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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 STEPHAN BROOKS, et al.,) NO. CV 15-7724-JFW(E)
12 Plaintiff,)
13 v.) REPORT AND RECOMMENDATION OF
14 PACO-MICHELLE ATWOOD, et al.,) UNITED STATES MAGISTRATE JUDGE
15 Defendants.)
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18 This Report and Recommendation is submitted to the Honorable
19 John F. Walter, United States District Judge, pursuant to 28 U.S.C.
20 section 636 and General Order 05-07 of the United States District
21 Court for the Central District of California.
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23 BACKGROUND
24

25 Plaintiff Stephan Brooks filed this action individually and as:
26 (1) alleged successor trustee to the Sireaner Townsend Revocable
27 Living Trust dated June 22, 2004 ("Trust"); (2) alleged sole
28 beneficiary of the Trust; (3) alleged sole heir of the Sireaner

1 Townsend Pour Over Will dated June 22, 2004; and (4) alleged heir to
2 the estate of Sherrell Atwood. Plaintiff's claims arise out of a
3 family dispute concerning residential real property which resulted in
4 state court litigation, including a probate case concerning the
5 Sherrell Atwood estate ("Estate Case"), a "Trust Case," a "Will
6 Contest Case" and a "Partition Case."

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8 The original Complaint purported to state civil rights claims and
9 state law claims against: (1) Plaintiff's sister Paco-Michelle Atwood,
10 individually and as alleged administrator of the estate of Sherrell
11 Atwood; (2) Chrisangela Walston, allegedly an attorney for Atwood in
12 the "Estate Case" and the "Partition Case"; (3) L'Tanya M. Butler,
13 allegedly an attorney for Atwood in the state court cases; (4) Maurice
14 Smith, Clifford Townsend, Jr. and Steven Townsend, the three
15 petitioners in the "Trust Case" and "Will Contest" cases; (5) Guy
16 Leemhuis, allegedly the attorney for Smith and the two Townsends;
17 (6) Jonnie Johnson Parker, allegedly the attorney for Plaintiff
18 individually and as alleged successor trustee in the "Trust Case"; and
19 (7) ten fictitious "Doe" Defendants. In the original Complaint,
20 Plaintiff alleged that the Defendants named in that pleading conspired
21 with lawyers and judges to deprive Plaintiff of the right to the
22 property, which allegedly previously was owned jointly by Plaintiff's
23 mother, Sherrell Atwood, and grandmother, Sireaner Townsend, both now
24 deceased.

25
26 On December 8, 2015, Defendants Atwood, Butler and Walston filed
27 a motion to dismiss the Complaint. On January 8, 2016, Plaintiff
28 filed an opposition to that motion. On January 19, 2016, the Court

1 issued an "Order Dismissing Complaint With Leave to Amend," dismissing
2 the Complaint with leave to amend and permitting Plaintiff to file a
3 First Amended Complaint.
4

5 Plaintiff did not file a First Amended Complaint by the deadline
6 set in the January 19, 2016 Order. Accordingly, on March 3, 2016, the
7 Magistrate Judge issued a Report and Recommendation recommending
8 dismissal of the action without prejudice for failure to prosecute.
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10 On March 21, 2016, Plaintiff filed objections to the Report and
11 Recommendation. On March 22, 2016, the Magistrate Judge issued a
12 Minute Order withdrawing the Report and Recommendation and extending
13 the time within which Plaintiff could file a First Amended Complaint.
14 Plaintiff filed a First Amended Complaint on April 5, 2016, naming the
15 original Defendants and adding two new Defendants: (1) Los Angeles
16 County Superior Court Executive Officer/Clerk Sherri Carter; and
17 (2) Joseph A. Lane, Clerk of the California Court of Appeal, Second
18 District.
19

