IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:16-cv-02480-WJM-CBS

GILBERT T. TSO,

Plaintiff,

v.

REBECCA MURRAY, individually;
TANYA AKINS, individually;
SHERR PUTTMAN AKINS LAMB PC, a law firm;
JEANNIE RIDINGS, individually;
KILILIS RIDINGS & VANAU PC, a law firm;
RUSSELL M. MURRAY, individually;
DENA MURRAY, individually;
JOANNE JENSEN, individually;
RICHARD F. SPIEGLE, PSY.D., individually;
DENVER DISTRICT COURT, a municipal entity:
DENVER DEPARTMENT OF HUMAN SERVICES, a municipal entity;
CITY AND COUNTY OF DENVER, a municipal entity;
COLORADO DEPARTMENT OF HUMAN SERVICES,
a governmental unit or political subdivision of the STATE OF COLORADO,

Defendants.

REPORT AND RECOMMENDATION

Magistrate Judge Craig B. Shaffer

This civil action comes before the court on the Motions to Dismiss filed by Defendants Rebecca Murray, Russell M. Murray, Dena Murray, and Joanne Jensen (collectively the "Murray Defendants") (Docs. 135), the City and County of Denver and the Denver Department of Human Services (the "Denver Defendants") (Doc. 137), the Denver District Court and the Colorado Department of Human Services (the "Colorado Defendants") (Doc. 139), Tanya Akins and Sherman Puttman Akins Lamb, P.C. (the "SPAL Defendants") (Doc. 141), Jeannie Ridings and Kililis Ridings & Vonau, P.C. (the "Illinois Defendants") (Doc. 142), and Richard Spiegle, Psy.D ("Dr. Spiegle") (Doc. 186). Pursuant to the Order Referring Case dated October 18, 2016

(Doc. 13) and the memorandums dated July 7, 2017 (Docs. 136, 138, 140), July 10, 2017 (Docs. 143, 144), and July 26, 2017 (Doc. 187), these matters were referred to the Magistrate Judge. The court has reviewed the motions, the entire case file, and the applicable law and is sufficiently advised in the premises. For the following reasons, the court recommends that the motions be granted and this case be dismissed.

BACKGROUND

This case arises from the November 2012 dissolution of Gilbert Tso ("Plaintiff") and Ms. Murray's marriage. The domestic proceedings originated in Illinois District Court, which granted residential custody[1] of the couple's child to Ms. Murray, and also permitted her to move to Colorado. In addition, the Illinois court entered a "duty of support" against Mr. Tso, but deferred establishment of a child support order. *See* Doc. 120 at ¶¶ 66, 91, 117, 139. By June 2013, Mr. Tso, Ms. Murray, and their child had moved to Colorado. Mr. Tso filed several motions in the Colorado courts to establish a child support order under Colorado law. *Id*. at ¶ 66. However, the Illinois District Court retained jurisdiction over the child support issue and ultimately entered a support order that included arrearages of approximately $17,500. *Id*. at ¶¶ 70, 92, 126-28. The Illinois Appellate Court affirmed the Illinois District Court's exercise of jurisdiction over the child support issue. *Id*. at ¶ 70. Thereafter, in 2015, the Denver District Court granted Ms. Murray's motion for registration and enforcement of the Illinois support order.[2] *Id*. at ¶ 80.

In his Second Amended Complaint ("SAC") (Doc. 120), filed on June 9, 2017, Mr. Tso — who is proceeding in this matter *pro se* — sued Ms. Murray, Ms. Murray's parents (Russell M. Murray, Dena Murray, and Joanne Jensen), Ms. Murray's Colorado (SPAL Defendants) and Illinois (Illinois Defendants) legal counsel, a court-appointed child psychologist (Dr. Spiegle),

[1] The Denver District Court has apparently granted the parties 50/50 shared custody of the child.

[2] Mr. Tso' SAC is 69 pages long and contains 180 numbered paragraphs. Additional factual allegations will be detailed as necessary in the forthcoming analysis.

the Colorado Department of Human Services, the Denver District Court, the City and County of Denver, and the Denver Department of Human Services.[3] Plaintiff contends that the Colorado and Denver Defendants violated his Fifth and Fourteenth Amendment rights (Claim One & Claim Four). In addition, Mr. Tso contends that Colorado Revised Statute § 14-10-124 is unconstitutional on its face (Claim Five). He also asserts two civil RICO claims against the remaining Defendants (Claim Two & Claim Three). In support of these claims, he contends that the Murray Defendants, Ms. Murray's attorneys, and Dr. Spiegel formed an enterprise with the goal of obtaining court orders that are financially onerous to Mr. Tso.

Mr. Tso initiated this action on October 3, 2016. Doc. 1. After he amended his complaint as a matter of course (Doc. 9), the court permitted Plaintiff to file the SAC over the Defendants' objections. *See* Doc. 119. Thereafter, the Defendants filed their Motions to Dismiss on the basis that (1) the SAC does not comply with Federal Rule of Civil Procedure 8; (2) this court lacks jurisdiction under the *Rooker-Feldman* doctrine; (3) Mr. Tso lacks standing to bring his RICO claims; (4) Mr. Tso has failed to state any claim for relief; (5) the court lacks personal jurisdiction over the Illinois Defendants; (6) Plaintiff's claims are barred by the Eleventh Amendment and the statute of limitations; and (7) some of the Defendants are protected by quasi-judicial immunity. *See* Doc. 135, 137, 139, 141, 142, 186. Plaintiff filed his Response (Doc. 202) on August 4, 2017, which was followed by Defendants' Replies. Docs. 209, 213, 216, 222. The court concludes that it may evaluate these motions without oral arguments. D.Colo.LCivR 7.1(h).

