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8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

10

11 JASON COBB,
12 Plaintiff,
13 vs.
14 JP MORGAN CHASE BANK, N.A., ET AL.,
15 Defendants.

Case No. CV 13-01955 CRB

**NOTICE OF MOTION AND MOTION TO
DISMISS; MEMORANDUM OF POINTS
AND AUTHORITIES; [PROPOSED]
ORDER**

Date: August 2, 2013
Time: 10:00 a.m.
Crtrm.: 6, 17th Floor
Judge: Charles R. Breyer

Trial Date: None assigned.

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NOTICE OF MOTION

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19 TO ALL PARTIES HEREIN AND THEIR ATTORNEYS OF RECORD:

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20 PLEASE TAKE NOTICE that on August 2, 2013 at 10:00 a.m. in Courtroom 6 in the
21 Court located at 450 Golden Gate Avenue, San Francisco, California, Defendant Amanda Freel
22 ("Freel") will move this Court for an Order granting her motion to dismiss plaintiff Jason Cobb's
23 Complaint without leave to amend. Said motion will be based on plaintiff's failure to plead fact
24 sufficient to constitute an action against Defendant Freel and will submit the following legal issues
25 for adjudication:

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- 26 1) Does the Cobb Complaint state a valid claim for violation of constitutional rights?
- 27 2) Does the Cobb Complaint state a valid claim for RICO?
- 28 3) Does the Cobb Complaint state a valid claim for conspiracy to violate RICO?

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- 1 4) Does the Cobb Complaint state a valid claim for defamation?
- 2 5) Does the Cobb Complaint state a valid claim for fraud?
- 3 6) Does the Cobb Complaint state a valid claim for civil conspiracy?

4 This motion will be based upon this notice, the memorandum of points and authorities in
5 support thereof, oral argument, and the complaint files and records of this proceeding.

6 Dated: June 21, 2013

ROBINSON & WOOD, INC.

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By: /s/Jesse F. Ruiz

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JESSE F. RUIZ

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Attorneys for Defendant AMANDA FREEL

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. Introduction**

3 Plaintiff Jason Cobb ("Cobb") has brought this action against fifty-one defendants on the
4 basis that each conspired by forming an "enterprise" with the goal of adversely affecting his
5 parental rights, adversely affecting a criminal action brought against him and adversely affecting
6 his membership in the English Menlo Park Congregation of Jehovah's Witnesses.

7 Defendant Amanda Freel ("Freel") has been brought into this web of conspiracy solely by
8 virtue of the fact that she was an investigator retained by Cobb's criminal attorney, defendant
9 Cameron Bowman, and the firm of Valencia, Ippolito and Bowman.

10 The specific allegations against Freel are that she somehow managed to sabotage
11 discovery, failed to statementize his former wife and another witness, failed to serve subpoenas to
12 Cobb's liking, was "evasive" and communicated "directly or indirectly" with other individuals.
13 Without question, none of the allegations against Freel raise any federal question. Moreover,
14 these allegations are not sufficient to support any of the claims contained in the Cobb Complaint.

15 **II. Statement of Facts**

16 Plaintiff alleges that Amanda Freel was an investigator, employed by Cameron Bowman
17 and the law firm of Valencia, Ippolito and Bowman (Complaint, para. 30, p. 8) in connection with
18 the criminal matter now pending in San Mateo Superior Court (B 1262610). The specific
19 allegations against Freel are as follows:

- 20 • Cobb alleges that Freel "impeded discovery throughout the pretrial period
21 specifically to sabotage plaintiff's case while consistently urging him to settle by
22 accepting a conviction of a lesser charge, the very thing desired by the 'enterprise in
23 its relentless effort to discredit plaintiff.'" (Complaint, para. 30, p. 8).
- 24 • Freel "served as an investigator employed by VIB Law in support of defense trial
25 preparation. She is a RICO defendant participating in the operation of the
26 enterprise described herein playing a key role in the defamation scheme against
27 Plaintiff, the attacks in his family/personal life and in the campaign of obstruction."
28 (Complaint, para. 55, p. 13).

