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 CLERK, U.S. DISTRICT COURT

2/29/2016

CENTRAL DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

STEVEN FISHMAN,
 Plaintiff,
 v.
 UNITED STATES OF AMERICA,
 et al.,
 Defendant(s).

Case No. CV 14-222 MWF(JC)
ORDER
 (1) ACCEPTING FINDINGS,
 CONCLUSIONS, AND
 RECOMMENDATIONS OF UNITED
 STATES MAGISTRATE JUDGE RE:
 DEFENDANT’S MOTION TO
 DISMISS THE COMPLAINT; AND
 (2) DENYING PLAINTIFF’S MOTION
 FOR JURISDICTIONAL DISCOVERY
 (DOCKET NOS. 20, 33)

Currently pending before the Court and addressed herein are (1) Defendant United States of America’s Motion to Dismiss the Complaint (“Motion to Dismiss”) filed on August 22, 2014; and (2) Plaintiff Steven Fishman’s “Motion to Conduct Discovery to Establish Subject Matter Jurisdiction in Counts III and XIII of His FTCA Claim” (“Plaintiff’s Motion”) filed on May 4, 2015. The Court addresses each motion and rules as set forth below.

I. Motion to Dismiss

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Complaint, all documents filed in support of and in opposition to the Motion to Dismiss, and all of the records herein, including the attached Report and Recommendation of

1 United States Magistrate Judge (“Report and Recommendation”) and plaintiff’s
2 objections to the Report and Recommendation (“Objections”). The Court has
3 further made a *de novo* determination of those portions of the Report and
4 Recommendation to which objection is made. The Court concurs with and accepts
5 the findings, conclusions, and recommendations of the United States Magistrate
6 Judge, and overrules the Objections which essentially reargue the merits of
7 plaintiff’s case and otherwise lack merit.

8 **II. Plaintiff’s Motion**

9 The Complaint seeks damages pursuant to the Federal Tort Claims Act
10 (“FTCA”) predicated on multiple state torts allegedly committed by certain prison
11 officials. (Complaint ¶¶ 76-96). Plaintiff’s Motion seeks jurisdictional discovery
12 in support of two such predicates – specifically Claim 3 (negligent failure properly
13 to investigate complaints about attacks on plaintiff by another inmate) and Claim
14 13 (negligent failure to protect plaintiff from such attacks). (Plaintiff’s Motion at
15 3-6). The Court has reviewed Plaintiff’s Motion, as well as defendant’s response
16 to Plaintiff’s Motion filed on May 22, 2015, and plaintiff’s Reply thereto filed on
17 June 25, 2015. Plaintiff has not established a basis for granting the discovery he
18 requests.

19 The Court may grant jurisdictional discovery in support of a complaint
20 “where pertinent facts bearing on the question of jurisdiction are controverted or
21 where a more satisfactory showing of the facts is necessary.” Boschetto v.
22 Hansing, 539 F.3d 1011, 1020 (9th Cir. 2008) (citations omitted), cert. denied, 555
23 U.S. 1171 (2009). District courts have broad discretion to grant or deny a motion
24 for jurisdictional discovery. See Laub v. United States Department of Interior, 342
25 F.3d 1080, 1093 (9th Cir. 2003) (citation omitted). Denial of such a motion is
26 improper only if the court’s ruling clearly “result[ed] in actual and substantial
27 prejudice to the complaining litigant.” Id. (citation and internal quotation marks
28 omitted). A litigant establishes such prejudice “if there is a reasonable probability

1 that the outcome would have been different had discovery been allowed.” Id.
2 (citation omitted).

3 Plaintiff has not shown that discovery is necessary to resolve a controverted
4 jurisdictional question or that a more satisfactory showing of the facts is necessary
5 to determine subject matter jurisdiction for Claims 3 and 13. As the Report and
6 Recommendation correctly concludes, the Court lacks subject matter jurisdiction
7 over such claims based on the “discretionary function exception” to FTCA
8 jurisdiction. (R&R at 15-19). Here, even if true, the facts plaintiff seeks to
9 establish through jurisdictional discovery would at most provide cumulative
10 support for the same jurisdictional arguments plaintiff made in opposing dismissal
11 of Claims 3 and 13 – which arguments lack merit for the reasons explained in
12 detail in the Report and Recommendation. (R&R at 15-19); See, e.g., Gonzalez v.
13 United States, __ F.3d __, 2016 WL 722527, *7 (9th Cir. Feb. 24, 2016) (No. 13-
14 15218) (affirming district court order denying discovery on discretionary function
15 exception in FTCA case where plaintiff failed to show prejudice).

16 To the extent Plaintiff’s Motion alleges that plaintiff was injured by
17 additional misconduct that occurred in connection with the negligent investigation
18 alleged in Claim 3 (*i.e.*, “threatening the plaintiff as a victim” and “threatening a
19 material witness” and/or failure properly to report and/or investigate such
20 misconduct by prison officials) (Plaintiff’s Motion at 4; Reply at 6-10), plaintiff
21 also fails to show that jurisdictional discovery is appropriate since the Complaint
22 does not allege an FTCA claim predicated on such alleged misconduct.


23 **III. ORDERS**

24 IT IS HEREBY ORDERED: (1) the Motion to Dismiss is granted in part
25 and denied in part; (2) all claims except Claims 1 and 9 are dismissed without
26 prejudice and this action shall proceed solely on Claims 1 and 9; (3) Plaintiff’s
27 Motion is denied; and (4) defendant shall file an Answer to the remaining portions
28 of the Complaint within fourteen (14) days of the entry of this Order.

1 IT IS FURTHER ORDERED that the Clerk serve copies of this Order and
2 the Report and Recommendation on plaintiff and counsel for defendant.

3 IT IS SO ORDERED.

4 DATED: February 29, 2016

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7 HONORABLE MICHAEL W. FITZGERALD
8 UNITED STATES DISTRICT JUDGE
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