[3] This list of Defendants has been winnowed down over the course of several amendments. Plaintiff previously asserted claims against several Colorado and Illinois state court judges, as well as the State of Illinois and multiple Illinois officials.

STANDARDS OF REVIEW

A. Fed. R. Civ. P. 12(b)(1)

Federal courts, as courts of limited jurisdiction, must have a statutory basis for their jurisdiction. *See Morris v. City of Hobart*, 39 F.3d 1105, 1111 (10th Cir. 1994) (citing *Castaneda v. INS*, 23 F.3d 1576, 1580 (10th Cir. 1994)). Pursuant to Federal Rule of Civil Procedure 12(b)(1), the court may dismiss a complaint for lack of subject matter jurisdiction. The determination of a court's jurisdiction over subject matter is a question of law. *Madsen v. United States ex rel. U.S. Army, Corps of Eng'rs*, 841 F.2d 1011, 1012 (10th Cir. 1987). "A court lacking jurisdiction cannot render judgment but must dismiss the cause *at any stage* of the proceedings in which it becomes apparent that jurisdiction is lacking." *Basso v. Utah Power & Light Co.*, 495 F.2d 906, 909 (10th Cir. 1974).

A motion to dismiss for a lack of subject matter jurisdiction may take two forms. *See Holt v. United States*, 46 F.3d 1000, 1002 (10th Cir. 1995). It may facially attack a complaint's allegations or it may challenge the facts upon which subject matter jurisdiction depends. *Id*. at 1002-1003.

> When reviewing a factual attack on subject matter jurisdiction, a district court may not presume the truthfulness of the complaint's factual allegations. A court has wide discretion to allow affidavits, other documents, and a limited evidentiary hearing to resolve disputed jurisdictional facts under Rule 12(b)(1). In such instances, a court's reference to evidence outside the pleadings does not convert the motion to a Rule 56 motion.

Id. at 1003 (internal citations omitted); *see also Wheeler v. Hurdman*, 825 F.2d 257, 259 n.5 (10th Cir. 1987). "The burden of establishing subject-matter jurisdiction is on the party asserting jurisdiction." *Montoya v. Chao*, 296 F.3d 952, 955 (10th Cir. 2002) (citing *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994))

B. Fed. R. Civ. P. 12(b)(6)

Under Rule 12(b)(6) of the Federal Rules of Civil Procedure, a court may dismiss a complaint for "failure to state a claim upon which relief can be granted." *See* Fed. R. Civ. P. 12(b)(6). In deciding a motion under Rule 12(b)(6), the court must "accept as true all well-pleaded factual allegations . . . and view these allegations in the light most favorable to the plaintiff." *Casanova v. Ulibarri*, 595 F.3d 1120, 1124-25 (10th Cir. 2010) (quoting *Smith v. United States*, 561 F.3d 1090, 1098 (10th Cir. 2009)). The court is not, however, "bound to accept as true a legal conclusion couched as a factual allegation." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). In addition, this court may consider exhibits attached to the Complaint without converting the motion into one for summary judgment pursuant to Rule 56. *See Hall v. Bellmon*, 935 F.2d 1106, 1112 (10th Cir. 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*, 556 U.S. at 678 (internal quotation marks omitted). A claim is plausible when the plaintiff "pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. This standard requires more than the sheer possibility that a defendant has acted unlawfully. *Id*. Facts that are "merely consistent" with a defendant's liability are insufficient. *Id*. "[T]o state a claim in federal court, a complaint must explain what each defendant did to him or her; when the defendant did it; how the defendant's actions harmed him or her; and what specific legal right the plaintiff believes the defendant violated." *Nasious v. Two Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1163 (10th Cir. 2007). The ultimate duty of the court

is to "determine whether the complaint sufficiently alleges facts supporting all the elements necessary to establish an entitlement to relief under the legal theory proposed." *Forest Guardians v. Forsgren*, 478 F.3d 1149, 1160 (10th Cir. 2007). "Nevertheless, the standard remains a liberal one, and 'a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and that recovery is very remote and unlikely.'" *Morgan v. Clements*, No. 12-cv-00936-REB-KMT, 2013 WL 1130624, at *1 (D. Colo. Mar. 18, 2013) (quoting *Dias v. City & County of Denver*, 567 F.3d 1169, 1178 (10th Cir. 2009)).

The court is cognizant of the fact that Mr. Tso is not an attorney; consequently, his pleadings and other papers have been construed liberally and held to a less stringent standard than formal pleadings drafted by a lawyer. *See Hall*, 935 F.2d at 1110 (citing *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972)). Therefore, "if the court can reasonably read the pleadings to state a claim on which the plaintiff could prevail, it should do so despite the plaintiff's failure to cite proper authority, his confusion of legal theories, his poor syntax and sentence construction, or his unfamiliarity with pleading requirements." *Id*. However, this court cannot act as a *pro se* litigant's advocate. *Id*. It is the responsibility of the *pro se* plaintiff to provide a simple and concise statement of his claims and the specific conduct that gives rise to each asserted claim. *See Willis v. MCI Telecomms.*, 3 F. Supp. 2d 673, 675 (E.D.N.C. 1998). This court may not "supply additional factual allegations to round out a plaintiff's complaint." *Whitney v. State of New Mexico*, 113 F.3d 1170, 1173-74 (10th Cir. 1997). Nor may a plaintiff defeat a motion to dismiss by alluding to facts that have not been alleged, or by suggesting violations that have not been plead. *Associated Gen. Contractors of Cal. Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 526 (1983). *Pro se* plaintiffs must "follow the same rules of procedure that govern other litigants." *Nielsen v. Price*, 17 F.3d 1276, 1277 (10th Cir. 1994).

