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

MICHAEL WALDEN SMITH,)	NO. ED CV 14-1413-VBF(E)
)	
Plaintiff,)	
)	
v.)	REPORT AND RECOMMENDATION OF
)	
SUPERIOR COURT OF RIVERSIDE)	UNITED STATES MAGISTRATE JUDGE
COUNTY, et al.,)	
)	
Defendants.)	
)	

18 This Report and Recommendation is submitted to the Honorable
19 Valerie Baker Fairbank, United States District Judge, pursuant to 28
20 U.S.C. section 636 and General Order 05-07 of the United States
21 District Court for the Central District of California.

22

PROCEEDINGS

23
24

25 Plaintiff filed this civil rights action pursuant to 42 U.S.C.
26 section 1983 on July 16, 2014. The original Complaint named as
27 Defendants the Riverside County Superior Court, two Superior Court
28 judges, a private attorney, and Plaintiff's ex-wife who is the mother

1 of Plaintiff's minor daughter. Plaintiff asserted claims arising out
2 of state court orders in family law proceedings declaring Plaintiff a
3 vexatious litigant pursuant to California's Vexatious Litigant Statute
4 ("VLS")¹ and imposing a bond requirement. According to Plaintiff, the
5 bond requirement prevented Plaintiff from filing an opposition to the
6 mother's application for a "move-away" order approving the mother's
7 move to Virginia with Plaintiff's minor daughter.

8
9 On September 3, 2014, United States Magistrate Judge
10 David T. Bristow screened the Complaint and issued an order dismissing
11 the Complaint with leave to amend. On December 8, 2014, Plaintiff
12 filed a First Amended Complaint, naming the same Defendants and adding
13 four new Defendants: the California Judicial Council, California
14 Supreme Court Chief Justice Tami Cantil-Sakauye, former Judicial
15 Council Administrative Director Steven Jahr and the presiding Justice
16 of the California Court of Appeal, Fourth Judicial District, Manuel
17 Ramirez.

18
19 ¹ The California legislature adopted the Vexatious
20 Litigant Statute in 1963 to ease the "unreasonable burden
21 placed upon the courts by groundless litigation."
22 [citation]. The statute provides that a defendant in any
23 state court may move the court to require a pro se plaintiff
24 who qualifies as a "vexatious litigant" to post a security
25 bond before proceeding. Cal. Civ. Proc. Code § 391.1. The
26 statute also allows a judge to enter a prefiling order
27 prohibiting a vexatious litigant from filing any new pro se
28 litigation without the permission of the presiding judge of
the court where the litigant seeks to file. *Id.* § 391.7(a).
Parties subject to prefiling orders are placed on a
statewide list—"the Vexatious Litigant List"—maintained by
the Judicial Council of California and disseminated to
clerks of the state courts. *Id.* § 391.7(e).

Wolfe v. Strankman, 392 F.3d 358, 360-61 (9th Cir. 2004).

1 On January 20, 2015, Plaintiff filed a Second Amended Complaint,
2 naming the same Defendants as those named in the First Amended
3 Complaint, except for Defendant Jahr, and adding California Judicial
4 Council Administrative Director Martin N. Hoshino.

5
6 On February 3, 2015, Magistrate Judge Bristow issued a screening
7 order dismissing the Second Amended Complaint with leave to amend. On
8 March 6, 2015, Plaintiff filed a Third Amended Complaint. On July 13,
9 2015, Magistrate Judge Bristow issued a screening order dismissing the
10 Third Amended Complaint with leave to amend. On August 27, 2015,
11 Plaintiff filed a Fourth Amended Complaint.

12
13 The Fourth Amended Complaint named as Defendants the California
14 Judicial Council, California Supreme Court Chief Justice Tami Cantil-
15 Sakaue, former Judicial Council Administrative Director Steven Jahr,
16 current Judicial Council Administrative Director Martin N. Hoshino and
17 Superior Court Judge Steven Couselis. In the Fourth Amended
18 Complaint, Plaintiff asserted the following ten claims for relief:

19
20 Claim One: Defendants' alleged application of the VLS to
21 Plaintiff assertedly violated Equal Protection.

22
23 Claim Two: Defendants' alleged application of the VLS to
24 Plaintiff assertedly violated Due Process and the First Amendment
25 right to petition.

26
27 Claim Three: The VLS allegedly is vague and overbroad on its face
28 as applied to child custody cases.

1 Claim Four: The VLS as applied to Plaintiff assertedly creates a
2 prior restraint in alleged violation of the First Amendment right to
3 petition;

4
5 Claim Five: Purported unwritten rules and procedures
6 implementing VLS prefiling orders allegedly violate Due Process.

7
8 Claim Six: The VLS purportedly functions as an improper bill of
9 attainder.

10
11 Claim Seven: The VLS assertedly functions as an improper Ex Post
12 Facto law.

13
14 Claim Eight: Defendant Superior Court Judge Councilis allegedly
15 violated Plaintiff's right to familial association, assertedly by
16 issuing a "void" VLS order imposing a \$25,000 bond on Plaintiff
17 without a valid hearing, the effect of which assertedly was to deny
18 Plaintiff the right to oppose a motion to move Plaintiff's child to
19 Virginia.

