

Judith ZIMMERLY, et al., Plaintiffs,

v.

COLUMBIA RIVER GORGE
COMMISSION, et al.,
Defendants.

CASE NO. 3:22-cv-05209-BHS

United States District Court,
W.D. Washington,
at Tacoma.

Signed March 23, 2023

Background: Landowners brought action against the Columbia River Gorge Commission, alleging that the Commission committed various public-records violations, due process and civil rights violations, and tortious interference with business operations by improperly causing owners to cease their mining operation. Commission moved to dismiss for lack of subject matter jurisdiction and for failure to state a claim.

Holdings: The District Court, Benjamin H. Settle, Senior District Judge, held that:

- (1) district court lacked subject matter jurisdiction over landowners' claim that the Commission failed to disclose certain public records in violation of the National Scenic Area Act;
- (2) Commission was not a state agency and therefore was not subject to the Oregon Public Records Law;
- (3) Commission was a regional agency and therefore not subject to the Washington Public Records Act;
- (4) district court lacked subject matter jurisdiction over landowners' claims already rejected by state court under the *Rooker-Feldman* doctrine;
- (5) landowners' tortious-interference claim was inextricably intertwined with issues already decided by the state court, and thus district court lacked

jurisdiction under the *Rooker-Feldman* doctrine; and

- (6) state court's order rejecting landowners' claims was a final judgment subject to the *Rooker-Feldman* doctrine.
- Motions granted.

1. Federal Civil Procedure ⇌1772

Dismissal for failure to state a claim may be based on either the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory. Fed. R. Civ. P. 12(b)(6).

2. Federal Courts ⇌2081

The party asserting subject matter jurisdiction bears the burden of proving the existence of subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1).

3. Records ⇌528

District court lacked subject matter jurisdiction over landowners' claims that the Columbia River Gorge Commission failed to disclose certain public records in violation of the National Scenic Area Act; landowners waived the claim, and even if landowners had not waived the claim, the Act vested federal district courts of Oregon and Washington with jurisdiction over only those actions involving the Secretary of Agriculture and otherwise left to the state courts jurisdiction over actions involving the Commission. 16 U.S.C.A. § 544m(b)(6)(B); Fed. R. Civ. P. 12(b)(1).

4. Records ⇌343

Under Oregon law, the Columbia River Gorge Commission was not a state agency and therefore was not subject to the Oregon Public Records Law, given that Oregon legislature defined the Commission as a regional agency, not a state agency. Or. Rev. Stat. §§ 192.005(6), 196.150.

5. Administrative Law and Procedure
⌘1054**States** ⌘378

Unlike state agencies, regional agencies created by interstate compacts are generally recognized to be neither categorically state nor federal in nature; instead, they are hybrids.

6. Records ⌘343

Under Washington law, the Columbia River Gorge Commission was a regional agency, not a state agency, and thus the Commission was not subject to the Washington Public Records Act; Washington legislature defined the Commission as a regional agency established by way of an interstate compact with Oregon, the term state agency, as defined in the Act, included every state office, department, division, bureau, board, commission, or other state agency. Wash. Rev. Code Ann. §§ 42.56.010(1), 43.97.015.

7. Courts ⌘509.2

The *Rooker-Feldman* doctrine recognizes that federal district courts generally lack subject matter jurisdiction to review state court judgments.

8. Courts ⌘509.2

The *Rooker-Feldman* doctrine precludes cases brought by state-court losers complaining of injuries caused by state-court judgments and inviting district-court review and rejection of those judgments.

9. Courts ⌘509.2

Under the *Rooker-Feldman* doctrine, when a losing plaintiff in state court brings a suit in federal district court asserting as legal wrongs the allegedly erroneous legal rulings of the state court and seeks to vacate or set aside the judgment of that court, the federal suit is a forbidden de facto appeal.

10. Courts ⌘509.2

The *Rooker-Feldman* doctrine applies not only to claims that were actually raised before the state court, but also to claims that are inextricably intertwined with state court determinations.

11. Courts ⌘509.2

A claim is inextricably intertwined with a state court judgment, for purposes of the *Rooker-Feldman* doctrine, if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it, or if the relief requested in the federal action would effectively reverse the state court decision or void its ruling.

