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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MICHAEL SMITH,

Plaintiff,

v.

CALIFORNIA JUDICIAL
COUNCIL,

TANI CANTIL-SAKAUYE
(Chief Justice of California
Supreme Court, Acting as Chair
of Judicial Council) in official
capacity,

STEVEN JAHR (Former Admin.
Director of the Admin. Office of
the Courts) in official capacity,

MARTIN N. HOSHINO (Current
admin. Director of the Admin.
Office of the Courts) in official
capacity, and

HON. JUDGE STEVEN
COUNELIS (Family Law
Superior Court Judge) in official
capacity,

Defendants.

) **Case No. ED CV 14-01413-VBF (DTB)**
) **ORDER**
) **Overruling Plaintiff’s Objections;**
) **Adopting Report & Recommendation;**
) **Granting in Part & Denying in Part**
) **Document #61** (Defendants’ Motion to
) Dismiss the Fourth Amended Complaint);
) **Dismissing Claims 3, 5, 6, 7, and 10**
) **With Prejudice;**

Dismissing Portion of Claims 1 and 2;

Directing Defendants Cantil-Sakauye and
Hoshino to Answer Surviving Portion of
Claims 1 and 2 by November 23, 2016
and Permitting Plaintiff to Reply by
Thursday, December 22, 2016

Pursuant to 28 U.S.C. § 636(b)(1), the Court has reviewed Michael Smith’s
Fourth Amended Complaint (Case Management / Electronic Case Filing System

1 Document (“Doc”) 54), plaintiff’s supporting declarations and supporting memoranda
2 of law (Docs 55-58), the defendants’ motion to dismiss and accompanying
3 memorandum (Doc 61), plaintiff’s brief opposing the motion to dismiss (Doc 73) and
4 accompanying declarations and requests for judicial notice (Docs 71-72 and 74-76),
5 the Report and Recommendation (“R&R”) issued by the United States Magistrate
6 Judge pursuant to Fed. R. Civ. P. 72(b)(1) and 28 U.S.C. § 636(b)(1)(B) on
7 September 7, 2016 (Doc 85), plaintiff’s objections to the R&R filed October 11, 2016
8 (Doc 91), and the applicable law.

9 “Federal Rule of Civil Procedure 72(b)(2) g[ives] respondent a right to respond
10 to the objections”, *Ruelas v. Muniz*, No. SA CV 14-01761, 2016 WL 540769, *1
11 (C.D. Cal. Feb. 9, 2016) (Fairbank, J.), and that time has not yet elapsed. Given that
12 the Court is overruling plaintiff’s objections, however, defendants cannot be
13 prejudiced by the Court declining to wait for defendants’ possible response thereto.

14 “As required by Fed. R. Civ. P. 72(b)(3), the Court has engaged in de novo
15 review of the portions of the R&R to which p[laintiff] has specifically objected and
16 finds no defect of law, fact, or logic in the . . . R&R.” *Rael v. Foulk*, No. LA CV
17 14-02987, 2015 WL 4111295, *1 (C.D. Cal. July 7, 2015), *COA denied*, No.
18 15-56205 (9th Cir. Feb. 18, 2016).

19 “The Court finds discussion of [plaintiff]’s objections to be unnecessary on this
20 record. The [Federal] Magistrates Act ‘merely requires the district judge to make a
21 de novo determination of those portions of the report or specified proposed findings
22 or recommendation to which objection is made.’” It does not require the district
23 judge to provide a written explanation of the reasons for rejecting objections. *See*
24 *MacKenzie v. California AG*, No. SA CV 12-00432, 2016 WL 5339566, *1 (C.D.
25 Cal. Sept. 21, 2016) (Fairbank, J.) (quoting *United States ex rel. Walterspiel v. Bayer*
26 *AG*, 639 F. App’x 164, 168-69 (4th Cir.) (per curiam) (“The district court complied
27 with this requirement. Accordingly, we find no procedural error in the district court’s
28 decision not to address specifically Walterspiel’s objections.”), *cert. denied*, – U.S.

1 – , – S. Ct. –, 2016 WL 3552734 (Oct. 3, 2016) (No. 16-8)) (brackets & internal
2 quotation marks omitted). This is particularly true where, as here, the objections are
3 plainly unavailing.

4 Accordingly, the Court will overrule the objections, accept the Magistrate’s
5 factual findings and legal conclusions, and implement his recommendations.

6
7 IT THEREFORE IS ORDERED as follows:

8 Plaintiff’s objection [**Doc #91**] is **OVERRULED**.

9 The Report and Recommendation [**Doc #85**] is **ADOPTED**.

10
11 Defendants’ motion to dismiss the complaint [**Doc #61**] is **GRANTED in part**
12 **and DENIED in part as follows:**

13 – Defendants’ Motion to Dismiss Claims 1 and 2 to the extent that those claims
14 challenge the Vexatious Litigant Statute as applied to plaintiff is **DENIED**.

15
16 – Defendants’ motion to dismiss the due process and equal protection challenges
17 in Claims 1 and 2 to the extent that they challenge the Vexatious Litigant
18 Statute as applied to all family court litigants is **GRANTED**.

19
20 – Defendants’ motion to dismiss Claims 3, 5, 6, 7, and 10, is **GRANTED**.
21 Claims 3, 5, 6, 7, and 10 are **DISMISSED with prejudice**.

22
23 All claims against California Judicial Council are dismissed without prejudice.

24
25 All claims against “Steven Jahr (Former Administrative Director of the
26 Administrative Office of the Courts)” are dismissed without prejudice.

27
28 No later than Wednesday, November 23, 2016, defendants Tani Cantil-

1 Sakauye and Martin N. Hoshino **SHALL FILE** an Answer to the remaining portion
2 of Claims 1 and 2 of the Fourth Amended Complaint.

3 No later than Thursday, December 22, 2016, plaintiff **MAY FILE** a reply.
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5 Dated: Monday, October 17, 2016
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7 VALERIE BAKER FAIRBANK
8 Senior United States District Judge
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