ANALYSIS

I. Illinois Defendants

In the SAC, Mr. Tso lodges claims against Jeannie Ridings and Kililis Ridings & Vonau, P.C., who represented Ms. Murray in the Illinois domestic proceedings. Mr. Tso previously asserted claims against the Illinois Defendants in Denver District Court, wherein he asserted claims for abuse of process and malicious prosecution. *See* Doc. 142-3. However, the Colorado court concluded that these Illinois Defendants were non-residents who had no involvement in any proceedings in Colorado and had not purposefully availed themselves of the privilege of conducting business in Colorado. Doc. 142-6 at 3-4. Consequently, the court dismissed Mr. Tso's claims against the Illinois Defendants based on a lack of personal jurisdiction. *Id*. at 5. Mr. Tso never appealed this determination. Doc. 142-7. The Illinois Defendants now contend, based on this state court order, that Mr. Tso is precluded from relitigating this issue. Doc. 142 at 6-8. The court agrees.

"[I]ssue preclusion bars a party from relitigating an issue once it has suffered an adverse determination on the issue, even if the issue arises when the party is pursuing or defending against a different claim." *Park Lake Res. Ltd. Liab. Co. v. U.S. Dep't of Agric.*, 378 F.3d 1132, 1136 (10th Cir. 2004). This doctrine applies when "(1) the issue previously decided is identical with the one presented in the action in question, (2) the prior action has been finally adjudicated on the merits, (3) the party against whom the doctrine is invoked was a party, or in privity with a party, to the prior adjudication, and (4) the party against whom the doctrine is raised had a full and fair opportunity to litigate the issue in the prior action." *Id*. at 1136. In the case of dismissals for lack of jurisdiction, issue preclusion prevents relitigation of the issues determined in ruling on the jurisdiction question. *Park Lake,* 378 F.3d at 1136; *Matosantos Commercial Corp. v.*

Applebee's Int'l, Inc., 245 F.3d 1203, 1209–1210 (10th Cir. 2001).

Here, the record shows that the Colorado state court decided the issue of whether Mr. Tso had established a *prima facie* case of specific jurisdiction under Colorado's long-arm statute and the Fourteen Amendment due process provisions. In doing so, the court specifically considered Mr. Tso's allegations regarding the Illinois Defendants' representation of Ms. Murray in the Illinois domestic proceedings. Doc. 142-6. Mr. Tso's claims in this case arise out of the same representation. *See* Doc. 120. Further, Mr. Tso and the Illinois Defendants had an opportunity to brief this issue, and it was fully and finally adjudicated by the Colorado district court. Thus, the issue of whether personal jurisdiction[4] exists in Colorado has already been decided and Mr. Tso may not relitigate that question in this case.

Mr. Tso has attempted to circumvent the issue of personal jurisdiction by invoking 18 U.S.C. § 1965(b), which gives the Racketeer Influenced and Corrupt Organizations Act ("RICO") nationwide jurisdictional reach. *Cory v. Aztec Steel Bldg., Inc.*, 468 F.3d 1226, 1229 (10th Cir. 2006) (joining the Second, Seventh, and Ninth Circuits in holding that, pursuant to subsection (b), when a civil RICO action is brought in a district court where personal jurisdiction can be established over at least one defendant, summonses can be effected nationwide on other defendants if required by the ends of justice). For two reasons, these efforts are unavailing.

First, apart from his conclusory assertion that "[j]urisdiction under 18 U.S.C. § 1965(b), (d) is invoked," Mr. Tso has not pointed to any facts demonstrating that the ends of justice require nationwide service of process in this case. Second, as discussed in the forthcoming analysis, Mr. Tso has not stated a viable RICO claim in this matter; thus, the court need not address whether nationwide jurisdiction is proper. Mr. Tso's claims against the Illinois

[4] The Denver District Court analyzed the question of specific jurisdiction. It noted that there had been no arguments or evidence that general jurisdiction could apply to the Illinois Defendants. Doc. 142-6 at 3.

Defendants should be dismissed for a lack of personal jurisdiction.

II. Colorado & Denver Defendants

Mr. Tso asserts two claims for relief against the Colorado and Denver Defendants.[5] In his first claim, Plaintiff alleges that the Denver Defendants' and the Colorado Defendants' are garnishing his wages and other financial accounts as a result of the child support registration and enforcement orders. He contends that these actions amount to a taking without compensation in violation of the Fifth Amendment. In his fourth claim for relief, Mr. Tso contends that these Defendants have violated his Fourteenth Amendment right to equal protection. The court concludes that these Defendants should be dismissed from the case.

A. Fifth Amendment Claim

Mr. Tso brings his Fifth Amendment claim pursuant to 42 U.S.C. § 1983 and seeks only monetary damages in recompense for the alleged violations. Doc. 120 at 25-28, 66. However, this claim is barred as against the Colorado Defendants and the Denver Department of Human Services.

> The Eleventh Amendment bars a suit for damages against a state in federal court, absent a waiver of immunity by the state. . . . Congress did not abrogate state Eleventh Amendment immunity when it enacted § 1983 . . . ; however, that immunity extends only to the states and governmental entities that are "arms of the state." . . . The arm-of-the-state doctrine bestows immunity on entities created by state governments that operate as alter egos or instrumentalities of the states.

Watson v. Univ. of Utah Med. Ctr., 75 F.3d 569, 574–75 (10th Cir. 1996) (citing *inter alia Edelman v. Jordan*, 415 U.S. 651, 663 (1974)).