20
21 Claim Nine: Defendants assertedly applied the VLS to Plaintiff
22 in alleged violation of Plaintiff's rights to substantive and
23 procedural due process under the California Constitution.

24
25 Claim Ten: Plaintiff allegedly is entitled to declaratory
26 judgment and injunctive relief on the issue of whether the VLS as
27 applied in Family Court, as opposed to civil court, violates "basic
28 fundamental rights."

1 On September 30, 2015, Magistrate Judge Bristow screened the
2 Fourth Amended Complaint and issued a Minute Order. The Minute Order
3 stated that: (1) because the doctrine of judicial immunity shields
4 Judge Counelis from suit, the Fourth Amended Complaint failed to state
5 a claim against Judge Counelis; and (2) the Fourth Amended Complaint
6 stated a claim against the Judicial Council and Defendants Cantil-
7 Sakauye, Jahr and Hoshino, in their administrative capacities, "at
8 least at this initial stage of the proceedings." The Minute Order
9 gave Plaintiff the option to continue to pursue an action against
10 Judge Counelis by filing a Fifth Amended Complaint within thirty (30)
11 days. Plaintiff did not file a timely Fifth Amended Complaint,
12 choosing instead to pursue the action only against the other
13 Defendants named in the Fourth Amended Complaint.

14
15 On January 7, 2016, Defendants Judicial Council, Cantil-Sakauye,
16 Jahr and Hoshino filed a motion to dismiss the Fourth Amended
17 Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil
18 Procedure. Plaintiff filed opposition papers on February 19, 2016.

19
20 On September 7, 2016, Magistrate Judge Bristow issued a Report
21 and Recommendation recommending that the Court: (1) dismiss all claims
22 against the Judicial Council and Defendant Jahr without prejudice;
23 (2) dismiss the Equal Protection and Due Process claims contained in
24 Claims One and Two to the extent those claims challenged the VLS as
25 applied to all family court litigants; and (3) dismiss Claims Three,
26 Five, Six, Seven and Ten with prejudice. The Report and
27 Recommendation observed that the Court already had screened out Claim
28 Eight in the September 30, 2015 Minute Order (Report and

1 Recommendation filed September 7, 2016, at p. 9, n.3). The Report and
2 Recommendation further observed that Defendants had not moved to
3 dismiss Plaintiff's section 1983 claims for alleged violation of the
4 First Amendment right to petition, alleged prior restraint or alleged
5 violation of the California Constitution (id., p. 18, n.10).² The
6 Report and Recommendation stated that Plaintiff's claims in Claims One
7 and Two challenging the VLS as applied specifically to Plaintiff were
8 sufficient to withstand the motion to dismiss and recommended that the
9 Court order Defendants Cantil-Sakauye and Hoshino to file an Answer to
10 the Fourth Amended Complaint with respect to the "as applied" claims
11 asserted in Claims One and Two.

12
13 On October 17, 2016, the District Judge issued an order adopting
14 the Report and Recommendation, inter alia, ordering Defendants Cantil-
15 Sakauye and Hoshino (the only remaining Defendants) to file an Answer
16 to the surviving portions of Claims One and Two of the Fourth Amended
17 Complaint.

18
19 On November 23, 2016, Defendants Cantil-Sakauye and Hoshino
20 ("Defendants") filed an Answer to the Fourth Amended Complaint which
21 denied Claims One and Two and asserted, inter alia, that Claim Four
22 (alleged violation of First Amendment right to petition) and Claim
23 Nine (alleged violations of California Constitution) had been
24 dismissed in the October 17, 2016 Order.

25
26
27 ² And yet, the Report and Recommendation recommended that
28 Defendants Cantil-Sakauye and Hoshino be ordered to file an
Answer only to Claims One and Two of the Fourth Amended Complaint
(see Report and Recommendation, p. 36).

1 On June 21, 2017, the case was transferred to the undersigned
2 Magistrate Judge.

3
4 On July 28, 2017, Defendants filed a "Motion for Leave to File a
5 First Amended Answer, etc.," seeking leave to amend the Answer to add
6 denials to Claims Four and Nine of the Fourth Amended Complaint in
7 light of statements in Magistrate Judge Bristow's Report and
8 Recommendation indicating that Defendants had not moved to dismiss
9 those claims.

10
11 On August 11, 2017, Plaintiff filed an "Ex Parte Request to
12 Continue Case 30 Days Due to Time Required to Complete Deposition of
13 Chief Justice, etc.," accompanied by two declarations of Plaintiff.
14 On August 16, 2017, Defendants filed an opposition to the Ex Parte
15 Application. On August 29, 2017, Plaintiff filed a "Rebuttal" to
16 Defendants' Opposition to the "Ex Parte Application to Continue Case
17 30 Days, etc.," accompanied by various documents.

18
19 On August 31, 2017, Plaintiff filed an opposition to Defendants'
20 "Motion for Leave to File an Amended Answer, etc.," accompanied by
21 various documents.

22
23 On September 5, 2017, Defendants filed a "Motion for Summary
24 Judgment/Partial Summary Judgment or in the Alternative Dismissal of
25 the Action for Lack of Subject Matter Jurisdiction" (the "motion for
26 summary judgment"), accompanied by various documents and a request for
27 judicial notice.

