

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KEVIN DANIEL QUILLINAN,
Plaintiff,
v.
RUSSELL AINSWORTH, et al.,
Defendants.

Case No. [4:17-cv-00077-KAW](#)

**ORDER DENYING MOTION FOR
SANCTIONS AND REQUEST TO
DECLARE PLAINTIFF VEXATIOUS**

Re: Dkt. No. 90

On March 28, 2018, Defendants filed a second motion for sanctions and requested that Plaintiff Kevin Quillinan be declared a vexatious litigant. (Defs.’ Mot., Dkt. No. 90.)

For the reasons set forth below, the undersigned DENIES the second motion for sanctions.

I. PROCEDURAL BACKGROUND

On August 10, 2017, Defendants filed a motion for sanctions and requested that Plaintiff Kevin Quillinan be declared a vexatious litigant. (Dkt. No. 50.) On October 5, 2018, while the undersigned found it plausible that Plaintiff’s pre-filing behavior could be grounds for Rule 11 sanctions, the civil Racketeer Influenced and Corrupt Organizations Act (“RICO”) statute, 18 U.S.C. § 1961 *et seq.*, is a complicated one, so the Court declined to impose sanctions. (Dkt. No. 76 at 2.) Instead, in an order filed concurrently, the Court dismissed the case with prejudice against all defendants in lieu of granting leave to amend. (Dkt. No. 75; *see* Dkt. No. 76 at 2.) The undersigned similarly denied Defendants’ request to declare Plaintiff vexatious, because Defendants failed to provide sufficient information on the prior cases filed “to support the conclusion that Plaintiff’s filings are so numerous or abusive that they should be enjoined.” (Dkt. No. 76 at 3.) Indeed, the undersigned noted “that additional [case] information could have resulted in a different outcome, so Plaintiff is advised to be more discerning in filing lawsuits going

1 forward.” *Id.* On October 5, 2017, the Court entered judgment against Plaintiff. (Dkt. No. 77.)

2 On November 15, 2017, Defendants appealed the order denying the motion for sanctions
3 and request to declare Plaintiff vexatious. (Dkt. No. 82.) On February 27, 2018, the Ninth Circuit
4 *sua sponte* vacated the judgment and October 5, 2017 order on the motions to dismiss and
5 remanded the case for further proceedings in light of its recent ruling in *Williams v. King*, 875
6 F.3d 500, 503-504 (9th Cir. 2017), which required that all parties, including unserved defendants,
7 consent in order for jurisdiction to vest with the magistrate judge pursuant to 28 U.S.C §
8 636(c)(1). (Dkt. No. 85.) The Ninth Circuit’s order vacating judgment and remanding the case for
9 further proceedings also included the case number for Defendants’ appellate case. *Id.* While the
10 Ninth Circuit’s order referenced the October 5, 2017 order, of which there were two, a motion for
11 sanctions does not require the consent of all parties, so the undersigned assumed that the Ninth
12 Circuit was only vacating the order granting the motion to dismiss. (*See* Dkt. No. 86 at 3 n. 4.)

13 On March 14, 2018, the undersigned issued a report and recommendation to grant the
14 motions to dismiss with prejudice and reassigned the case to a district judge. (Dkt. No. 86.) The
15 case was reassigned to the Honorable Sandra Brown Armstrong. (Dkt. No. 87.)

16 On March 28, 2018, Defendants filed another motion for sanctions. (Defs.’ Mot., Dkt. No.
17 90.) On April 11, 2018, Plaintiff filed a corrected opposition. (Pl.’s Opp’n, Dkt. No. 96.) On April
18 18, 2018, Defendants filed a reply. (Defs.’ Reply, Dkt. No. 98.)

19 On April 11, 2018, the district court issued an order to show cause to Plaintiff regarding
20 the dismissal of the unserved defendants. (Dkt. No. 97.) The district court noted that, despite the
21 undersigned’s deadline of July 10, 2017 to complete service, Plaintiff had failed to effectuate
22 service on 44 defendants. *Id.* The district court, therefore, ordered Plaintiff to show cause why the
23 unserved defendants should not be dismissed from the action without prejudice pursuant to
24 Federal Rule of Civil Procedure 4(m). *Id.* On April 24, 2018, after Plaintiff failed to timely
25 respond to the order to show cause, the district court issued an order dismissing the unserved
26 defendants without prejudice. (Dkt. No. 99.) On April 25, 2018, since all remaining parties had
27 consented to magistrate judge jurisdiction, the district court reassigned the case back to the
28 undersigned for all purposes. (Dkt. No. 100.)