First, both the Denver District Court and the Colorado Department of Human Services

[5] Mr. Tso's fifth claim challenges the constitutionality of Colorado Revised Statute § 14-10-124. He does not name a Defendant in this claim although it is, presumably, lodged against the Colorado Defendants. Nevertheless, the court addresses this claim in a separate section.

were created by the Colorado state government and are, undeniably, arms of the state. *See* Colo. Const. art. VI § 10; C.R.S. § 26-1-105; *see also Ruiz v. McDonnell*, 299 F.3d 1173 (10th Cir. 2002) ("there exists no dispute between the parties that the CDHS qualifies as an 'arm' of the state of Colorado"); *Coopersmith v. Supreme Ct., St. of Colo.*, 465 F.2d 993, 994 (10th Cir. 1972) (Colorado Supreme Court, Colorado Court of Appeals, and Grand County, Colorado District Court "are not 'persons'" as contemplated in 42 U.S.C. §§ 1983, 1985, and 1986); 13 Charles Alan Wright et al., Federal Practice and Procedure § 3524.2, at 324–25 (3d ed.2008) ("As a general matter, state courts are considered arms of the state.").

Second, courts in this district as well as Colorado state courts have consistently held that Colorado county human services departments are also arms of the state under the Eleventh Amendment. *T.D. v. Patton*, 149 F.Supp.3d 1297 (2016) (conducting a thorough analysis of the factors in *Watson v. Univ. of Utah Med. Ctr.*, 75 F.3d 569, 574-75 (10th Cir. 1996), and concluding that the Denver Department of Human Services was an arm of the state and, therefore, entitled to Eleventh Amendment Immunity); *Freeman v. White et al.*, No. 05–cv–00164–EWN–CBS, 2006 WL 2793139, at *8-12 (D. Colo. Sept. 28, 2006) (collecting cases). As a Colorado county health and human services department, the Denver Department of Human Services is also an arm of the State of Colorado.

Accordingly, the court recommends dismissing Mr. Tso's first claim against the Denver District Court, the Colorado Department of Human Services, and the Denver Department of Human Services based on Eleventh Amendment immunity. The dismissal should be without prejudice because the court lacks jurisdiction over the claim. *See, e.g., Amin v. Voigtsberger*, 560 F. App'x 780, 783 (10th Cir. 2014).

With respect to Mr. Tso's Claim against the City and County of Denver, the court

concludes that his claim is barred under the doctrine of quasi-judicial immunity.[6] The Tenth Circuit has held that "enforcing a court order or judgment is intrinsically associated with a judicial proceeding" and that "[a]bsolute immunity for officials assigned to carry out a judge's orders is necessary to insure that such officials can perform their function without the need to secure permanent legal counsel." *Valdez v. City & Cty. of Denver*, 878 F.2d 1285, 1289 (10th Cir. 1989) ("it is simply unfair to spare the judges who give orders while punishing the officers who obey them"). *See also Moss v. Kopp*, 559 F.3d 1155, 1163-1168 (10th Cir. 2009) (holding that "[j]ust as judges acting in their judicial capacity are absolutely immune from liability under section 1983, 'official[s] charged with the duty of executing a facially valid court order enjoy [ ] absolute immunity from liability for damages in a suit challenging conduct prescribed by that order'") (quoting *Turney v. O'Toole*, 898 F.2d 1470, 1472 (10th Cir. 1990)). "The 'fearless and unhesitating execution of court orders is essential if the court's authority and ability to function are to remain uncompromised.'" *Coverdell v. Dep't of Soc. & Health Servs.*, 834 F.2d 758, 765 (9th Cir. 1987). *Cf. Smeal v. Alexander*, No. 5:06 CV 2109, 2006 WL 3469637, at *6 (N.D. Ohio Nov. 30, 2006) ("quasi-judicial immunity extends to those persons performing tasks so integral or intertwined with the judicial process that they are considered an arm of the judicial officer who is absolutely immune").

"[F]or the defendant state official to be entitled to quasi-judicial immunity, the judge issuing the disputed order must be immune from liability in his or her own right, the officials executing the order must act within the scope of their own jurisdiction, and the officials must

[6] The Denver Defendants contend that the City and County of Denver, through its Department of Human Services, is an "arm of the state." Doc. 137 at 2-3. Indeed, Mr. Tso's claim against Denver does seem to be based entirely upon the actions of the Department. However, to the extent that Mr. Tso alleges Denver acted in some independent capacity, Eleventh Amendment immunity does not extend to counties, cities, or other political subdivisions of the state. *Ambus v. Granite Bd. of Educ.*, 975 F.2d 1555, 1560 (10th Cir. 1992); *see also Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 280 (1977).

only act as prescribed by the order in question." *Moss*, 559 F.3d at 1163. The doctrine of quasi-judicial immunity further requires that the court order in question be "facially valid." *Id.* at 1164. The Tenth Circuit has recognized, however, that a court order may be "facially valid" even if that order is infirm or erroneous as a matter of state law.

> "State officials 'must not be required to act as pseudo-appellate courts scrutinizing the orders of judges,' but subjecting them to liability for executing an order because the order did not measure up to statutory standards would have just that effect." Further, "[t]o allow plaintiffs to bring suit any time a state agent executes a judicial order that does not fulfill every legal requirement would make the agent 'a lightning rod for harassing litigation aimed at judicial orders." "Simple fairness requires that state officers 'not be called upon to answer for the legality of decisions which they are powerless to control.'"

Id. at 1165 (internal citations omitted).

In the SAC, Mr. Tso alleges the 19th Judicial District of Illinois entered a "Duty of Support" pursuant to Illinois' "single-payer, percent of income" formula. Doc. 120 at ¶¶ 66, 68. That order was later registered with the Denver District Court, which entered an enforcement order. *Id*. at ¶¶ 80. Thereafter, the enforcement of the support order was assigned to the Denver Department of Human Services, and the City and County of Denver — presumably via the Department — allegedly began to garnish Mr. Tso's wages and accounts. *Id*. at ¶¶ 81-82.