28 ///

1 On September 7, 2017, Plaintiff filed "Plaintiff[']s Request to
2 File Document Two Days Past File Date Due to Mix-Up," apparently
3 seeking leave to file a belated response to Defendants' "Motion for
4 Leave to File a First Amended Answer, etc." The Magistrate Judge
5 issued a Minute Order on October 11, 2017, indicating that the Court
6 had permitted the filing of the opposition to the "Motion for Leave to
7 File A First Amended Answer, etc."

8
9 On October 11, 2017, Plaintiff filed an "Ex Parte Request to
10 Continue Case Four Days Due to Difficulties Experienced By Plaintiff
11 When Arrested on Friday September 29th, 2017 By San Bernardino Police
12 Department, etc."³ Also on October 11, 2017, Plaintiff filed an
13 Opposition to Defendants' Motion for Summary Judgment, accompanied by
14 various documents. On October 24, 2017, Defendants filed a Reply to
15 Plaintiff's Opposition.

16
17 **DEFENDANTS' MOTION TO FILE A FIRST AMENDED ANSWER**
18

19 Rule 15(a)(2) of the Federal Rule of Civil Procedure provides
20 that a court "should freely give leave" to amend a pleading "when
21 justice so requires. "This policy is to be applied with extreme
22 liberality." C.F. ex rel. Farnan v. Capistrano United School Dist.,
23 654 F.3d 975, 985 (9th Cir. 2011), cert. denied, 565 U.S. 1200 (2012)
24 (citations and internal quotations omitted; affirming order permitting
25

26
27 ³ In light of the passage of time, the Court's receipt
28 for filing of Plaintiff's opposition to the motion for summary
judgment, and the Court's consideration of the opposition, this
"Ex Parte Request" should be denied as moot.

1 amendment of answer). Defendants seek to amend the Answer to plead
2 denials to certain claims due to an asserted lack of clarity in the
3 Report and Recommendation with respect to the claims Defendants were
4 required to answer. Defendants have not previously amended the
5 Answer, there is no indication that amendment would be futile, and
6 there is no showing of undue delay, bad faith, dilatory motive or
7 undue prejudice to Plaintiff. See id. Accordingly, the Motion to
8 File a First Amended Answer should be granted.

9
10 **STANDARDS GOVERNING MOTION FOR SUMMARY JUDGMENT**

11
12 Summary judgment is appropriate if the evidence, viewed in the
13 light most favorable to the nonmoving party, demonstrates that there
14 is no genuine issue of material fact and that the moving party is
15 entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The
16 party moving for summary judgment bears the initial burden of offering
17 proof of the absence of any genuine issue of material fact. Celotex
18 Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the moving party's
19 burden is met, the party opposing the motion is required to go beyond
20 the pleadings and, by the party's own affidavits or by other evidence,
21 designate "specific facts showing that there is a genuine issue for
22 trial." Fed. R. Civ. P. 56(e); Miller v. Glenn Miller Productions,
23 Inc., 454 F.3d 975, 987 (9th Cir. 2006). The party opposing the
24 motion must submit evidence sufficient to establish the elements that
25 are essential to that party's case, and for which that party will bear
26 the burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. at
27 322.

28 ///

1 The Court must "view the facts in the light most favorable to the
2 non-moving party and draw reasonable inferences in favor of that
3 party." Scheuring v. Traylor Bros., Inc., 476 F.3d 781, 784 (9th Cir.
4 2007). Where different ultimate inferences reasonably can be drawn,
5 summary judgment is inappropriate. Miller v. Glenn Miller
6 Productions, Inc., 454 F.3d at 988. "At the summary judgment stage,
7 the court does not make credibility determinations or weigh
8 conflicting evidence." Porter v. California Dep't of Corrections, 419
9 F.3d 885, 891 (9th Cir. 2005) (citation omitted).

10
11 A factual dispute is "genuine" only if there is a sufficient
12 evidentiary basis upon which a reasonable jury could return a verdict
13 for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S.
14 242, 248 (1986). A factual dispute is "material" only if it might
15 affect the outcome of the lawsuit under governing law. Id.

16
17 "Evidence may be offered 'to support or dispute a fact' on
18 summary judgment only if it could be presented in an admissible form
19 at trial." Southern California Darts Ass'n v. Zaffina, 762 F.3d 921,
20 925-26 (9th Cir. 2014) (citing Fraser v. Goodale, 342 F.3d 1032, 1036-
21 37 (9th Cir. 2003), cert. denied, 541 U.S. 937 (2004)) (internal
22 quotations omitted); see also Fonseca v. Sysco Food Servs. of Arizona,
23 Inc., 374 F.3d 840, 846 (9th Cir. 2004) ("Even the declarations that
24 do contain hearsay are admissible for summary judgment purposes
25 because they 'could be presented in an admissible form at trial.'")
26 (citations omitted). Conclusory statements are insufficient to defeat
27 summary judgment. Comite de Jornaleros de Redondo Beach v. City of
28 Redondo Beach, 657 F.3d 936, 950 n.9 (9th Cir. 2011) (en banc), cert.

1 denied, 565 U.S. 1200 (2012).