20 On April 7, 2016, Defendants Atwood, Butler and Walston filed a
21 motion to dismiss the First Amended Complaint. On May 4, 2016,
22 Plaintiff filed an opposition to this motion. On May 13, 2016, the
23 Magistrate Judge issued a Report and Recommendation recommending that
24 the Court: (1) dismiss the First Amended Complaint and the action as
25 against private party Defendants Atwood, Walston, Butler, Maurice
26 Smith, Clifford Townsend, Jr., Steven Townsend, Guy A. Leemhuis, and
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1 Jonnie Johnson Parker,¹ with prejudice with respect to the federal
2 claims; and (2) decline to exercise supplemental jurisdiction over the
3 state law claims against the private party Defendants and dismiss
4 those state law claims against the private party Defendants without
5 prejudice.

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7 On May 17, 2016, Defendants Carter and Lane filed a Motion to
8 Dismiss the First Amended Complaint. On June 16, 2016, Plaintiff
9 filed an Opposition.

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11 On June 20, 2016, the District Judge issued an "Order Accepting
12 Findings, Conclusions and Recommendations of United States Magistrate
13 Judge." This Order adopted the Magistrate Judge's May 13, 2016 Report
14 and Recommendation, dismissing from the action all Defendants other
15 than Defendants Carter and Lane.

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17 On June 28, 2016, the Magistrate Judge issued a Report and
18 Recommendation addressing the Motion to Dismiss filed by Defendants
19 Carter and Lane and inter alia recommending dismissal of the First
20 Amended Complaint as against the Defendants with leave to amend.
21 Among other things, the Report and Recommendation advised Plaintiff
22 that the doctrine of quasi-judicial immunity shielded Defendants
23 Carter and Lane from liability for actions taken in their capacities

24
25 ¹ Although Defendants Maurice Smith, Clifford Townsend,
26 Jr., Steven Townsend, Guy A. Leemhuis and Jonnie Johnson Parker
27 had not appeared in the action, the same reasons supporting
28 dismissal of the First Amended Complaint as against the appearing
private party Defendants supported dismissal of the First Amended
Complaint and the action as against Defendants Smith, Clifford
Townsend, Jr., Steven Townsend, Leemhuis and Parker.

1 as court clerks when they perform tasks that are an integral part of
2 the judicial process. On August 5, 2016, the District Judge issued an
3 "Order Accepting Findings, Conclusions and Recommendations of United
4 State Magistrate Judge," dismissing the First Amended Complaint as
5 against Defendants Carter and Lane with leave to amend.

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7 On September 6, 2016, Plaintiff filed a Second Amended Complaint
8 against Defendants Carter and Lane, and adding as Defendants: (1) Los
9 Angeles County Superior Court Judges Beckloff, Cowan, Levanas and
10 Stratton; (2) California Court of Appeal Justices Epstein, Willhite
11 and Collins; and (3) the County of Los Angeles ("County").

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13 On September 21, 2016, Defendants Carter and Lane filed a Motion
14 to Dismiss the Second Amended Complaint. On October 21, 2016,
15 Plaintiff filed an Opposition to the Motion to Dismiss.

16
17 On November 29, 2016, the Magistrate Judge issued a Report and
18 Recommendation recommending the dismissal of the action as against
19 Defendants Carter and Lane without leave to amend and with prejudice
20 as to Plaintiff's federal claims and without prejudice as to
21 Plaintiff's state law claims. On January 5, 2017, the District Judge
22 issued an "Order Accepting Findings, Conclusions and Recommendations
23 of United States Magistrate Judge." This Order adopted the Magistrate
24 Judge's November 29, 2016 Report and Recommendation, dismissing from
25 the action Defendants Carter and Lane.

