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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**
) **Adopting Report & Recommendation**
) **Without Objection;**
) **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 document entitled “Notice of Objection to the
8 Report and Recommendation” filed October 11, 2016 (Doc 91), and the applicable
9 law.

10 For their part, the defendants have not filed objections to the R&R, and the
11 time for them to do so has elapsed.

12 Federal Rule of Civil Procedure 72(b)(2) gives defendants a right to respond
13 to objections, *Ruelas v. Muniz*, No. SA CV 14-01761, 2016 WL 540769, *1 (C.D.
14 Cal. Feb. 9, 2016) (Fairbank, J.), but there would be no point in waiting for
15 defendants’ response time to elapse here. Although entitled “Notice of Objection to
16 the Report and Recommendation”, plaintiff states in the document that he has no
17 objection to the R&R. Accordingly, the Court will accept the Magistrate’s factual
18 findings and legal conclusions and implement his recommendations.

19
20 IT THEREFORE IS ORDERED as follows:

21 The Report and Recommendation [**Doc #85**] is **ADOPTED** without objection.

22
23 Defendants’ motion to dismiss the complaint [**Doc #61**] is **GRANTED in part**
24 **and DENIED in part as follows:**

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

27
28 – Defendants’ motion to dismiss the due process and equal protection challenges

1 in Claims 1 and 2 to the extent that they challenge the Vexatious Litigant
2 Statute as applied to all family court litigants is **GRANTED**.

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

6
7 All claims against California Judicial Council are dismissed without prejudice.

8
9 All claims against “Steven Jahr (Former Administrative Director of the
10 Administrative Office of the Courts)” are dismissed without prejudice.

11
12 No later than Wednesday, November 23, 2016, defendants Tani Cantil-
13 Sakauye and Martin N. Hoshino **SHALL FILE** an Answer to the remaining portion
14 of Claims 1 and 2 of the Fourth Amended Complaint.

15 No later than Thursday, December 22, 2016, plaintiff **MAY FILE** a reply.

16
17 Dated: Monday, October 17, 2016



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20 VALERIE BAKER FAIRBANK
Senior United States District Judge