2
3 **SUMMARY OF EVIDENCE⁴**
4

5 On April 14, 2000, Plaintiff filed a petition for dissolution of
6 his marriage in the Riverside County Superior Court (Defendants' Ex.
7 1, p. 3). Plaintiff is the father of a minor daughter, born on
8 December 1, 1999 (Defendants' Ex. 11, Requests for Admission No. 58;
9 Defendants' Ex. 12, Responses to Requests for Admission No. 58). More
10 than a decade of state court litigation followed, including litigation
11 concerning the custody of Plaintiff's daughter. Plaintiff represented
12 himself during most of the state court litigation. As of the date of
13 the challenged vexatious litigant bond order, the state court case
14 file comprised twenty-seven volumes (see Defendants' Ex. 2, p. 84).
15

16 On May 7, 2004, Plaintiff's ex-wife (the child's mother), Juvelyn
17 Smith ("Juvelyn"), filed a motion for imposition of a vexatious
18 litigant sanction against Plaintiff (Defendants' Ex. 1, p. 149).
19 Plaintiff filed opposition to the motion (Defendants' Ex. 4). On
20

21 ⁴ Defendants seek judicial notice of the docket and
22 documents filed in the state court family law proceeding.
23 Defendants' request for judicial notice of these documents is
24 granted. See Mir v. Little Company of Mary Hosp., 844 F.2d 646,
649 (9th Cir. 1988) (court may take judicial notice of court
records)

25 Plaintiff has submitted a number of documents relating to
26 Plaintiff's criticism of the actions of his ex-wife, judges,
27 social workers and/or others in connection with dependency and
28 custody proceedings concerning Plaintiff's daughter, most of
which actions allegedly occurred prior to the events at issue in
the present proceeding. Such documents are immaterial to the
issues presented here.

1 July 8, 2004, the court denied the motion without prejudice for
2 failure to effect proper service of the motion, but granted Juvelyn
3 leave to file an amended motion (Defendants' Ex. 1, pp. 166-67, 169;
4 Defendants' Ex. 5). Juvelyn filed an amended motion on July 26, 2004
5 (Defendants' Ex. 1, p. 170; Defendants' Ex. 6). Following a hearing
6 at which Plaintiff was present and argued, the court issued an order
7 on September 9, 2004, declaring Plaintiff a vexatious litigant and
8 "preventing Michael Walden Smith from filing any new litigation in the
9 courts of this state in propria persona without first obtaining leave
10 of the Presiding Judge of the court where the litigation is supposed
11 to be filed" (Defendants' Ex. 1, pp. 173-74; Defendants' Ex. 7). The
12 order further prohibited Plaintiff "from filing any motions/orders to
13 show cause and ex parte filings in this action in propria persona
14 without first obtaining leave of the Presiding Judge" (Defendants' Ex.
15 1, p. 174). The court declined to impose a bond requirement at that
16 time (id., p. 173).

17
18 During a hearing on March 9, 2012, however, the court described
19 the history of Plaintiff's filings during the years of litigation, and
20 the court then ordered that Plaintiff would be required to post a
21 \$25,000 bond before making any further filings with the court
22 (Defendants' Ex. 2, pp. 89-91; Defendants' Ex. 8).

23
24 On June 18, 2012, Juvelyn filed an application for a "move-away"
25 order seeking leave to move to Virginia with the child (Defendants'
26 Ex. 1, p. 92). Although the court initially rejected this application
27 because the application had been filed by an attorney who was not
28 counsel of record, it appears the court subsequently permitted the

1 substitution of counsel and set a hearing on the application for
2 July 10, 2012 (see Defendants' Ex. 2, pp. 92-93).

3
4 On July 3, 2012, Plaintiff submitted for filing a "Notice of
5 Motion/Responsive Declaration, etc.," opposing Juvelyn's application
6 for a "move away" order (id., p. 95; Deposition of Michael Walden
7 Smith, Respondent's Lodgment 13, Ex. 5 thereto; Plaintiff's Ex. 10).
8 The court clerk rejected Plaintiff's document for filing because
9 Plaintiff had not posted a bond as required by the court's March 9,
10 2012 order (Defendants' Ex. 2, p. 95; Declaration of Michael Walden
11 Smith, Respondents' Lodgment 13, Ex. 6 thereto). No other document in
12 the case was rejected for filing due to Plaintiff's failure to satisfy
13 the bond requirement (Deposition of Michael Walden Smith, Defendants'
14 Ex. 13, pp. 59-60).

15
16 Plaintiff appeared at the hearing on July 10, 2012, and presented
17 argument objecting to Juvelyn's request to move the child to Virginia
18 (Defendants' Ex. 9). Over Defendant's objection, the court granted
19 leave for Juvelyn to move the child to Virginia (Defendants' Ex. 2, p.
20 96; Defendants' Ex. 9).

21
22 Thereafter, Plaintiff requested an order vacating the move-away
23 order and the vexatious litigant order, including the bond requirement
24 (Defendants' Ex. 10; Deposition of Michael Walden Smith, Defendants'
25 Ex. 13, at pp. 88-89, Ex. 12 thereto; Plaintiff's Ex. 15). At a
26 hearing on November 16, 2012, the court denied Plaintiff's requests
27 (id.).