- 1 • Freel was "unduly influenced by enterprise members ... to obstruct the formation
2 of Plaintiff's defense by sabotaging discovery, while, at the same time, requesting a
3 series of hearing continuances in an effort to exhaust time to the end of the Court
4 demanding that the case either settle or go to trial with the Plaintiff being ill
5 prepared to do either one." (Complaint, para. 258, p. 50).
- 6 • Although Freel "obtained statements from some of the persons Plaintiff directed her
7 to, she consistently avoided defendants Jennifer Altamirano and Bill Douglas.
8 Defendant Free generally downplayed the significance of her findings in an
9 intentional effort to discourage Plaintiff while mentioning the idea of settling the
10 case." (Complaint, para. 260, p. 50).
- 11 • Freel "rationalized her delays by representing to Plaintiff that she had to go to the
12 Clerk's office to get subpoenas issued." As a "licensed and experienced process
13 server and investigator, defendant Freel" knew or should have known that the
14 proposed service of process rules did not apply to a criminal case. (Complaint,
15 para. 265, p. 51).
- 16 • Freel was "evasive while attempting to take advantage of Plaintiff's presumed
17 ignorance of the law and procedure being a pro se litigant. When plaintiff caught
18 her doing so, she abruptly exited from his defense team having been exposed as a
19 liar and pawn of the enterprise. (Exhibit 15)." (Complaint, para. 266, p. 52).
- 20 • Plaintiff attaches as Exhibit 15 a series of e-mails between himself and Freel which
21 specifically state that Freel was "no longer working on [Cobb's] case [because his]
22 invoice still hasn't been paid..." (Complaint, Exhibit 15).
- 23 • Defendant Freel "failed to arrange for an inspection of defendant Douglas' fifth
24 wheel." (Complaint, para. 267, p. 52).

25 These allegations, according to Cobb, prevented him from conducting discovery in the
26 defense of his criminal charges and amount to a "systematic participation in the pattern of
27 racketeering activity perpetuated by the association-in-fact RICO enterprise... " (Complaint, para.
28 268, p. 52).

1 **III. Argument**

2 **A. Legal Standard for Motion to Dismiss**

3 Pursuant to Federal Rule of Civil Procedure 12(b)(6), a complaint may be dismissed
 4 against a defendant for failure to state a claim upon which relief may be granted against that
 5 defendant. Dismissal may be based on either the lack of a cognizable legal theory or the absence
 6 of sufficient facts alleged under a cognizable legal theory. *Balistreri v. Pacifica Police Dep't*, 901
 7 F.2d 696, 699 (9th Cir. 1988); *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 533-34 (9th
 8 Cir. 1984). For purposes of evaluating a motion to dismiss, the Court "must presume all factual
 9 allegations of the complaint to be true and draw all reasonable inferences in favor of the
 10 nonmoving party." *Usher v. Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). Any existing
 11 ambiguities must be resolved in favor of the pleading. *Walling v. Beverly Enters.*, 476 F.2d 393,
 12 396 (9th Cir. 1973).

13 However, mere conclusions couched in factual allegations are not sufficient to state a cause
 14 of action. *Papasan v. Allain*, 478 U.S. 265, 286 (1986); see also *McGlinchy v. Shell Chem. Co.*,
 15 845 F.2d 802, 810 (9th Cir. 1988). The complaint must plead "enough facts to state a claim to
 16 relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim
 17 is plausible on its face "when the plaintiff pleads factual content that allows the court to draw the
 18 reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*,
 19 129 S. Ct. 1937, 1949 (2009). Thus, "for a complaint to survive a motion to dismiss, the non-
 20 conclusory 'factual content' and reasonable inferences from that content, must be plausibly
 21 suggestive of a claim entitling the plaintiff to relief." *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969
 22 (9th Cir. 2009). Courts may dismiss a case without leave to amend if the plaintiff is unable to cure
 23 the defect by amendment. *Lopez v. Smith*, 203, F.3d 1122, 1129 (9th Cir. 2000).]

24 **B. The Cobb Complaint Does Not State a Valid Claim for**
 25 **Violations of Constitutional Rights (14th Amendment; Free**
 26 **Exercise Clause) [First Cause of Action]**

27 As to Freel, Cobb alleges that the above-described acts constitute violations of Plaintiff's
 28 constitutional rights, specifically the provisions of the Equal Protection Clause and the Due
 Process Clause. (Complaint, para. 394, Count 3, p. 79). Nowhere in the complaint does Cobb

1 allege that Freel's acts constitute state action sufficient to impose liability. Indeed, the complaint
 2 admits that Freel was at all times acting under the direction of his criminal defense attorney,
 3 defendant Cameron Bowman. Plaintiff's claims find no support under Section 1983 because Freel
 4 is not a state actor.