12. Courts ⌘509.3(2)

District court lacked subject matter jurisdiction over landowners' claims against the Columbia River Gorge Commission, alleging that during landowners' appeal from county hearing examiner's order requiring them to cease mining activities until they obtained necessary permits the Commission engaged in certain due process and civil rights violations by violating the appearance of fairness doctrine and by failing to disclose certain ex parte communications, under the *Rooker-Feldman* doctrine; landowners raised such arguments during their appeal to the state court, which rejected them on the merits and as being untimely raised, and landowners requested that the district court reverse the Commission's final opinion and order, which was affirmed by the state court. U.S. Const. Amend. 14.

13. Courts ⌘509.3(2)

Landowners' claim of tortious interference with business relations against the Columbia River Gorge Commission, alleging that the Commission intentionally interfered with landowner's ongoing business relationship to lease and operate their mine through improper means and

for an improper purpose causing landowners damages, was inextricably intertwined with issues already decided by a state court and thus district court lacked jurisdiction under the *Rooker-Feldman* doctrine; by affirming the Commission's decision, which reversed county hearing examiner's decision insofar as it concluded that landowners did not need a permit to conduct surface mining operations on their property, the state court expressly concluded the Commission's behavior, which landowners alleged was tortious, was lawful.

14. Courts — 509.3(1)

State court's order affirming the decision of the Columbia River Gorge Commission, which reversed county hearing officer's decision insofar as it concluded that landowners did not need a permit to conduct surface mining operations on their property, was a final judgment subject to the *Rooker-Feldman* doctrine, and thus the district court lacked subject matter jurisdiction over landowners' claims against the Commission that had already been resolved by the state court, even though landowners' appeal of the state court decision was pending; state court's order resolved the merits of landowners' arguments advanced before it, and the sole reason why landowners had been able to appeal the state court's decision to the state appellate court was because that order was a final judgment.

General's Office, Olympia, WA, for Defendants Columbia River Gorge Commission, Sondra Clark, Robin Grimwade, Jerry Meninick.

Allie M. Boyd, James S. Smith, Oregon Department of Justice, Portland, OR, Jeffrey Bruce Litwak, Columbia River Gorge Commission, White Salmon, WA, for Defendants Robert Liberty, Bowen Blair, Dan Ericksen, Carina Miller, Antone Minthorn, Rodger Nichols.

Aaron Kelley, Oregon Department of Justice, Portland, OR, Jeffrey Bruce Litwak, Columbia River Gorge Commission, White Salmon, WA, for Defendant Bridget Bailey.

Jeffrey Bruce Litwak, Columbia River Gorge Commission, White Salmon, WA, for Defendants Don Bonker, Keith Chamberlain, Lorrie Dekay, Damon Webster, Janet Wainwright.

Jeffrey S. Myers, Law Lyman Daniel Kamerrer & Bogdanovich, Olympia, WA, Nathan J. Baker, Friends of the Columbia Gorge, Portland, OR, for Intervenor-Defendant Friends of Columbia Gorge, Inc.

Jeffrey S. Myers, Law Lyman Daniel Kamerrer & Bogdanovich, Olympia, WA for Intervenor-Defendants Jody Akers, Paul Akers, Danny Gaudren, Kathee Gaudren, Rachel Grice, Zachary Grice, Greg Misarti, Edmond Murrell, Kimberly Murrell, Richard Ross, Karen Streeter, Sean-Streeter, and Eleanor Warren.

ORDER

BENJAMIN H. SETTLE, United States District Judge

This matter is before the Court on Defendants Columbia River Gorge Commission, Sondra Clark, Robin Grimwade, and Jerry Meninick's ("Washington Commissioners") Motion to Dismiss, Dkt. 37, and Defendants Bowen Blair, Dan Ericksen, Robert Liberty, Carina Miller, Antone Minthorn, and Rodger Nichols' ("Oregon Commissioners") Motion to Dismiss, Dkt. 40.¹ Because Plaintiffs Judith Zimmerly,

David Bowser, James D. Howsley, Jordan Ramis PC, Portland, OR, for Plaintiffs Judith Zimmerly, ZP# 5 LLC.