28 ///

1 Plaintiff filed a petition for mandate in the California Court of
2 Appeal inter alia challenging the vexatious litigant bond order
3 (Defendants' Ex. 11, Requests for Admission Nos. 32, 33; Defendants'
4 Ex. 12, Responses to Requests for Admission Nos. 32, 33). The Court
5 of Appeal denied the petition, stating that Plaintiff had "failed to
6 make any legally cognizable argument supporting his contentions that
7 the superior court abused its discretion and violated due process in
8 permitting his former spouse to move out of state with their child and
9 that the vexations litigant statute is unconstitutional" (Plaintiff's
10 Ex. 12).

11
12 Plaintiff filed a petition for mandate in the Court of Appeal
13 inter alia challenging the Superior Court's July 10, 2012 orders
14 (Defendants' Ex. 11, Requests for Admission Nos. 41 and 42;
15 Defendants' Ex. 12, Responses to Requests for Admission Nos. 41 and
16 42). The Court of Appeal denied the petition (id.).

17
18 At a hearing before the Superior Court on January 14, 2013,
19 Plaintiff agreed to a stipulation allowing his daughter to live with
20 Juvelyn in Virginia (Defendants' Ex. 2, p. 102). At a hearing on
21 March 18, 2013, Plaintiff again stipulated to allow the child to
22 continue to reside in Virginia (Deposition of Michael Walden Smith,
23 Defendants' Ex. 13, p. 171).

24
25 In November of 2014, at the conclusion of a two-day trial, the
26 Superior Court issued a judgment awarding joint legal custody to
27 Plaintiff and Juvelyn, with physical custody to Juvelyn and visitation
28 to Plaintiff (Defendants' Ex. 2, pp. 139-40; Defendants' Ex. 14).

1 DISCUSSION

2
3 I. As the Court Previously Ruled, Plaintiff's Facial Challenges to
4 the VLS Lack Merit.

5
6 Despite this Court's previous dismissal of Plaintiff's claims
7 asserting facial challenges to the VLS, Plaintiff persists in arguing
8 those claims in his papers opposing summary judgment (see e.g.,
9 "Memorandum of Points and Authorities in Support of Plaintiff's
10 Opposition to Defendants' Motion for Summary Judgment"). As
11 Magistrate Judge Bristow explained in his Report and Recommendation
12 (which the Court adopted), Plaintiff's facial Due Process and Equal
13 Protection claims, his facial claims of alleged overbreadth and
14 vagueness, his claims that the VLS assertedly constitutes a bill of
15 attainder and an ex post facto law and his claims that the VLS
16 purportedly violates "basic fundamental rights" all lack merit. See
17 Wolfe v. George, 486 F.3d 1120, 1124-27 (9th Cir. 2007); see also
18 Pierce v. Cantil-Sakauye, 628 Fed. App'x 548, 549 (9th Cir. 2016).

19
20 II. This Court Lacks Jurisdiction Over Plaintiff's "As Applied"
21 Challenges⁵ to the State Court's Custody and Vexatious Litigant-
22 Related Determinations.

23
24 Under the "Rooker-Feldman" doctrine, a federal district court
25 lacks subject matter jurisdiction to review final state court
26 decisions. See District of Columbia Court of Appeals v. Feldman, 460

27
28

⁵ Plaintiff's "as-applied" challenges include that
alleged in Claim 4.

1 U.S. 462, 476 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413
2 (1923).⁶ The only proper federal court in which to obtain such review
3 is the United States Supreme Court, by petition for writ of
4 certiorari. District of Columbia Court of Appeals v. Feldman, 460
5 U.S. at 476; 28 U.S.C. § 1257. Rooker-Feldman applies to "cases
6 brought by state-court losers complaining of injuries caused by state-
7 court judgments rendered before the district court proceedings
8 commenced and inviting district court review and rejection of those
9 judgments." Exxon Mobil Corp. v. Saudi Basic Industries, Inc., 544
10 U.S. 280, 294 (2005). Rooker-Feldman applies "only when the federal
11 plaintiff both asserts as [his or her] injury legal error or errors by
12 the state court and seeks as [his or her] remedy relief from the state
13 court judgment." Kougasian v. TMSL, Inc., 359 F.3d 1136, 1440-41 (9th
14 Cir. 2004). "This doctrine applies even when the challenge to the
15 state court decision involves federal constitutional issues."
16 Worldwide Church of God v. McNair, 805 F.2d 888, 891 (9th Cir. 1986)
17 (citations omitted). In this Circuit, "[p]roceedings end for Rooker-
18 Feldman purposes when the state courts finally resolve the issue that
19 the federal court plaintiff seeks to relitigate in a federal forum,
20 even if other issues remain pending at the state level." Mothershed
21 v. Justices of Supreme Court, 410 F.3d 602, 604 n.1 (9th Cir. 2005).

22
23 In Wolfe v. Strankman, 392 F.3d 358 (9th Cir. 2004), after the
24 state court rescinded a previously issued VLS prefiling order, the

25 _____
26 ⁶ The Rooker-Feldman doctrine "may be raised at any time
27 by either party or sua sponte by the court." Riding v. Cach LLC,
28 992 F. Supp. 2d 987, 992 (C.D. Cal. 2014). Magistrate Judge
Bristow's Report and Recommendation did not discuss the possible
application of the Rooker-Feldman doctrine.

