quoting *Forrester v. White*, 484 U.S. 219, 225 (1988)). Moreover, the proper mechanism to challenge a judge's errors is on appeal, not by this subsequent civil litigation. *Pierson v. Ray*, 386 U.S. 547, 554 (1967). "It is a judge's duty to decide all cases within his jurisdiction that are brought before him, including controversial cases that arouse the most intense feelings in the litigants. His errors may be corrected on appeal, but he should not have to fear that

unsatisfied litigants may hound him with litigation charging malice or corruption." *Ibid.* "Imposing such a burden on judges would contribute not to principled and fearless decisionmaking but to intimidation." *Id.*

In the present action, the State Judicial Defendants are entitled to absolute immunity from Johnson's claims. Johnson's claims against the State Judicial Defendants arise solely from actions they each took in their official capacities as state court judges. Issuing rulings in a matter pending before the court is a normal judicial function. Although Johnson takes issue with their decisions and rulings, judicial immunity applies "however erroneous the act may have been, and however injurious it may have proved to the plaintiff." *Ashelman*, 793 F.2d at 1075 (internal quotation omitted). Even Johnson's allegations of a conspiracy between the defendants to deprive him of his civil rights are insufficient to circumvent judicial immunity. *Id*. at 1078.

Further, despite Johnson's conclusory allegation that the defendants "acted *ultra vires* beyond their legal jurisdiction when violating Johnson's clearly established constitutional rights," there are simply no facts alleged in the FAC that support a theory that the State Judicial Defendants lacked jurisdiction over the matters at issue. Because the State Judicial Defendants enjoy judicial immunity, and no facts have been alleged, nor could they be, that would overcome judicial immunity, the FAC should be dismissed without leave to amend.

D. Eleventh Amendment Immunity Bars Johnson's Action Against the State Judicial Defendants.

The Eleventh Amendment bars suits for damages, injunctive relief, and declaratory relief against "a state, an 'arm of the state,' its instrumentalities, or its agencies." *Franceschi v. Schwartz*, 57 F.3d 828, 831 (9th Cir. 1995); *Greater Los Angeles Council of Deafness, Inc. v. Zolin*, 812 F.2d 1103, 1110 (9th Cir. 1987). Not only are California courts deemed state agencies for purposes of Eleventh Amendment immunity, *Simmons v. Sacramento County Superior Court*, 318 F.3d 1156, 1161 (9th Cir. 2003); *Zolin*, 812 F.2d at 1110; *see also* Cal. Const. art. VI §§ 1, 5; *Sacramento & San Joaquin Drainage*

Dist. v. Superior Court, 238 P. 687, 694 (Cal. 1925), but Eleventh Amendment immunity also extends to claims against state court judges and employees in their official capacities, as they are also considered arms of the state, *Simmons*, 318 F.3d at 1161; *see also Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989) ("neither a State nor its officials acting in their official capacities are 'persons' under § 1983"). Such immunity applies to suits for damages, injunctive relief, and declaratory relief. *Zolin*, 812 F.2d at 1110 n.10.

Here, despite Johnson suing the State Judicial Defendants in their individual capacities, all of the allegations against them concern acts allegedly undertaken in their official capacities as a judicial officers of the superior court, and the FAC alleges no conduct they performed outside of their official functions. Accordingly, the Eleventh Amendment applies to bar Johnson's claims, and this action should be dismissed without leave to amend.

E. The FAC Fails to State a Claim Upon Which Relief Can Be Granted.[6]

Section 1983 is not a source of substantive rights but merely a method for vindicating federal rights established elsewhere. *Graham v. Connor*, 490 U.S. 386, 393-94 (1989). To succeed on a § 1983 claim, a plaintiff must show "that a right secured by the Constitution or the laws of the United States was violated[.]" *Long v. County of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006).

Here, Johnson's allegation that his due process rights were violated is merely a legal conclusion that is insufficient in and of itself to overcome a motion to dismiss. *Ileto v. Glock Inc.*, 349 F.3d 1191, 1200 (2003); *Iqbal,* 556 U.S. at 679. Moreover, an

[6] The State Judicial Defendants note that other parties have addressed the deficiency of Johnson's §§ 1985(2) and 1986 causes of action because Johnson failed to allege racial or class-based animus, and Johnson has apparently conceded this point. (*See* Doc. 11-1, pp. 6:8-7:28, 14:4-23; Doc. 14-1, p. 7:3-26; Doc. 19, pp. 3:18-4:12; Doc. 20, pp. 3:11-4:2.) Accordingly, the State Judicial Defendants will not reargue this issue in an effort to avoid duplication in briefing per the Court's Standing Order for Civil Cases.

examination of the alleged "facts" plainly demonstrates that the FAC fails to state a cognizable § 1983 claim against the State Judicial Defendants. Although Johnson may not have been satisfied with the results of the state court cases, such allegations do not give rise to a plausible claim that Johnson's due process rights were violated. In addition, because "neither a State nor its officials acting in their official capacities are 'persons' under § 1983," *Will*, 491 U.S. at 71, and all of the allegations against the State Judicial Defendants concern acts allegedly undertaken in their official capacities as a judicial officers of the superior court, the FAC fails to state a cognizable § 1983 claim.