5 "Every person who, under color of any statute, ordinance,
 6 regulation, custom, or usage, of any state . . . , subjects, or causes to
 7 be subjected, any citizen of the United States or other person within
 8 the jurisdiction thereof to the deprivation of any rights, privileges, or
 immunities secured by the Constitution and laws, shall be liable to
 the party injured in an action at law, suit in equity, or other proper
 proceeding for redress."

9 With respect to individual defendants, "Section 1983 imposes civil liability upon an
 10 individual who under color of State law subjects or causes, any citizen of the United States to the
 11 deprivation of any rights, privileges or immunities secured by the Constitution and laws."
 12 *Franklin v. Fox*, 312 F.3d 423, 444 (9th Cir. 2002). "To state a claim under Section 1983, a
 13 plaintiff must allege two essential elements: (1) That a right secured by the Constitution or laws of
 14 the United States was violated, and (2) that the alleged violation was committed by a person acting
 15 under the color of State law." *Long v. County of LA*, 442 F.3d 1178, 1185 (9th Cir. 2006) (citing
 16 *West v. Atkins*, 487 U.S. 42, 48, 108 S.Ct. 2250 (1988)). Plaintiff's Complaint admits that Freel
 17 was an investigator retained by his criminal defense attorney, defendant Cameron Bowman, in
 18 connection with Bowman's representation of Cobb in a criminal action filed in San Mateo
 19 Superior Court. (Complaint, paras. 23, 38, 46 and 55). There are simply no allegations contained
 20 in this massive pleading that could reasonably be construed as an allegation that Cobb was acting
 21 under color of State law for any purpose associated with a 42 USC Section 1983 claim.

22 At best, the above-cited allegations of the Complaint set forth Cobb's criticism of the work
 23 performed by Freel. Apart from Cobb's conclusionary allegation that Freel's cited conduct was
 24 part of a grand scheme to deprive him of his civil liberties, there are simply no facts which tie
 25 these criticisms to Cobb's problems with the English Menlo Park Congregation of Jehovah's
 26 Witnesses, to his apparently longstanding custody disputes with his former spouse, or to any of the
 27 other myriad of claims contained in the Complaint.

28

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1 **C. The Cobb Complaint Does Not State a Valid RICO Claim as to**
 2 **Freel [Third Claim for Relief]**

3 The elements of a civil RICO claim are: (1) conduct (2) of an enterprise (3) through a
 4 pattern (4) of racketeering activity (known as 'predicate acts' (5) causing injury to plaintiff's
 5 business or property. See *Living Designs Inc. v. E.I. DuPont de Nemours Co.*, 431 F.3d 353, 361
 6 (9th Cir. 2005). Under RICO, a "plaintiff only has standing if, and can only recover to the extent
 7 that, he has been injured in his business or property by the conduct constituting the violation."
 8 *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496, 105 S.Ct. 3275, 87 L.Ed. 2d 346 (1985). In
 9 order to survive a Motion to Dismiss, a plaintiff must show that the defendant's conduct was the
 10 proximate cause of that injury. *Holmes v. Sec. Investor Prot. Corp.*, 503 U.S. 258, 268, 112 S.Ct.
 11 1311, 117 L. Ed. 2d 532 (1992). This requires, "some direct relation between the injury asserted
 12 and the injurious conduct alleged." See, *Hemi Group, LLC v. City of New York, U.S.*, 130 S.Ct.
 13 983, 991, 175 L.Ed. 2d 943 (2010).

14 In support of this claim, Cobb alleges under Bribery Count 3 the following: The cited
 15 conduct of defendants Bowman and Freel in violation of their fiduciary duty to their client,
 16 Plaintiff Jason Cobb, as described herein, infer undue influence and/or bribery in violation of 18
 17 U.S.C. 201. This claim is wholly unsupported by specific facts and amounts to no more than a
 18 mere conclusion. Apart from Cobb's unique views on service of process, and his criticism of
 19 Freel's work product and "evasive" responses, there is no attempt by Cobb to establish a predicate
 20 act, a cognizable enterprise or a pattern of wrongful activity.

21 **D. The Cobb Complaint Does Not State a Valid Claim for**
 22 **Conspiracy [4th Claim for Relief]**

23 As noted above, Cobb has failed to allege any facts sufficient to show that Freel engaged in
 24 a predicate act. For these reasons, Cobb's conspiracy claim fails as well. (See *Turner v. Cook*,
 25 362 F.3d 1219, 1231 n. 17 (9th Cir. 2004) (quoting 18 U.S.C. 1962 D).