1 plaintiff filed six pro se lawsuits in the state courts. In federal
2 court, the plaintiff sought only injunctive and declaratory relief
3 against threatened future harm from a potential future application of
4 the VLS to the plaintiff. In those circumstances, the Ninth Circuit
5 held that Rooker-Feldman did not bar the plaintiff's exclusively
6 prospective challenge because the plaintiff thereby was not seeking
7 relief from any state court judgment. Id. at 363-64.⁷

8
9 In the present case, by contrast, Plaintiff's remaining claims
10 that the VLS "as applied" to Plaintiff by the state court purportedly
11 violated the federal and state constitutions clearly challenge the
12 validity of the state court's prior orders imposing a prefiling order,
13 imposing a bond requirement and issuing a judgment concerning child
14 custody, as demonstrated more fully below:

15
16 In the Fourth Amended Complaint, Plaintiff alleges that
17 Judge Couselis' order setting a bond requirement allegedly
18 violated Due Process and "asks the court to make a
19 Declaratory Judgment on this issue and confirm that
20 Plaintiff's rights were violated by the 'administrative
21 actions' of Judge Couselis" (Fourth Amended Complaint, p.
22 10). Plaintiff alleges that "since Judge Couselis had no
23 jurisdiction to make such an order, he was acting without
24 any authority or jurisdiction" (id.). "Plaintiff asks the
25 Court to affirm that this act was outside of his

26
27 ⁷ The Ninth Circuit subsequently upheld judgment on the
28 pleadings against the plaintiff. See Wolfe v. George, 486 F.3d
1120 (9th Cir. 2007).

1 jurisdiction or allow Plaintiff to appeal this particular
2 issue . . ." (id.). "Judge Counelis used the law to
3 separate [Plaintiff] from his daughter unlawfully" (id., p.
4 11). "The Appellate Judges used the VLS law to deny
5 Plaintiff's appeals . . ." (id.). Plaintiff alleges that
6 all of these acts were unconstitutional and asks the Court
7 "to find [Plaintiff's] arguments correct . . ." (id.).
8

9 In the Fourth Amended Complaint's prayer for relief,
10 Plaintiff seeks, inter alia: (1) a declaration that the
11 vexatious litigant order issued against Plaintiff assertedly
12 was unlawful; (2) a declaration that the \$25,000 bond
13 imposed on March 9, 2012 and the rejection of Plaintiff's
14 responsive declaration opposing the application for a move-
15 away order assertedly were unlawful; (3) a declaration that
16 the move-away order was unlawful; and (4) a declaration that
17 various judges' impositions of the VLS on Plaintiff
18 assertedly to deny Plaintiff the ability to file documents
19 and to separate Plaintiff from his child for over two years
20 were unlawful (Fourth Amended Complaint, pp. 12-14).
21

22 In his Opposition to the Motion for Summary Judgment,
23 Plaintiff states: "The Family Law Court under Judge Counelis
24 issued a void order in direct due process violation of
25 Plaintiff's rights, by ordering that the child shall remain
26 in Virginia, when the court order clearly specified the
27 child was to return to the father at the end of summer
28 vacation. Then the Family Court AND the Appellate Court

1 went on to violate father's due process rights further by
2 refusing to adjudicate any of his pleadings (of several
3 types including appeals) to void the unconstitutional and
4 void orders." (Memorandum of Points and Authorities in
5 Support of Plaintiff's Opposition to Defendants' Motion for
6 Summary Judgment, p. 6) (original emphasis).⁸

7
8 In his Opposition to the Motion for Summary Judgment,
9 Plaintiff incorporates arguments contained in Plaintiff's
10 Opposition to Defendants' Amended Answer to Plaintiff's
11 Fourth Amended Complaint (Plaintiff's Opposition to
12 Defendants' Motion for Summary Judgment, ¶ 12 & Ex. Five
13 thereto). Therein, Plaintiff argues that: (1) the superior
14 court allegedly violated Plaintiff's due process rights by
15 granting the move-away order; (2) Plaintiff allegedly
16 suffered injury "at the hands of the Family Law Court under
17 Judge Counelis and the Appellate Court"; and (3) the state
18 court's orders supposedly were void and rendered void all
19 subsequent actions.

20
21 Plaintiff also incorporates arguments contained in
22 Plaintiff's "Rebuttal of Michael Smith to Opposition of

23
24 ⁸ However, at his deposition, Plaintiff testified that:
25 (1) Plaintiff did not recall whether any document other than the
26 responsive declaration to the application for the move-away order
27 was ever rejected for filing for failure to comply with the bond
28 requirement; (2) no one prevented Plaintiff from seeking
permission of the presiding judge to file documents; and
(3) Plaintiff could and did file documents with the permission of
the presiding judge without posting bond (Deposition of Michael
Walden Smith, Respondent's Ex. 13, pp. 57-59).