Maren Calvert, Adam P. Murray, Schwabe Williamson & Wyatt, Vancouver, WA, for Plaintiffs Jerry Nutter, Nutter Corporation.

Jeffrey Bruce Litwak, Columbia River Gorge Commission, White Salmon, WA, Katy J. Dixon, Attorney General's Office, Seattle, WA, William McGinty, Attorney

1. Intervenor Defendants Friends of Columbia Gorge, Inc., Jody Akers, Paul Akers, Danny

Gaudren, Kathee Gaudren, Rachel Grice, Zachary Grice, Greg Misarti, Edmond Mur-

ZP#5 LLC, Jerry Nutter, and Nutter Corporation's claims that Defendants violated the Washington Public Records Act and the Oregon Public Records Law fail on the merits, and because the Court lacks subject matter jurisdiction over the remaining claims, the motions to dismiss are granted.

I. BACKGROUND

Plaintiffs own and operate a mine located within the Columbia River Gorge National Scenic Area. Dkt. 12, ¶¶ 3–6, 12. In May 2018, a Clark County code enforcement coordinator and the County's interim director of community development issued to Plaintiffs an amended notice and order,² which required them to cease all mining activities until they obtained the necessary permits. Dkt. 38-2 at 2–4. The amended notice and order stated that Plaintiffs' mining operation violated the Clark County Codes because Plaintiffs “[f]ail[ed] to obtain required Clark County site plan and conditional use permits for surface mining operation and rock crushing in a Surface Mining Overlay District” and because they conducted “[l]and alterations and surface mining activities within the Columbia River Gorge National Scenic Area without Clark County review and approval.” *Id.* at 2.

Plaintiffs appealed the notice and order to the Clark County Hearing Examiner. The hearing examiner granted the appeal in part and denied it in part. Dkt. 38-3 at 16–17. The hearing examiner concluded that Plaintiffs were authorized to conduct surface mining operations on their property without permits because such operations amounted to an existing use on the

property under the Clark County Codes. *Id.* at 16. However, the hearing examiner concluded that Plaintiffs were not allowed to conduct rock crushing activities on the property unless they had a permit to do so. *Id.* at 16–17.

The Friends of the Columbia Gorge and numerous “neighbors” of the mining operation appealed the hearing examiner's order to the Columbia River Gorge Commission. *See* Dkt. 38-6. The Commission issued a final opinion and order which reversed the hearing examiner's decision insofar as it concluded that Plaintiffs did not need a permit to conduct surface mining operations on their property. *Id.* at 44–45.

Plaintiffs petitioned for review of the Commission's final opinion and order to the Clark County Superior Court. Dkt. 38-7 at 2–26. The Superior Court affirmed the Commission's decision. Dkt. 38-8. In so doing, the Superior Court concluded that “[t]he Gorge Commission properly applied 16 U.S.C. section 544m(a)(2) of the National Scenic Area Act, considered the relevant evidence and properly applied the law. The decision of the Gorge Commission in this matter is affirmed in full, and the Petitioners' appeal is denied.” *Id.* at 17. The Superior Court also rejected Plaintiffs' arguments that the Commission, in reaching its decision, violated the appearance of fairness doctrine, engaged in improper *ex parte* communications, and failed to disclose certain conflicts of interest. *Id.* at 4–7.

Plaintiffs appealed the Superior Court's order to the Washington State Court of Appeals, Division II. Dkt. 38-9. That appeal remains pending.

rell, Kimberly Murrell, Richard Ross, Karen Streeter, Sean Streeter, and Eleanor Warren join in both of these motions to dismiss. Dkt. 42. Defendant Bridget Bailey joins in the second motion to dismiss. Dkt. 41.

2. The original notice and order was issued in March 2018. Dkt. 38-1. It also required Plaintiffs to cease all mining activities but for slightly different reasons. *See* Dkt. 38-1 at 2.