As the court understands Mr. Tso's contention, the Illinois support order was improper because Colorado was obligated to accept jurisdiction over the question of child support pursuant to C.R.S. § 14-11-101. *See Id*. at ¶ 70. Even accepting that proposition as true, there are no well-pleaded facts in the SAC to suggest that the City and County of Denver was aware of any alleged deficiency when it began to enforce the support order via garnishment. Nor are there any allegations to establish that the Illinois or Colorado judges acted "in the clear absence of all jurisdiction." *Whitesel v. Sengenberger*, 222 F.3d 861, 867 (10th Cir. 2000) ("A judge does not

act in the clear absence of jurisdiction even if the action he took was in error, was done maliciously, or was in excess of his authority."); *see also Stump v. Sparkman*, 435 U.S. 349, 359 (1978) ("A judge is absolutely immune from liability for his judicial acts even if his exercise of authority is flawed by the commission of grave procedural errors."). Thus, the court recommends that this claim against the City and County of Denver be dismissed based on quasi-judicial immunity.

B. Fourteenth Amendment Claim

The contours of Plaintiff's fourth claim for relief are, at best, opaque. Although it is ostensibly a claim pursuant to the Fourteenth Amendment, the allegations primarily concern the Defendants' alleged violations of C.R.S. § 14-5-607 and the Uniform Interstate Family Support Act ("UIFSA"). *See* Doc. 120 at 59-62. It is unclear whether Mr. Tso contends that the Defendants discriminated against him in their application of the Colorado statute, whether he is challenging a violation of said statute, or both. Under any permutation, however, he has failed to state a claim upon which relief can be granted.

First, any equal protection claim should be dismissed because Mr. Tso makes no specific factual allegations in support of his claim that these Defendants violated his equal protection rights. His open-ended allegations provide no suggestion as to what the grounds for an equal protection violation might be. *See* Doc. 120 at ¶¶ 155-69. The Equal Protection Clause requires that no state "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. Amend. XIV. The Equal Protection clause is triggered only when the government treats someone differently than another who is similarly situated. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985); *see also Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (recognizing equal protection claim brought by a "class of one," where the

plaintiff alleged that she had been intentionally treated differently from others similarly situated and that there was no rational basis for the difference in treatment); *Hennigh v. City of Shawnee*, 155 F.3d 1249, 1257 (10th Cir. 1998) ("The allegation that a plaintiff was treated differently from those similarly situated is an essential element of an equal protection action."); *Jacobs, Visconsi & Jacobs v. City of Lawrence*, 927 F .2d 1111, 1118–19 (10th Cir. 1991) (discussing "similarly situated" requirement of equal protection claim); *Buckley Const., Inc. v. Shawnee Civic & Cultural Dev. Auth.*, 933 F.2d 853, 859 (10th Cir. 1991) (complaint failed to allege "an element of intentional or purposeful discrimination" sufficient "to invoke the equal protection doctrine"). Mr. Tso has not alleged an essential element of his equal protection claim: namely, that he was intentionally treated differently than another who was similarly situated.

Second, Mr. Tso — to the extent he attempts to do so — cannot seeks redress pursuant to § 1983 for the violations of a state statue or UIFSA. In *Maine v. Thiboutot*, the Supreme Court determined that § 1983 safeguards certain rights conferred by federal statutes, as well as federal constitutional rights. 448 U.S. 1, 4 (1980). However, the plaintiff must assert the deprivation of a federal right not just the violation of a federal law. *Blessing v. Freestone*, 520 U.S. 329, 340 (1997). Here, Mr. Tso has not asserted the deprivation of any federal or constitutional right. Indeed, he has not even alleged the violation of a federal law.

Mr. Tso contends that the Defendants violated C.R.S. § 14-5-607, a Colorado statute. "It is well established, however, that a state's violation of its own laws does not create a claim under § 1983." *Rector v. City & Cty. of Denver*, 348 F.3d 935, 947 (10th Cir. 2003). Mr. Tso also contends that the Defendants violated provisions of UIFSA. But this is merely a model statute and does not create any federal rights or laws. *See Office of Child Support ex rel. Tetta-Parham*

v. Malico, No. 1:05-CV-24, 2005 WL 1026585, at *1 (D. Vt. May 2, 2005).

For the foregoing reasons, the court recommends that the Colorado Defendants and the Denver Defendants be dismissed from this case.

III. RICO Claims

Mr. Tso has also asserted two claims pursuant to RICO. Specifically, he contends that the Defendants violated 18 U.S.C. § 1962(c) (conducting or participating in the affairs of an enterprise through a pattern of racketeering activity), and 18 U.S.C. § 1962(d) (conspiracy to violate § 1962(c)). Generally, he alleges that the Murray Defendants, the SPAL Defendants, Dr. Spiegle, and the Illinois Defendants, conducted an "enterprise" aimed at obtaining court orders favoring Ms. Murray through a pattern of illegal activity — including, *inter alia*, wire fraud, mail fraud, and extortion — directed at the courts of Illinois and Colorado. Doc. 120 at ¶¶ 87-154.

In their respective Motions, the Defendants contend that the *Rooker-Feldman* doctrine limits this court's subject matter jurisdiction as to all of Plaintiff's claims. *See* Doc. 135 at 12-13, Doc. 137 at 2-3, Doc. 139 at 6-7, Doc. 141 at 5-7, Doc. 142 at 9-10, Doc. 186 at 5-6. Defendants further contend, that even if this court has jurisdiction, Plaintiff has failed to state any claims upon which relief could be granted. The court agrees that these claims are barred by *Rooker-Feldman*, and — even if they are not — Mr. Tso has failed to state a claim under RICO.