26 **E. The Cobb Complaint Does Not State a Valid Claim for**
 27 **Defamation (Slander) [Misabeled 4th Claim for Relief]**

28 California Civil Code section 46 provides that slander is a false and unprivileged
 communication, orally uttered, and also communication by radio or other mechanical means

1 which: (1) charges any person with a crime, or having been indicted, convicted or punished for
 2 crime; (2) imputes in him the present existence of an infectious, contagious or loathsome disease;
 3 (3) tends directly to injure him in respect to his office, profession, trade or business, either by
 4 imputing to him general disqualification in those respects which the office or other occupation
 5 peculiarly requires, or by imputing something with reference to his office, profession, trade or
 6 business that has a natural tendency to lessen its profits; (4) imputes to him impotence or a want of
 7 chastity; or (5) which, by natural consequence, cause actual damage. (California Civil Code
 8 section 46).

9 The allegations which support the defamation claim are singularly limited to the alleged
 10 conduct of defendants Brede and Showers. Essentially, Cobb alleges that Brede and Showers filed
 11 a "false" report to the Menlo Park Police Department accusing Cobb of theft. (Complaint, paras.
 12 493, 494, 495). Putting aside the fact that false statements made to the police are absolutely
 13 privileged under aspects of official proceedings privilege when a citizen contacts law enforcement
 14 personnel to report suspected criminal activity and to investigate law enforcement personnel who
 15 respond (*Hagberg v. California Federal Bank FSB*, 32 Cal.4th 39 (2004); California Civil Code
 16 §47(b)), the Cobb Complaint fails to allege that Freel participated in any way in the filing of a
 17 false police report.

18 Moreover, this claim does not attempt to state a federal question. Under 28 USC section
 19 1367(a), supplemental jurisdiction is limited to "claims that are so related to claims in the action
 20 with such original jurisdiction that they form part of the same case or controversy..."

21 **F. The Cobb Complaint Does Not State a Valid Claim for Fraud**
 22 **[Misabeled as 5th Claim for Relief]**

23 Under California law, allegations of fraud must be pleaded "with particularity." Fraud is
 24 the "last remaining habitat" of common law pleading standards. (*Committee on Children's*
 25 *Television v. General Foods* (1983) 35 Cal.3d 197, 216; *Small v. Fritz Cos.* (2003) 30 Cal.4th 167,
 26 183.) When pleading fraud, plaintiffs must plead factual allegations of both the injury or damage
 27 sustained and its causal connection with plaintiff's reliance on defendant's representations.
 28

1 (*Service By Medallion v. Clorox Co.* (1996) 44 Cal.App.4th 1807, 1818.) The California Supreme
 2 Court has explained:

3 In California, fraud must be pled specifically; general and
 4 conclusory allegations do not suffice. Thus, the policy of liberal
 5 construction of the pleadings ... will not ordinarily be invoked to
 6 sustain a pleading defective in any material respect. This
 7 particularity requirement necessitates pleading facts which show
 8 how, when, where, to whom, and by what means the representations
 9 were tendered. We trust the trial Courts of this state to enforce this
 10 pleading requirement.

11 (*Robinson Helicopter Co. v. Dana Corp.* (2004) 34 Cal.4th 979, 993 (quoting *Lazar v. Superior*
 12 *Court*, (1996) 12 Cal.4th 631, 645) (quotation marks omitted).)

13 In support of the claim for fraud, Cobb relies on his list of disputes he had with Freel over
 14 the investigation services provided. The allegations specifically cited to support the claim of fraud
 15 are set forth in the boiler-plate terms in which each Defendant is alleged to have engaged in "overt
 16 acts of bank fraud, mail fraud, wire fraud, malicious prosecution and fraud upon the court."
 17 (Complaint, para. 499, p. 101).

18 In summary, Cobb recites a short list of disputes he had with Freel over the investigation
 19 services provided, including an allegation that Freel was "evasive." There is absolutely no
 20 allegation that Freel engaged in any of the cited conduct, or that Cobb relied on any
 21 representations by Freel to his detriment. As a result, Cobb's claims fail to allege facts sufficient
 22 to support a claim for fraud and raise no federal question, or other justification for this Court to
 23 take this claim by way of supplemental jurisdiction pursuant to 28 U.S.C. 1367(a).

