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7 UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF CALIFORNIA
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10 NABIL SAMAAAN,

11 Plaintiff,

12 v.

13 SCOTT R. JONES,

14 Defendant.
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Case No. 2:16-cv-00789-KJM-CKD

ORDER

16 Defendant Scott Jones moves in limine to strike plaintiff Nabil Samaan's jury
17 demand under Federal Rule of Civil Procedure 39. Mot., ECF No. 76. Jones also requests the
18 court empanel an advisory jury to try any factual issues remaining for trial. Mot. at 3. Plaintiff
19 filed no response to Jones's motion. As explained below, the motion to strike is GRANTED,
20 though the request for an advisory jury is DENIED.

21 Jones argues the court should strike plaintiff's jury demand because the Seventh
22 Amendment right to a jury trial does not apply to equitable claims including plaintiff's First
23 Amendment retaliation claim against Jones in his official capacity arising from emails sent in
24 2013, which is the only claim proceeding to trial in this matter. Mot. at 1–2; *see* Summ.
25 Judgment Order, ECF No. 69, at 22 (granting defendants' summary judgment motion as to all of
26 plaintiff's claims other than his First Amendment retaliation claim arising out of 2013 emails).
27 Jones asserts plaintiff seeks only injunctive relief on this claim and, regardless, injunctive relief is
28 the only form of relief available given that Jones is entitled to sovereign immunity. Mot. at 2

1 (citing *Students for a Conservative Am. v. Greenwood*, 378 F.3d 1129, 1130 (9th Cir.), *amended*,
2 391 F.3d 978 (9th Cir. 2004), and *Taylor v. Westly*, 402 F.3d 924, 929–30 (9th Cir. 2005)).

3 The Seventh Amendment to the United States Constitution guarantees the right to
4 a trial by jury for “[s]uits at common law.” U.S. Const. amend. VII. “Suits at common law” are
5 those “in which *legal* rights were to be ascertained and determined, in contradistinction to those
6 where equitable rights alone were recognized, and equitable remedies were administered.” *City*
7 *of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 708 (1999) (quoting *Parsons v.*
8 *Bedford*, 3 Pet. 433, 447 (1830) (emphasis original)). Federal Rule of Civil Procedure 39
9 provides that when a party has made a demand for a jury trial, the trial must be by jury unless the
10 parties stipulate to a nonjury trial or the court determines no right to a jury trial applies. Fed. R.
11 Civ. P. 39(a)(1)–(2).

12 While a “[42 U.S.C.] § 1983 suit seeking legal relief is an action at law within the
13 meaning of the Seventh Amendment,” the Seventh Amendment right to a jury trial does not apply
14 to suits, including claims made under § 1983, seeking only injunctive relief. *City of Monterey*,
15 526 U.S. at 709, 719; *see also Dollar Sys., Inc. v. Avcar Leasing Sys., Inc.*, 890 F.2d 165, 170 (9th
16 Cir. 1989) (“The [S]eventh [A]mendment preserves the right to trial by jury of all legal claims,”
17 but “no right to a jury trial exists” for equitable claims). Here, the only potential relief available
18 for plaintiff’s § 1983 claim is injunctive relief because Jones is sued in his official capacity as a
19 state officer. *Papasan v. Allain*, 478 U.S. 265, 278 (1986) (compensatory relief barred in actions
20 against state officers in their official capacity); *see also* Summ. Judgment Order at 11 (Jones sued
21 in his official capacity). Therefore, plaintiff has no federal right to a jury trial on his First
22 Amendment retaliation claim against Jones. Accordingly, the court GRANTS defendant Jones’s
23 motion and strikes plaintiff’s jury demand.

24 In addition to seeking to strike plaintiff’s jury demand, Jones consents to and
25 requests the court empanel an advisory jury to try any factual issues related to the claims
26 remaining for trial. Mot. at 3. Rule 39 of the Federal Rules of Civil Procedure provides that in an
27 action not triable of right by a jury, a court, on motion or on its own, “may try an issue with an
28 advisory jury.” Fed. R. Civ. P. 39(c)(1). If a court empanels an advisory jury, it must “find the

1 facts specially and state its conclusions of law separately.” Fed. R. Civ. P. 52(a)(1). An advisory
2 jury verdict does not bind a court. *See Traxler v. Multnomah Cty.*, 596 F.3d 1007, 1013 (9th Cir.
3 2010).

4 Jones argues the court should empanel an advisory jury because the court denied
5 summary judgment on plaintiff’s First Amendment retaliation claim based in part on the need for
6 a credibility determination as to the true reason for Jones’s decision to revoke plaintiff’s permit to
7 carry a concealed weapon, and “[c]redibility determinations . . . are jury functions, not those of a
8 judge.” Mot. at 3 (quoting *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150
9 (2000)); *see also* Summ. Judgment Order at 16 (explaining the court’s reasoning in denying
10 summary judgment as to Jones). Jones has not justified the additional time and expense
11 associated with empaneling an advisory jury in this case. “[E]mpaneling an advisory jury to
12 render factual determinations in a trial with a single equitable claim for relief does not promote
13 judicial economy.” *Freeman v. U.S. Bank, N.A.*, No. 2:10-CV-01544 RSM, 2014 WL 969642,
14 at *4 (W.D. Wash. Mar. 12, 2014). Even if empaneled, the factual determinations of an advisory
15 jury will not be binding on the court. *See Ashland v. Ling-Temco-Vought, Inc.*, 711 F.2d 1431,
16 1438 (9th Cir. 1983). Empaneling an advisory jury would burden the court, the parties and
17 potential jurors by requiring citizen jurors to commit time and resources to sit on a jury when
18 their ultimate factual determinations would be neither binding nor essential.

19 The court GRANTS defendant Scott Jones’s motion to strike plaintiff Nabil
20 Samaan’s jury demand and DECLINES to empanel an advisory jury in this case.

21 IT IS SO ORDERED.

22 DATED: May 4, 2019.

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25 UNITED STATES DISTRICT JUDGE
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