A. The *Rooker-Feldman* Doctrine

The *Rooker-Feldman* doctrine[7] prohibits federal courts from exercising "appellate" jurisdiction over final judgments by a state court. *Mo's Express, LLC v. Sopkin*, 441 F.3d 1229, 1233 (10th Cir. 2006). To wit, it "precludes a losing party in state court who complains of injury caused by the state court judgment from bringing a case seeking review and rejection of that

[7] The doctrine is so named for two United States Supreme Court cases, *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

judgment in federal court." *Dillard v. Bank of New York*, 476 F. App'x 690, 691 (10th Cir. 2012) (quoting *Miller v. Deutsche Bank Nat'l Trust Co.*, 666 F.3d 1255, 1261 (10th Cir. 2012)) (internal quotation marks omitted). However, "*Rooker-Feldman* does not bar claims that would be identical even if there had been no state-court judgment; that is, claims that do not rest on any allegation concerning the state-court proceedings or judgment." *Bolden v. City of Topeka*, 441 F.3d 1129, 1145 (10th Cir. 2006).

In this case, Mr. Tso contends that the doctrine does not apply because he is not expressly attacking or seeking reversal of the state court judgments. Doc. 202 at 8-9. But this argument is not consistent with the substance of the SAC. In his complaint, Mr. Tso alleges that the Illinois and Colorado judgments were a direct result of the Defendants' allegedly illegal schemes. *See* Doc. 120 at 28-58.

The Tenth Circuit has explained, however, that "the type of judicial action barred by *Rooker-Feldman* consists of a review of the proceedings already conducted by the [state] tribunal to determine whether it reached its result in accordance with law." *PJ ex. rel. Jensen v. Wagner*, 603 F.3d 1182, 1193 (10th Cir. 2010). In order for this court to evaluate Mr. Tso's claims — that the Defendants' alleged illegal activities led the Illinois and Colorado state courts to err in entering their respective judgments — this court would have to review those proceedings to determine if the judgments were, in fact, reached as a result of the various alleged frauds. *See Farris v. Burton*, 686 F. App'x 590 (10th Cir. 2017) (concluding that *Rooker-Feldman* barred review of divorce proceedings; the plaintiff's allegations of fraud would necessarily require the court to review the state court proceedings). Consequently, the court agrees that Mr. Tso's RICO claims are barred by *Rooker-Feldman*.

B. Failure to State a Claim

Even if this court has jurisdiction to consider the RICO claims, they are, nevertheless, properly dismissed for failure to state a claim upon which relief can be granted.

"The purpose of RICO is 'the elimination of the infiltration of organized crime and racketeering into legitimate organizations operating in interstate commerce.'" *Marlow v. Allianz Life Ins. Co. of N. Am.*, No. 08-cv-00752-CMA-MJW, 2009 WL 1328636, at *3 (D. Colo. May 12, 2009) (quoting S.Rep. No. 617, 91st Cong., 1st Sess. 76 (1969)). "The elements of a civil RICO claim are (1) investment in, control of, or conduct of (2) an enterprise (3) through a pattern (4) of racketeering activity." *Dewey v. Lauer*, No. 08-cv-01734-WYD-KLM, 2009 WL 3234276, at *3 (D. Colo. Sep. 30, 2009) (internal quotation marks omitted, quoting *Tal v. Hogan*, 453 F.3d 1244, 1261 (10th Cir. 2006)).

Although the Defendants challenge nearly all aspects of Mr. Tso's claims, the court concludes that it need only address those arguments made by the SPAL Defendants. *See* Docs. 141 & 222. Specifically, the court agrees with the SPAL Defendants that Mr. Tso has failed to allege any injury caused by the purported RICO violations. The court also agrees that even if he had alleged an injury, Mr. Tso's allegations do not establish a pattern of racketeering activity.

i. Proximate Cause

In addition to the fundamental statutory elements enumerated above, the Supreme Court has added additional pleading requirements that a plaintiff must satisfy in order to state a RICO claim. As it is relevant here, a plaintiff must demonstrate proximate cause; that is, that he or she was "injured in his [or her] business or property by reason of a violation of [18 U.S.C. § 1962]." *Holmes v. Sec. Inv'rs Prot. Corp.*, 503 U.S. 258, 268 (1992); *see also Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 457 (2006) (explaining *Holmes* as requiring more than "but for" causation;

rather there must be some "direct relation between the injury asserted and the injurious conduct alleged").

In this case, although the allegations are somewhat difficult to follow, Plaintiff alleges that the Defendants engaged in illegal activity during the pendency of the state court proceedings, which resulted in an unfavorable child support order and the enforcement thereof. This theory — that Plaintiff suffered injury because of fraud perpetrated on a third-party[8] — has been discredited by the Supreme Court. *See Anza*, 547 U.S. at 457-58.

In *Anza*, the plaintiff alleged that a competitor had defrauded the state tax authority and used the proceeds from the fraud to lower prices, without affecting its profit margins, and attract more customers. *Id*. at 461. The Court noted that the "central question . . . is whether the alleged violation led *directly* to the plaintiff's injuries." *Id*. (emphasis added). The court determined that the plaintiff lacked RICO standing, reasoning that "[t]he cause of [the plaintiff's] harms . . . is a set of actions (offering lower prices) entirely distinct from the alleged RICO violations (defrauding the state)." *Id*. at 458. The Court further concluded that the plaintiff was not the "immediate victim[]" of the alleged RICO violation; rather, it was the State of New York that had been defrauded. *Id*. at 460.

Here, the court's analysis is guided by the same principle as in *Anza*: it is entirely possible that Mr. Tso would have received the same child support order and enforcement orders "regardless of whether the alleged RICO acts occurred because the decision that allegedly lead to the Plaintiff's injury was made by" the Illinois and Colorado courts. *See Sheridan v. Mariuz*, No. 07 Civ. 3313 (SCR) (LMS), 2009 WL 920431, at *7 (S.D.N.Y. Apr. 6, 2009) (Plaintiff could not establish proximate cause because the decision regarding his marital settlement amount was made by a neutral third party); *see also Sladek v. Bank of Am., NA*, No. 13-cv-03094-PAB-MEH,

[8] The Denver District Court is not alleged to be a part of the enterprise.