Plaintiffs also sued Defendants in this Court, asserting seven claims. Dkt. 12. Claims one through four allege that Defendants failed to produce various public records in violation of the Columbia River Gorge National Scenic Area Act, 16 U.S.C. §§ 544–544p, the Oregon Public Records Law, Or. Rev. Stat. §§ 192.311–192.431, and the Washington Public Records Act, RCW Ch. 42.56. *Id.* ¶¶ 52–79. Claim five alleges that Defendants violated the appearance of fairness doctrine during the appeal from the hearing examiner's decision. *Id.* ¶¶ 80–92. Claim six is a 42 U.S.C. § 1983 claim alleging due process and civil rights violations. *Id.* ¶¶ 93–104. Under this claim, Plaintiffs contend that Defendants failed to disclose certain *ex parte* communications and again assert that Defendants violated the appearance of fairness doctrine. *Id.* ¶ 95. Finally, claim seven alleges that Defendants engaged in tortious interference with business operations by improperly causing Plaintiffs to cease their mining operation. *Id.* ¶¶ 105–108.

Defendants move to dismiss all of these claims under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). They contend that the National Scenic Area Act vests exclusive jurisdiction over Plaintiffs' claims in the state courts of Washington and Oregon. Dkt. 37 at 6, 12–15; Dkt. 40 at 9. They also assert that Plaintiffs' claims one through four fail to state a claim on which relief can be granted. Dkt. 37 at 6–7, 19–26; Dkt. 40 at 9.

Defendants next argue that the Court lacks subject matter jurisdiction over claims five through seven under the *Rooker-Feldman* doctrine. Dkt. 37 at 15–17; Dkt. 40 at 6–9. Defendants assert that, under claims five and six, Plaintiffs impermissibly request that this Court reverse

the Commission's final opinion and order. Dkt. 37 at 16; Dkt. 40 at 8.

Defendants further contend that they are entitled to both quasi-judicial immunity from claims five through seven and Eleventh Amendment immunity from Plaintiffs' damages claims. Dkt. 37 at 17–19, 26–27; Dkt. 40 at 4–6, 9. They also argue that *res judicata* precludes Plaintiffs from advancing claims five through seven. Dkt. 37 at 28–29. Finally, the Washington Commissioners assert that Plaintiffs failed to properly serve the summons and complaint on them in their official capacities.³ Dkt. 37 at 10–11.

Plaintiffs respond that the National Scenic Area Act does not deprive the Court of subject matter jurisdiction over claims one through four insofar as they allege that Defendants failed to disclose public records in violation of the Washington Public Records Act. Dkt. 55 at 5, 8–10; Dkt. 58 at 12–19. They argue that the National Scenic Area Act does not deprive the Court of subject matter jurisdiction over claims five through seven. Dkt. 55 at 10–12.

Plaintiffs next assert that the *Rooker-Feldman* doctrine does not apply to claims five through seven because their appeal to the Washington Court of Appeals is not final and because they are not directly challenging the Clark County Superior Court's decision. Dkt. 55 at 5–6, 12–14; Dkt. 58 at 2. They claim that Defendants are not entitled to quasi-judicial or Eleventh Amendment immunity. Dkt. 55 at 6, 15–20; Dkt. 58 at 19–21. They also argue that *res judicata* does not apply to preclude claims five through seven. Dkt. 58 at 21–23. Finally, they contend that service against the Washington Commissioners was proper. Dkt. 55 at 21; Dkt. 58 at 4–11.

3. The Oregon Commissioners neither raise nor join in this argument. *See generally* Dkt.

40.

II. DISCUSSION

A. Plaintiffs' Public Disclosure Claims (Claims One Through Four)

Defendants assert that the Court lacks subject matter jurisdiction over Plaintiffs' claim that the Commission failed to disclose certain public records in violation of the National Scenic Area Act. Dkt. 37 at 12–14. Additionally, Defendants contend that, to the extent Plaintiffs allege that the Commission violated the public records laws of either Oregon or Washington, Plaintiffs have failed to state a claim on which relief can be granted. *Id.* at 13 n.5, 23–26. Plaintiffs respond that the Washington Public Records Act applies to the Commission and, therefore, they have stated a valid claim for relief under claims one through four. Dkt. 55 at 5, 8–10; Dkt. 58 at 12–19.