As noted above, Johnson also alleges that multiple defendants, including business associates, attorneys, and judges, somehow conspired with one another to deprive Johnson of his civil rights. The FAC attempts to implicate the State Judicial Defendants in this purported conspiracy based solely on allegedly erroneous orders and rulings made in the underlying state cases. Such allegations are far from sufficient to state a civil rights conspiracy claim.

"[A] party cannot rely merely on allegations that a state judge issued erroneous orders to support a conspiracy claim under § 1983." *Margolis v. Ryan*, 140 F.3d 850, 853 (9th Cir. 1998). "Rather, the party must provide material facts that show an agreement among the alleged conspirators to deprive the party of his or her civil rights. [Citations]." *Ibid.*; *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007) (requiring complaint to include "enough factual matter (taken as true) to suggest than an agreement was made"). "Otherwise, any party dissatisfied with a state court decision could pursue a claim of conspiracy in federal court." *Margolis*, 140 F.3d at 853.

In *Margolis*, the plaintiffs filed a federal civil rights action alleging a state court judge, Judge Ramerman, had conspired with the opposing parties and attorneys in a state court action "to fix the outcome of the [action]." 140 F.3d at 852. In its decision affirming the district court's judgment against plaintiffs, the Ninth Circuit reasoned as follows:

> [T]he district court properly determined that [plaintiffs] presented no specific facts, other than alleging Judge Ramerman made erroneous decisions, from which a conspiracy could be inferred. [Plaintiffs'] federal complaint contains the conclusory allegation that Judge Ramerman joined a conspiracy with [the opposing attorneys] that was evidenced by the Judge granting defendant's motions, failing to consider certain papers offered by [plaintiffs], accepting inadmissible evidence offered by defendants, and failing to sanction [the opposing attorneys] for lying and asserting unsupported legal positions. [Plaintiffs] did not, however, allege in their complaint, or subsequently set forth, any facts to demonstrate an agreement between Judge Ramerman and [the opposing attorneys]. Thus, the essence of [plaintiffs'] conspiracy claim is that they litigated and lost. As such, [plaintiffs] failed to support their allegations of a conspiracy in violation of § 1983. [Citation.] *Id.* at 853.

Similar to *Margolis*, the FAC does not and cannot allege specific facts establishing any agreement to violate Johnson's constitutional rights involving the State Judicial Defendants. Instead, the FAC leaps to the implausible conclusion that the State Judicial Defendants conspired with the opposing parties and their attorneys in the underlying state cases.

Dismissal of Johnson's § 1983 claims against the State Judicial Defendants, and the correlating conspiracy and neglect to prevent claims, is therefore warranted. *See Simmons*, 318 F.3d at 1161 (conclusory allegations of private attorney's conspiracy with state officers are insufficient to state a § 1983 claim); *Burns v. County of King*, 883 F.2d 819, 821 (9th Cir. 1989) ("To state a claim for a conspiracy to violate one's constitutional rights under section 1983, the plaintiff must state specific facts to support the existence of the claimed conspiracy."); *Bhardwaj v. Pathak*, 668 F. App'x 763, 765 (9th Cir. 2016) (affirming dismissal of claims that judge, attorneys, and court reporter conspired to tamper with hearing transcripts as "highly implausible, vague, and conclusory as to the existence of a conspiracy").

In sum, the allegations of the FAC make clear that Johnson is simply unhappy with what transpired in the underlying state court proceedings. Such allegations do not give rise to a § 1983 claim. Given that Johnson's claims are also barred by judicial and

Eleventh Amendment immunity, leave to amend is not warranted, and this action should be dismissed with prejudice.

IV.
CONCLUSION

As set forth above, this action against the State Judicial Defendants is precluded by the *Rooker-Feldman* doctrine as well as judicial and Eleventh Amendment immunity. In addition, the FAC fails to state a viable claim for relief against the State Judicial Defendants. Because these defects cannot be cured by way of amendment, the State Judicial Defendants respectfully request that the Court grant their motion to dismiss, without leave to amend, and enter a judgment of dismissal, with prejudice, in their favor.

Respectfully submitted,

SUSANNE C. WASHINGTON
Superior Court of California, County of San Diego

DATED:

October 9, 2020

By: __s/ Patrick J. Goode II
PATRICK J. GOODE II
Attorneys for Defendants, The Honorable Katherine Bacal, The Honorable Kevin Enright, and The Honorable Randa Trapp, Judges of the Superior Court of California, County of San Diego