24 **G. The Cobb Complaint Does Not State a Valid Claim for Civil**
 25 **Conspiracy [Misabeled at 6th Claim for Relief]**

26 Under California law, there is no separate tort of civil conspiracy. (*Kidron v. Movie*
 27 *Acquisition Corp.* (1995) 40 Cal.App.4th 1571, 1581; *Kesmodel v. Rand* (2004) 119 Cal.App.4th
 28 1128, 1140.) Accordingly, there is no civil action for conspiracy to commit a recognized tort
 unless the wrongful act itself is committed and damage results from that act.

Where the complaint charges a conspiracy in the commission of a wrongful act, the only
 significance of the conspiracy charge is that each member may be held responsible as a joint
 tortfeasor, regardless of whether that member directly participated in the act. (*Orloff v.*

1 *Metropolitan Trust Co.* (1941) 17 C.2d 484, 488; *Saunders v. Superior Court* (1994) 27
 2 Cal.App.4th 832, 845; *Younan v. Equifax* (1980) 111 Cal.App.3d 498, 508, 511.)

3 Conspiracy is "a legal doctrine that imposes liability on persons who, although not actually
 4 committed a tort themselves, share with the immediate tortfeasors a common plan or design in its
 5 perpetration." *Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 C.4th 503, 510.
 6 There must be a showing of knowledge of the planned tort and intent to aid in its commission.
 7 (*Wyatt v. Union Mortg. Co.* (1979) 24 C.3d 773, 784.) A conspiring defendant must have actual
 8 knowledge of the planned tort and concur in the tortious scheme with knowledge of its unlawful
 9 purpose. In other words, knowledge of the planned tort must be combined with intent to aid in its
 10 commission. (*Kidron*, 40 Cal.App.4th at 1582.)

11 The Cobb Complaint lacks any allegation that Freel had actual knowledge of a planned
 12 tort, concurred in a tortious scheme, had knowledge of an unlawful purpose, or participated in any
 13 way in actions that could conceivably be interpreted as assisting, directing, or adversely affecting
 14 the Menlo Park Police Department in their investigation and prosecution of crimes against Cobb
 15 (Complaint, paras. 199-211), the corruption of the judicial process (Complaint, para. 212),
 16 dismissal of Cobb's federal action C 10-03907-MEJ (Complaint, paras. 213-222), dismissal of
 17 Cobb's federal action C 11-02496-DMR (Complaint, paras. 223-226), prosecution of the state
 18 action CIV 508137 (Complaint, paras. 227-232), Family Court Action 116981 (Complaint, paras.
 19 233-255), State Action B1262610 (Complaint, paras. 256-268), or the corruption of employees of
 20 Stanford University (Complaint, paras. 269-281, JP Morgan Chase (Complaint, paras. 282-286),
 21 or Cisco Systems (Complaint, paras. 287-309), or the corruption of Jehovah's Witnesses
 22 (Complaint, paras. 310-360), or the corruption of the Altamirano family (Complaint, paras. 361-
 23 365).

24 **H. Cobb's Complaint Cannot be Cured by Amendment**

25 Where the inadequacy of the Complaint is obvious on its face, the Court may sua sponte
 26 dismiss the action. (See, *Shawnee International N.V. v. Hondo Drilling Co.*, 742 F.2d 234, 236
 27 (5th Cir. 1984); and *Lee v. City of Los Angeles*, 250 F.3d 668, 683 (9th Cir. 2001).
 28

1 Dismissal without leave to amend is appropriate where the Complaint cannot be saved by
2 any amendment. (*Gadda v. State Bar of Cal.*, 511 F.3d 933, 939 (9th Cir. 2007). Even a pro se
3 Complaint may be dismissed with prejudice where it is "absolutely clear that the deficiencies of
4 the Complaint could not be cured by amendment. (*Noll v. Carlson*, 809 F.2d 1446, 1448-1449 (9th
5 Cir. 1987).)

6 Plaintiff has failed to allege facts sufficient to state any claim against Freel. At best,
7 Cobb's claims against Freel go to the nature of her work, scope of work, and to Cobb's
8 dissatisfaction with services provided. It is abundantly clear that the alleged disputes fail to state a
9 cause of action under California law or any federal claim.

10 **IV. Conclusion**

11 Based on the foregoing, Freel respectfully requests that this Court grant her motion to
12 dismiss without leave to amend.

13 Dated: June 21, 2013

ROBINSON & WOOD, INC.

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15 By: /s/Jesse F. Ruiz
16 JESSE F. RUIZ
17 Attorneys for Defendant AMANDA FREEL
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