[1] When considering a motion to dismiss under Federal Rule of Civil Procedure 12(b)(1) or 12(b)(6), the court construes the complaint in the light most favorable to the non-moving party. *See Livid Holdings Ltd. v. Salomon Smith Barney, Inc.*, 416 F.3d 940, 946 (9th Cir. 2005); *see also Wolfe v. Strankman*, 392 F.3d 358, 362 (9th Cir. 2004). Dismissal under Federal Rule of Civil Procedure 12(b)(6) may be based on either the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988). A plaintiff's complaint must allege facts to state a claim for relief that is plausible on its face. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009). A claim has “facial plausibility” when the party seeking relief “pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*

[2] Generally, the court must accept as true all well-pleaded allegations of material fact and draw all reasonable inferences in favor of the plaintiff. *See Wyler Summit P'ship v. Turner Broad. Sys., Inc.*, 135 F.3d 658, 661 (9th Cir. 1998). Additionally, the plaintiff bears the burden of proving the existence of subject matter jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377, 114 S.Ct. 1673, 128 L.Ed.2d 391 (1994).

[3] Plaintiffs' claims one through four fail for several reasons. First, Plaintiffs waived their claim that the Commission violated the National Scenic Area Act by not disclosing certain public records. *See* Dkt. 55 at 8 (“[T]his action seeks to compel the Commission's compliance with the Washington PRA, not the Gorge Act.”).

Second, even if Plaintiffs have not waived this claim, it is improperly advanced in this Court. As Defendants contend, the Court lacks subject matter jurisdiction over any claim that Defendants failed to disclose public records in violation of the National Scenic Area Act. *See* Dkt. 37 at 12–14. The Ninth Circuit has held that the National Scenic Area Act vests “the federal district courts of Oregon and Washington with jurisdiction over *only* those actions involving the Secretary [of Agriculture], and [leaves] to the state courts jurisdiction over actions involving the Commission.” *Broughton Lumber Co. v. Columbia River Gorge Comm'n*, 975 F.2d 616, 621 (9th Cir. 1992) (emphasis added).

Of particular significance here, 16 U.S.C. § 544m(b)(6)(B) provides that “[t]he State courts of the States of Oregon and Washington shall have jurisdiction . . . over any civil action brought . . . against the Commission, a State, or a county pursuant to subsection (b)(2) of this section.” (emphasis added). Subsection (b)(2) authorizes

“[a]ny person or entity adversely affected” to “commence a civil action” against the Commission to compel it “to perform any act or duty under sections 544 to 544p of this title which is not discretionary” 16 U.S.C. § 544m(b)(2)(B). Notably, section 544c(b) directs the Commission to “adopt regulations relating to . . . disclosure of information consistent with the more restrictive statutory provisions of either State.” Under the Ninth Circuit’s holding in *Broughton Lumber*, this Court lacks subject matter jurisdiction over any claim that the Commission failed to follow this directive. *See* 975 F.2d at 621.

[4] Third, as Plaintiffs concede, the Oregon Public Records Law does not apply to the Commission. *See* Dkt. 58 at 13. The Oregon Public Records Law, which applies to state agencies, defines “state agency” as “any *state* officer, department, board or commission created by the Constitution or statutes of this state.” Or. Rev. Stat. § 192.005(6). However, the Oregon legislature defined the Commission as a “regional agency,” not a state agency. Or. Rev. Stat. § 196.150. As explained by the Oregon Court of Appeals, Or. Rev. Stat. § 196.150 “does not purport to create a state agency. Rather, it ratifies Oregon’s compact with Washington to establish ‘a *regional* agency known as the Columbia River Gorge Commission’ to carry out the provisions of the compact and of the Scenic Area Act.” *Columbia River Gorge Comm’n v. Hood River Cnty.*, 210 Or.App. 689, 152 P.3d 997, 1003 (2007) (emphasis in original) (quoting Or. Rev. Stat. § 196.150).

[5] Unlike state agencies, “[r]egional agencies created by interstate compacts are generally recognized to be neither categorically state nor federal in nature; instead, they are hybrids.” *Id.* (citing *Murray v. Oregon*, 203 Or.App. 377, 124 P.3d 1261, 1263 (2005); *Hess v. Port Auth. Trans-Hudson*, 513 U.S. 30, 40, 115 S.Ct.

394, 130 L.Ed.2d 245 (1994)). Indeed, in *Hess*, the Supreme Court explained that “[t]he States, as separate sovereigns, are the constituent elements of the Union. Bistate entities, in contrast, typically are the creations of three discrete sovereigns: two States and the Federal Government.” 513 U.S. at 40, 115 S.Ct. 394. Because the Commission is not a state agency, the Oregon Public Records Law does not apply to it.