1 Defendants to Plaintiff's Ex Parte Request for 30-Day
2 Continuance of Discovery, etc." (Plaintiff's Opposition to
3 Defendants' Motion for Summary Judgment, ¶ 12 & Ex. Six
4 thereto). Therein, Plaintiff argues that: (1) the state
5 court which issued the move-away order was "corrupt and
6 refused to obey the law"; (2) the "entire scenario was void
7 from the moment Judge Counelis issued an unconstitutional
8 and unlawful order that [Plaintiff] post a \$25,000 bond";
9 (3) "[the] Family Law Court carried out a rape of this
10 child's best interests by refusing to order the mother to
11 MOVE-BACK to California. . . ."; and (4) Defendants
12 purportedly are blocking Plaintiff's efforts "to accumulate
13 all correct and relevant information to support the claim of
14 the civil rights violation and the mishandling of the cases
15 in the Family Law Courts by misapplying the CCP 391 law."
16

17 Plaintiff further contends his child "should never have
18 been taken from him" (Plaintiff's Opposition to Defendants'
19 Motion for Summary Judgment, p. 4) (emphasis deleted).
20

21 At his deposition, Plaintiff testified inter alia that:
22 (1) the present action "is only about that crooked judge
23 over there and what he did in denying me due process"; and
24 (2) Plaintiff's goal in this action is "to eventually expose
25 the fraud of the family law courts" (Deposition of Michael
26 Walden Smith, Defendants' Ex. 13, pp. 24, 174). Plaintiff
27 advocates the closure of California's family law courts and
28 the restoration of family relations "to its original

1 accepted location, THE CHURCH" ("Declaration of Michael
2 Smith in Support of Opposition to defendants' Motion
3 for Summary Judgment," ¶ 8).⁹
4

5 Thus, it is clear that Plaintiff complains "of injuries caused by
6 state-court judgments rendered before the district court proceedings
7 commenced and invit[es] district court review and rejection of those
8 judgments." See Exxon Mobil Corp. v. Saudi Basic Industries, Inc.,
9 544 U.S. at 294; Scheer v. Kelly, 817 F.3d 1183, 1186 (9th Cir.),
10 cert. denied, 137 S. Ct. 240 (2015) (attorney's as-applied First
11 Amendment, Equal Protection and Due Process challenges to State Bar
12 suspension order barred by Rooker-Feldman); Ignacio v. Judges of the
13 United States Court of Appeals for the Ninth Circuit, 453 F.3d 1160,
14 1165 (9th Cir. 2006) (Rooker-Feldman barred challenges to state
15 court's child custody and vexatious litigant determinations in family
16 law case); compare Morrison v. Peterson, 809 F.3d 1059, 1070 (9th Cir.
17 2015), cert. denied, 136 S. Ct. 2021 (2016) (Rooker-Feldman did not
18 bar the plaintiff's as-applied challenge to statute regarding post-
19 conviction use of DNA where, according to the Circuit, the plaintiff
20 did not seek an order that he be allowed the relief denied to him in
21 state court but rather made a categorical challenge to a defect not
22 apparent on the face of the statute and "not limited to the
23 particulars of [the plaintiff's] situation"). Under Rooker-Feldman,

24
25 ⁹ The Court observes that any request for relief
26 concerning the custody of Plaintiff's daughter will become moot
27 on December 1, 2017, when Plaintiff's daughter turns 18. See
28 Marriage of Jensen, 114 Cal. App. 4th 587, 594-95, 7 Cal. Rptr.
3d 701 (2003) (court lacks jurisdiction to enforce custody order
with respect to a child who has reached the age of 18).

1 this Court lacks jurisdiction to entertain Plaintiff's state law
2 claims as well as Plaintiff's federal law claims. See McDowell v.
3 California, 564 Fed. App'x 296, 296-97 (9th Cir. 2014) (affirming
4 dismissal of state law claims on Rooker-Feldman grounds); Mothershed
5 v. Justices of Supreme Court, 410 F.3d 602, 607-08 (9th Cir. 2005)
6 (same).¹⁰

7
8 **III. Plaintiff Has Not Shown Any Entitlement to Additional Discovery.**

9
10 On January 3, 2017, Magistrate Judge Bristow issued a Case
11 Management and Scheduling Order setting the discovery cut-off to occur
12 six months from the date of the Order. Due to an apparent lack of
13 service of the Order on Plaintiff, Magistrate Judge Bristow issued a
14 Minute Order on February 9, 2017 deeming the six-month discovery
15 period to commence on February 7, 2017. Accordingly, this Minute
16 Order set the discovery cut-off to occur July 7, 2017. On March 3,
17 2017, on the application of Plaintiff, Magistrate Judge Bristow
18 extended the discovery cut-off to August 3, 2017.

19
20 On August 11, 2017, prior to the filing of Defendants' summary
21 judgment motion, Plaintiff filed an "Ex Parte Request to Continue Case
22 30 Days Due to Time Required to Complete Deposition of Chief Justice,

23
24 ¹⁰ In dismissing a family law-related action under the
25 Rooker-Feldman doctrine, another District Court aptly noted "it
26 should be remembered that, in the area of family law, the [United
27 States] Supreme Court has long held that '[t]he whole subject of
28 domestic relations of husband and wife, parent and child, belongs
to the laws of the States and not the laws of the United
States.['] Ex parte Burrus, 136 U.S. 586, 593-94, 10 S. Ct. 850,
34 L. Ed. 500 (1890)." Roselle v. State of Montana, 2008 WL
3914974, at *8 n.5 (D. Mont. Aug. 20, 2008).