2014 WL 8105181, at *8 (D. Colo. July 30, 2014) (plaintiff failed to establish standing because, although the injury was the foreclosure of her home, plaintiff's RICO allegations did not directly involve the foreclosure); *Marlow*, 2009 WL 1328636, at *3 (the alleged RICO scheme was not the proximate cause of the plaintiff's injuries; rather, the injuries were directly caused by the Division of Insurance's decision to suspend his license). Indeed, Mr. Tso acknowledges as much in the SAC when he explicitly states that his injury was "proximately caused" by the Illinois state court judgment. *See* Doc. 120 at ¶¶ 92, 93. Further, as in *Anza*, the immediate victims of the alleged RICO violations in this case are the Illinois and Colorado courts. Because Mr. Tso has failed to allege any injury directly caused by the RICO activities, the court recommends dismissing these claims in their entirety.

ii. Pattern of Activity

Finally, even if Plaintiff had alleged an injury proximately caused by the illegal activities, the court would still recommend dismissal because Mr. Tso's allegations — construed in the light most favorable to him — do not establish a pattern of racketeering activity. "[T]o prove a pattern of racketeering activity[,] a plaintiff . . . must show that the racketeering predicates are related, and that they amount to or pose a threat of continued criminal activity." *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 239 (1989). As the Supreme Court explained,

> Continuity is both a closed- and open-ended concept, referring either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition . . . . It is, in either case, centrally a temporal concept — and particularly so in the RICO context, where what must be continuous, RICO's predicate acts or offenses, and the relationship these predicates must bear one to another, are distinct requirements.

Id. at 241-42.

"A party alleging a RICO violation may demonstrate . . . [closed-ended continuity] by

proving a series of related predicates extending over a substantial period of time." *Id.* However, "[p]redicate acts extending over a few weeks or months and *threatening no future criminal conduct* do not satisfy this requirement." *Id.* (emphasis added). *See also Gotfredson v. Larsen LP*, 432 F. Supp. 2d 1163, 1174–76 (D. Colo. 2006) (finding that a single seventeen-month-long scheme was aimed at accomplishing "a discrete goal" and was also "directed at a finite group of individuals" and had "no potential to extend to other persons or entities" was insufficient to allege closed-ended continuity).

Alternatively, open-ended continuity "may be established by showing that the predicates are a regular way of conducting the defendant's ongoing legitimate business or the RICO enterprise." *Resolution Trust Corp. v. Stone*, 998 F.2d 1534, 1543 (10th Cir. 1993). Furthermore, a plaintiff must sufficiently allege "a clear threat of future criminal conduct." *Gotfredson*, 432 F. Supp. 2d at 1176 (citing *Erikson v. Farmers Grp., Inc.*, 151 F. App'x 672, 677 (10th Cir. 2005) (unpublished) and *Phelps v. Wichita Eagle-Beacon*, 886 F.2d 1262, 1273 (10th Cir. 1989)). In light of these requirements, the Tenth Circuit has repeatedly held that "[a] single scheme to accomplish one discrete goal, directed at a finite group individuals, with no potential to extend to other persons or entities, rarely will suffice [.]" *Erikson*, 151 F. App'x at 677; *see also SIL-FLO, Inc. v. SFHC, Inc.*, 917 F.2d 1507, 1516 (10th Cir. 1990) (finding continuity had not been met because the scheme alleged was "directed at one individual with no potential to extend to other persons or entities").

Here, Mr. Tso's allegations fail to sufficiently allege either close-ended or open-ended continuity. *See Gotfredson*, 432 F. Supp. 2d at 1174-76. Defendants' alleged racketeering amounts to a single, narrowly-focused scheme conducted to accomplish only one discrete goal — to obtain favorable orders in the domestic relations matters and to obtain Plaintiff's financial

assets. It was allegedly directed solely at Mr. Tso[9] with no potential to expand beyond those confined limits to hurt any potential victims "waiting in the wings." *U.S. Textiles, Inc. v. Anheuser-Busch Cos., Inc.*, 911 F.2d 1261, 1269 (7th Cir. 1990). Such narrowly-focused behavior is not the kind of extensive, continuing scheme RICO was meant to protect against. *See, e.g., H.J.*, 492 U.S. at 241–42; *Resolution Trust Corp.*, 998 F.2d at 1544. Accordingly, the court recommends dismissal of Mr. Tso's second and third claims for relief.

IV. Constitutionality of Colorado Revised Statute § 14-10-124

In his final claim, Plaintiff challenges the constitutionality of Colorado Revised Statute § 14-10-124. This statute concerns the allocation of parental responsibilities and parenting time and enumerates factors that courts should consider in determining the best interests of the child. In the SAC, Plaintiff seeks a declaratory judgement that this statute is unconstitutional and "a violation of the people's right to substantive due process in the interest of parental rights." Doc. 120 at 67.

A Plaintiff may bring two types of constitutional challenges against a law: facial and as-applied. *Hawkins v. City of Denver*, 170 F.3d 1281, 1286 (10th Cir. 1999). "A facial challenge is a head-on attack on a legislative judgment, an assertion that the challenged statute violates the Constitution in all, or virtually all, of its applications." *United States v. Supreme Court of N.M.*, 839 F.3d 888, 907 (10th Cir. 2016) (internal citation and punctuation omitted). "In contrast, an as-applied challenge concedes that the statute may be constitutional in many of its applications, but contends that it is not so under the *particular circumstances* of the case." *Id*.; *see also N.M.*

[9] In the SAC, Mr. Tso alleges that the association may "ensnarl[] other victims besides this Plaintiff through similar predicate acts of racketeering . . ." Doc. 120 at p. 36. He also alleges that he is "aware of and acquainted with other victims within the state of Colorado, the state of Illinois, the federal 10th Circuit and other federal districts across the country, who are prepared to testify of the abuses and corruption carious out by various Association-in-Fact . . . ." *Id*. These allegations are vague, speculative, and, perhaps most importantly, concern other associations that have not been detailed in this case. Thus, these bare allegations do nothing to alter the court's conclusions regarding continuity.