[6] Finally, for this same reason, the Commission does not fall within the ambit of the Washington Public Records Act. The Washington legislature also defined the Commission as a “regional agency,” not a state agency. RCW 43.97.015 (“The States of Oregon and Washington establish by way of this interstate compact a *regional* agency known as the Columbia River Gorge Commission.” (emphasis added)). Furthermore, under the Washington Public Records Act, the term “‘state agency’ includes every *state* office, department, division, bureau, board, commission, or other *state* agency.” RCW 42.56.010(1) (emphases added). Because the Commission is a regional agency, not a state agency, under Washington law, the Washington Public Records Act does not apply to it.

In sum, to the extent Plaintiffs’ claims one through four allege that Defendants failed to disclose certain public records in violation of the National Scenic Area Act, the Court lacks subject matter jurisdiction over such claims, and they are DISMISSED without prejudice. To the extent that claims one through four allege that Defendants violated the Oregon Public Records Law and the Washington Public Records Act, Plaintiffs have failed state a claim on which relief can be granted. Accordingly, those claims are DISMISSED with prejudice.

B. Plaintiffs' Appearance of Fairness, 42 U.S.C. § 1983, and Tortious Interference with Business Relations Claims (Claims Five through Seven)

Defendants also assert that, under the *Rooker-Feldman* doctrine, this Court lacks subject matter jurisdiction over claims five through seven. Dkt. 37 at 15–17; Dkt. 40 at 6–9. They argue that claims five and six impermissibly ask this Court to decide issues that were already decided by the Clark County Superior Court and improperly request that the Court reverse the Commission's final opinion and order. Dkt. 37 at 16; Dkt. 40 at 8. They also contend that the issues presented by claim seven are inextricably intertwined with the issues decided by the Superior Court such that, to grant Plaintiffs relief, the Court would have to effectively reverse or void the Superior Court's decision. Dkt. 37 at 16–17; Dkt. 40 at 8–9. Plaintiffs respond that the *Rooker-Feldman* doctrine does not apply to claims five through seven because their appeal to the Washington Court of Appeals is not final and because they are not directly challenging the Clark County Superior Court's decision. Dkt. 55 at 5–6, 12–14; Dkt. 58 at 2. This is not persuasive.

[7,8] “The *Rooker-Feldman* doctrine recognizes that federal district courts generally lack subject matter jurisdiction to review state court judgments.” *Fontana Empire Ctr., LLC v. City of Fontana*, 307 F.3d 987, 992 (9th Cir. 2002) This doctrine precludes “cases brought by state-court losers complaining of injuries caused by state-court judgments . . . and inviting district court review and rejection of those judgments.” *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284, 125 S.Ct. 1517, 161 L.Ed.2d 454 (2005).

[9–11] Under this doctrine, “when a losing plaintiff in state court brings a suit in federal district court asserting as legal

wrongs the allegedly erroneous legal rulings of the state court and seeks to vacate or set aside the judgment of that court, the federal suit is a forbidden de facto appeal.” *Noel v. Hall*, 341 F.3d 1148, 1156 (9th Cir. 2003). “The doctrine applies ‘not only to claims that were actually raised before the state court, but also to claims that are inextricably intertwined with state court determinations.’” *Grant v. Unifund CCR Partners*, 842 F. Supp. 2d 1234, 1238 (C.D. Cal. 2012) (quoting *Kelley v. Med-1 Sols., LLC*, 548 F.3d 600, 603 (7th Cir. 2008)). “A claim is inextricably intertwined with a state court judgment if ‘the federal claim succeeds only to the extent that the state court wrongly decided the issues before it,’ or if ‘the relief requested in the federal action would effectively reverse the state court decision or void its ruling.’” *Fontana Empire Ctr., LLC*, 307 F.3d at 992 (internal citation omitted) (quoting *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 25, 107 S.Ct. 1519, 95 L.Ed.2d 1 (1987) (Marshall, J., concurring); *Charchenko v. City of Stillwater*, 47 F.3d 981, 983 (8th Cir. 1995)).