1 Obtain Information from Navy Via Subpoena; and Obtain Contact
2 Information of Mediator Ron Woods Via Subpoena" ("Ex Parte Request to
3 Continue Case 30 Days").
4

5 The proposed discovery concerning a Navy subpoena and the
6 mediator's contact information involve the merits of the move-away
7 order, specifically who supposedly was responsible for causing the
8 mother's move to Virginia.¹¹ The proposed discovery is not material
9 to the dispositive issues in the present proceeding.
10

11 With respect to the proposed deposition of Defendant Chief
12 Justice Cantil-Sakauye, Plaintiff alleges that it was only during his
13 own deposition on July 31, 2017 that Plaintiff supposedly first
14 realized why the deposition of the Chief Justice assertedly was "a
15 significant priority in this case, because the Chief Justice is
16 supposed to administer the courts and make sure the judges follow the
17 laws correctly." ("Ex Parte Request to Continue Case 30 Days," p. 5).
18 Plaintiff also alleges that, previously, he lacked funds for
19 deposition costs and only recently reportedly has secured commitments
20 from "volunteers" to pay the deposition fees (id.).

21 ///

22 ///

23
24 ¹¹ Plaintiff seeks a Navy subpoena to "verify who
25 initiated the move of the minor child's mother from San Diego to
26 Norfolk VA with her husband . . . ," to determine whether
27 Plaintiff's ex-wife was attempting to alienate the child from
28 Plaintiff ("Ex Parte Request to Continue Case 30 Days," pp 3-4).
Plaintiff seeks contact information of the mediator who allegedly
"adjudicated the child's mother's first attempt in spring of 2011
to 'move away' the child from California to Norfolk VA. . . ."
(id., p. 4).

1 As of the time Plaintiff filed his Opposition to the Motion for
2 Summary Judgment, Plaintiff apparently had not deposed Defendant
3 Cantil-Sakauye. Plaintiff alleges that the deposition purportedly
4 would show that: (1) the asserted harms to Plaintiff (and other family
5 law litigants) supposedly were the result of Cantil-Sakauye's acts as
6 an administrator; (2) Cantil-Sakauye allegedly did not ensure that the
7 VLS bond requirements "pass the strict scrutiny tests as to the
8 application of [the VLS] in the courts and especially in the Family
9 law Courts"; and (3) the "strict scrutiny tests" purportedly are not
10 being utilized when judges set bonds for VLS litigants ("Plaintiff's
11 Opposition to Defendants' Motion for Summary Judgment," ¶ 34).

12
13 Under Rule 56(d) of the Federal Rules of Civil Procedure, a court
14 may defer consideration of a motion for summary judgment and allow
15 additional time for discovery "[i]f a nonmovant shows by affidavit or
16 declaration that, for specified reasons, it cannot present facts
17 essential to justify its opposition." A district court "should
18 continue a summary judgment motion upon a good faith showing by
19 affidavit that the continuance is needed to obtain facts essential to
20 preclude summary judgment." State of California v. Campbell, 138 F.3d
21 772, 779 (9th Cir.), cert. denied, 525 U.S. 822 (1998). "References
22 in memoranda and declarations to a need for discovery do not qualify
23 as motions under Rule [56(d)]." Id. (citation and internal quotations
24 omitted). Rather, a party seeking a continuance to respond to a
25 summary judgment motion must submit an affidavit setting forth "the
26 particular facts expected from further discovery" (id.). "Failure to
27 comply with these requirements is a proper ground for denying relief."
28 United States v. Kitsap Phys. Serv., 314 F.3d 995, 1000 (9th Cir.

1 2002) (citations omitted).

2
3 Here, Plaintiff fails to identify any "essential" evidence which
4 Plaintiff does not already possess and which would bear on the
5 dispositive issues in the present proceeding. Plaintiff's speculation
6 concerning what information he might elicit is insufficient. See
7 Maljack Productions, Inc. v. GoodTimes Home Video Corp., 81 F.3d 881,
8 888 (9th Cir. 1996). Moreover, Plaintiff appears to seek to elicit
9 deposition testimony concerning the facial challenges to the VLS which
10 previously were dismissed and which are foreclosed by Ninth Circuit
11 law. See Wolfe v. George, 486 F.3d 1120, 1124-27 (9th Cir. 2007). In
12 such circumstances, granting a continuance for the purpose of
13 permitting Plaintiff to depose Defendant Cantil-Sakauye would be an
14 idle act. See Maljack Productions, Inc. v. GoodTimes Home Video
15 Corp., 81 F.3d at 887-888 (motion to pursue additional discovery
16 properly denied where nonmoving party "listed a number of facts that,
17 even if established, would not have precluded summary judgment");
18 Qualls v. Blue Cross of California, Inc., 22 F.3d 839, 844 (9th Cir.
19 1994) (district court did not abuse discretion in denying motion where
20 "the information sought by [the party opposing summary judgment] would
21 not have shed light on any of the issues upon which the summary
22 judgment decision was based"). Therefore, Plaintiff's "Ex Parte
23 Request to Continue Case 30 Days, etc." should be denied.

24 ///

25 ///

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28 ///

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.

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