Youth Organized v. Herrera, 611 F.3d 669, 677 n.5 (10th Cir. 2010) ("[An] 'as-applied' challenge to a law acknowledges that the law may have some potential constitutionally permissible applications, but argues that the law is not constitutional as applied to [particular parties]."). Here, Mr. Tso contends that section 14-10-124 is "facially unconstitutional individually in virtually every sentence, paragraph, and section." Doc. 120 at ¶ 171.

The Tenth Circuit has explained that "the approach to facial challenges . . . involves an examination of whether the terms of the statue itself measured against the relevant constitutional doctrine, and independent of the constitutionality of particular applications, contain a constitutional infirmity that invalidates the statute in its entirety." *Doe v. City of Albuquerque*, 667 F.3d 1111, 1127 (2012) (citations and internal punctuation omitted). "In other words, where a statute fails the relevant constitutional test (such as strict scrutiny, the Ward test, or reasonableness review), it can no longer be constitutionally applied to anyone—and thus there would be 'no set of circumstances' in which the statute would be valid." *Id*. (discussing the "test" laid out in *United States v. Salerno*, 481 U.S. 739 (1987)).

In this case, however, the court cannot reach such an analysis because Plaintiff's claim is bare, conclusory, and littered with legal conclusions masquerading as factual allegations. For example, Plaintiff contends, without more, that the statute violates the First, Fourth, Fifth, Ninth, and Fourteenth Amendments. Doc. 120 at ¶ 176. This is purely a legal conclusion that the court is not bound to accept. *Papasan v. Allain*, 478 U.S. 265, 286 (1986) (on a motion to dismiss, courts "are not bound to accept as true a legal conclusion couched as a factual allegations"). Plaintiff has not alleged with any particularity how this statute has violated his rights under these five amendments. And — apart from sweeping legal conclusion about the effect of this statute on the family law community — Mr. Tso has not offered any allegations as to how this statute

would violate the rights of others.

In addition, Mr. Tso alleges that he has been "detrimentally subjected to the authority and provisions of C.R.S. § 14-10-124 and has had his parental rights abrogated and infringed by the State without the State showing parental unfitness, endangerment or neglect. . . ." Doc. 120 at ¶ 174. However, Plaintiff has offered no supporting factual allegations that would allow the court to draw such an inference.[10] Indeed, in the preceding paragraph, Mr. Tso alleges that he shares joint custody with Ms. Murray and states that he "possesses and enjoys his full parental rights to both legal and residential custody." *Id*. at ¶ 173. Mr. Tso must do more than allude to a violation; he must plead it with particularity. He has not done so here.

Furthermore, this court agrees with the Colorado Defendants that this claim is, at its core, an attempt to unwind the proceedings in the state court. *See* Doc. 139 at 7. Even if the claim had been sufficiently plead, an ultimate finding that the statute is unconstitutional would undermine the state court domestic relations orders regarding parenting time. Thus, this claim is barred by the *Rooker-Feldman* doctrine and should be dismissed.

CONCLUSION

Based on the foregoing, the court RECOMMENDS that the Motions to Dismiss (Docs. 135, 137, 139, 141, 142, 186) be GRANTED and that this case be dismissed in its entirety.

ADVISEMENT TO THE PARTIES

Within fourteen days after service of a copy of the Recommendation, any party may serve and file written objections to the Magistrate Judge's proposed findings and recommendations with the Clerk of the United States District Court for the District of Colorado. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *In re Griego*, 64 F.3d 580, 583 (10th Cir. 1995). A

[10] The primary dispute and the majority of the allegations in this case concern the allotment of child support, not the allotment of parental responsibility or parenting time.

general objection that does not put the district court on notice of the basis for the objection will not preserve the objection for *de novo* review. "[A] party's objections to the magistrate judge's report and recommendation must be both timely and specific to preserve an issue for *de novo* review by the district court or for appellate review." *United States v. Once Parcel of Real Prop. Known As 2121 East 30th Street, Tulsa, Okla.*, 73 F.3d 1057, 1060 (10th Cir. 1996). Failure to make timely objections may bar de novo review by the district court of the magistrate judge's proposed findings and recommendations and will result in waiver of the right to appeal from a judgment of the district court based on the proposed findings and recommendations of the magistrate judge. *See Vega v. Suthers*, 195 F.3d 573, 579-80 (10th Cir. 1999) (a district court's decision to review a magistrate judge's recommendation de novo despite the lack of an objection does not preclude application of the "firm waiver rule"); *One Parcel of Real Prop.*, 73 F.3d at 1059-60 (a party's objections to the magistrate judge's report and recommendation must be both timely and specific to preserve the issue for *de novo* review by the district court or appellate review); *Int'l Surplus Lines Ins. Co. v. Wyo. Coal Ref. Sys., Inc.*, 52 F.3d 901, 904 (10th Cir. 1995) (by failing to object to certain portions of the magistrate judge's order, cross-claimant had waived its right to appeal those portions of the ruling); *Ayala v. United States*, 980 F.2d 1342, 1352 (10th Cir. 1992) (by their failure to file objections, plaintiffs waived their right to appeal the magistrate judge's ruling); *but see, Morales-Fernandez v. INS*, 418 F.3d 1116, 1122 (10th Cir. 2005) (firm waiver rule does not apply when the interests of justice require review).

DATED at Denver, Colorado, this 26th day of September, 2017.

BY THE COURT:

s/ Craig B. Shaffer
United States Magistrate Judge