[12] Plaintiffs' claim five alleges that, during the appeal from the hearing examiner's order, the Commission violated the appearance of fairness doctrine. Dkt. 12, ¶¶ 80–92. Similarly, claim six alleges that the Commission engaged in certain due process and civil rights violations during that appeal by violating the appearance of fairness doctrine and by failing to disclose certain *ex parte* communications. *Id.* ¶¶ 93–104.

Plaintiffs raised these arguments during their appeal to the Clark County Superior Court, which rejected them on the merits and as being untimely raised. Dkt. 38-8 at 6–7. Furthermore, Plaintiffs request that this Court reverse the Commission's final opinion and order, which was affirmed by the Clark County Superior Court. *Id.*

¶¶ 92, 104. This Court plainly lacks subject matter jurisdiction over claims five and six under the *Rooker-Feldman* doctrine.

[13] Claim seven alleges that Defendants engaged in tortious interference with business relations by “intentionally interfer[ing] with” Zimmerly and Nutter’s ongoing business relationship to lease and operate their mine “through improper means and for an improper purpose” *Id.* ¶ 107. Plaintiffs assert that “Defendants’ wrongful actions caused the Mine to stop operating, resulting in millions of dollars of lost revenue through sales, lost profits to Nutter, lost royalties to Zimmerly, and other damages to Zimmerly and Nutter.” *Id.* ¶ 108. However, as Defendants assert, claim seven is inextricably intertwined with the issues decided by the Clark County Superior Court because it “is premised on a reversal of” that court’s final judgment. Dkt. 37 at 16–17. Indeed, “[b]y affirming the Gorge Commission’s decision, the Clark County Superior Court expressly concluded the behavior that Plaintiffs allege is tortious was lawful.” *Id.* at 17. Therefore, this Court also lacks subject matter jurisdiction over claim seven.⁴

[14] The Court rejects Plaintiffs’ argument that the Clark County Superior Court’s order is not a final judgment subject to the *Rooker-Feldman* doctrine as a result of the ongoing appeal to the Washington Court of Appeals. *See* Dkt. 55 at 12–13; Dkt. 58 at 2. Indeed, the Superior Court’s order resolved the merits of Plaintiffs’ arguments advanced in that court. *See Denney v. City of Richland*, 195 Wash. 2d 649, 654, 462 P.3d 842 (2020) (en banc) (defining “final judgment” as a judgment that “resolved the merits of a party’s legal claims”). Additionally, it appears that the sole reason why Plaintiffs were able to appeal the Superior Court’s order to the

Washington Court of Appeals is because that order was a final judgment. *See* Wash. R. App. P. 2.2(a).

Accordingly, because claims five through seven effectively request this Court to reverse or void the final judgment of the Clark County Superior Court, the Court lacks subject matter jurisdiction over them and they are **DISMISSED** without prejudice.

III. ORDER

Therefore, it is hereby **ORDERED** that Defendants Columbia River Gorge Commission, Sondra Clark, Robin Grimwade, and Jerry Meninick’s Motion to Dismiss, Dkt. 37, and Defendants Bowen Blair, Dan Ericksen, Robert Liberty, Carina Miller, Antone Minthorn, and Rodger Nichols’ Motion to Dismiss, Dkt. 40, are **GRANTED**. Plaintiffs Judith Zimmerly, ZP#5 LLC, Jerry Nutter, and Nutter Corporation’s claims that Defendants failed to disclose certain public records in violation of the National Scenic Area Act are **DISMISSED without prejudice**. Plaintiffs’ claims that Defendants violated the Oregon Public Records Law and the Washington Public Records Act are **DISMISSED with prejudice**. Plaintiffs’ claim that Defendants violated the appearance of fairness doctrine is **DISMISSED without prejudice**. Plaintiffs’ claim advanced pursuant to 42 U.S.C. § 1983 alleging that Defendants engaged in due process and civil rights violations is **DISMISSED without prejudice**. Plaintiffs’ claim that Defendants engaged in tortious interference with business relations is **DISMISSED without prejudice**.



4. Because the Court lacks subject matter jurisdiction over this claim of tortious interference with business relations, the Court de-

clines to analyze whether Defendants are entitled to either quasi-judicial or Eleventh Amendment immunity against it.