26
27 The only other Defendants named in the Second Amended Complaint
28 are: (1) Los Angeles Superior Court Judges Mitchell L. Beckloff, David

1 J. Cowan, Michael I. Levanas and Maria E. Stratton; (2) California
2 Court of Appeal Justices Normal L. Epstein, Audrey B. Collins and
3 Thomas L. Willhite; and (3) the County of Los Angeles. None of these
4 Defendants ("non-appearing Defendants") have appeared in this action.
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6 On December 8, 2016, the Magistrate Judge filed a Minute Order
7 requiring Plaintiff to show cause, within thirty (30) days of the
8 December 8, 2016, why proper service of the Summons and Second Amended
9 Complaint was not made on the non-appearing Defendants in a timely
10 manner. The Minute Order advised Plaintiff that Plaintiff must
11 attempt to show such cause by filing a declaration, signed under
12 penalty of perjury. The Minute Order further advised Plaintiff that
13 failure to file such a declaration could result in the dismissal of
14 the action as to the non-appearing Defendants without prejudice.
15 Nevertheless, Plaintiff failed to respond to the Minute Order within
16 the allotted time.

17 18 **DISCUSSION** 19

20 Under Rule 4(m) of the Federal Rules of Civil Procedure, a court
21 may dismiss an action without prejudice if the summons and complaint
22 are not served on the defendant within 90 days after filing the
23 complaint or such further time as ordered by the court. Fed. R. Civ.
24 P. 4(m); see Efaw v. Williams, 473 F.3d 1038, 1041 (9th Cir. 2007).
25 Rule 4(m) requires the Court to extend the time for service if a
26 plaintiff shows good cause for the failure to serve. "At a minimum,
27 'good cause' means excusable neglect." Boudette v. Barnette, 923 F.2d
28 754, 756 (9th Cir. 1991). A court has "broad discretion" to extend

1 the time for service under Rule 4(m), even absent a showing of good
2 cause. See Efaw v. Williams, 473 F.3d at 1040-41; see also United
3 States v. 2,164 Watches, More or Less, Bearing a Registered Trademark
4 of Guess?, Inc., 366 F.3d 767, 773 (9th Cir. 2004) (Rule 4(m) gives
5 courts "leeway to preserve meritorious lawsuits despite untimely
6 service of process"). A court may consider various factors including
7 prejudice to the defendant, actual notice, a possible limitations bar,
8 and eventual service. See Efaw v. Williams, 473 F.3d at 1041. Any
9 such dismissal should be without prejudice. See United States v.
10 2,164 Watches, More or Less, Bearing a Registered Trademark of Guess?,
11 Inc., 366 F.3d at 772.

12
13 Under Rule 4(m), this Court should dismiss the present action as
14 against the non-appearing Defendants without prejudice. Plaintiff has
15 not demonstrated good cause for the failure to effect timely service
16 on these remaining Defendants, and no cause appears from the record.
17 Under the circumstances of this case, the Court should not exercise
18 its "broad discretion" to extend the time for service. See Kennedy v.
19 Grattan Township, 2007 WL 1108566, at *4 (W.D. Mich. April 10, 2007)
20 (observing that extension of the deadline for service on a defendant
21 who was the trial judge would be futile because claims against the
22 judge would be barred by the doctrine of judicial immunity).

23 24 **RECOMMENDATION**

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26 For all of the foregoing reasons, it is recommended that the
27 Court issue an Order: (1) accepting and adopting this Report and
28 Recommendation; (2) dismissing the action against the non-appearing

1 Defendants without prejudice; and (3) directing that Judgment be
2 entered dismissing the action in accordance with the present
3 recommended Order and the previous Orders filed June 20, 2016 and
4 January 5, 2017.

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6 Dated: January 11, 2017.

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9 /s/
10 CHARLES F. EICK
11 UNITED STATES MAGISTRATE JUDGE
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1 **NOTICE**

2 Reports and Recommendations are not appealable to the Court of
3 Appeals, but may be subject to the right of any party to file
4 objections as provided in the Local Rules Governing the Duties of
5 Magistrate Judges and review by the District Judge whose initials
6 appear in the docket number. No notice of appeal pursuant to the
7 Federal Rules of Appellate Procedure should be filed until entry of
8 the judgment of the District Court.