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3 UNITED STATES DISTRICT COURT
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA
5 OAKLAND DIVISION

6 JEREMY KEE,

7 Plaintiff,

8 vs.

9 WHITNEY ANN LOVEJOY HINES and
10 ALEX HINES,

11 Defendants.

Case No: C 17-3780 SBA

ORDER OF DISMISSAL

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14 Plaintiff Jeremy Kee filed the instant pro se action and request to proceed in forma
15 pauperis (“IFP”) under 28 U.S.C. § 1915 in this Court against his ex-wife, Whitney Ann
16 Lovejoy Hines (“Whitney”), and her current husband, Alex Hines (“Alex”), alleging claims
17 for declaratory relief and interference with his custodial and parental rights. Magistrate
18 Judge Laurel Beeler (“Magistrate”) has issued a Report and Recommendation (“R&R”)
19 which recommends the dismissal of the action for lack of subject matter jurisdiction.
20 Plaintiff has filed objections to the R&R. Having read and considered the papers filed in
21 connection with this matter and being fully informed, the Court hereby OVERRULES
22 Plaintiff’s objections, ACCEPTS the R&R, and DISMISSES the instant action, without
23 prejudice.

24 **I. BACKGROUND**

25 The instant action arises from a child support and custody matter involving Plaintiff
26 and Whitney’s minor child, JT. Plaintiff claims that, in the summer of 2013, Whitney
27 authorized him to have custody of JT. Compl. ¶ 10, Dkt. 1. At some point, a Utah court
28 ordered Plaintiff, under threat of contempt, to return JT to Whitney in Utah. Id. ¶ 12.

1 Plaintiff complied. However, Whitney told Plaintiff she no longer wanted to care for JT
2 and returned him to live with Plaintiff in California. Id. ¶¶ 14, 19. Despite the fact that
3 Whitney allegedly relinquished custody of JT to Plaintiff, and notwithstanding Plaintiff’s
4 “de facto” parent status, Plaintiff asserts that the State of Utah has continued to pursue child
5 support from him. Id. ¶ 7. Unlike Utah, however, California allegedly has recognized
6 Plaintiff’s de facto parent status and refused Utah’s efforts to collect past due child support
7 from him. Id. ¶ 2. Based on the “conflicting” decisions by California and Utah regarding
8 his child support obligations, Plaintiff seeks a judicial decree, inter alia, declaring his child
9 support obligations “null and void.” Id. ¶ 29.

10 On June 30, 2017, Plaintiff filed a Complaint in this Court alleging two claims
11 against Defendants (1) under the Declaratory Judgment Act, 28 U.S.C. § 2201, and (2) for
12 “interference with custody & parental rights.” The pleadings alleged subject matter
13 jurisdiction based on federal question and diversity jurisdiction. See 28 U.S.C §§ 1331,
14 1332. The Magistrate granted Plaintiff’s request to proceed IFP, but found that Plaintiff
15 had neither alleged any federal claims nor alleged facts sufficient to establish diversity
16 jurisdiction. She dismissed the Complaint with leave to amend. Dkt. 10.

17 On August 23, 2017, Plaintiff filed a First Amended Complaint (“FAC”), which
18 alleged the same claims as before. The Magistrate found that federal question jurisdiction
19 was lacking because the federal declaratory relief claims failed to allege an independent
20 basis of jurisdiction.¹ Similarly, she found that the Court lacked subject matter jurisdiction,
21 pursuant to the domestic relations exception, which divests the federal courts of jurisdiction
22 to resolve disputes involving custody and support decrees. See Ankenbrandt v. Richards,
23 504 U.S. 689, 702-703 (1992); see Thompson v. Thompson, 798 F.2d 1547, 1562 (9th Cir.
24 1986), aff’d, 484 U.S. 174 (1988). In the FAC, Plaintiff’s primary allegations were that
25 Whitney had attempted to interfere with his de facto parental rights, and was “fraudulently”
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28 ¹ The Declaratory Judgment Act does not provide an independent basis for subject
matter jurisdiction. Skelly Oil Co. v. Phillips Petroleum Co., 339 U.S. 667, 671-72 (1950).

1 attempting to collect child support from him. Id. at 5-6.² As such, the Magistrate dismissed
2 the FAC with leave to amend.

3 On October 10, 2017, Plaintiff filed a Second Amended Complaint (“SAC”), which
4 again included a federal declaratory judgment claim, but added a claim for intentional
5 infliction of emotional distress (“IIED”). On November 30, 2017, the Magistrate issued an
6 order which found that Plaintiff had not rectified the previously-identified deficiencies that
7 led to the dismissal of the two prior complaints. Dkt. 20. As to the new IIED claim, the
8 Magistrate ruled that the Court lacks jurisdiction over such claim because, as before, it
9 arises primarily from Plaintiff’s custody dispute. Finally, the Magistrate concluded that
10 Plaintiff had failed to allege facts to support his contention that Utah and California
11 imposed conflicting obligations. Dkt. 20 at 6-7. Based on the foregoing findings, the
12 Magistrate’s R&R recommends the reassignment of the action to a district judge and the
13 dismissal of the SAC under 28 U.S.C. § 1915(e)(2)(B). Dkt. 20 at 7. On December 18,
14 2017, Plaintiff filed objections to the Magistrate’s recommendations.³ Dkt. 23.

15 **II. LEGAL STANDARD**

16 The district court must review de novo “those portions of the report or specified
17 proposed findings or recommendations to which objection is made.” Fed. R. Civ. P.
18 72(b)(1); see United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003) (holding
19 that “[28 U.S.C. 636(b)(1) (c)] makes it clear that the district judge must review the
20 magistrate judge’s findings and recommendations de novo *if objection is made*, but not
21 otherwise”) (emphasis in original); Holder v. Holder, 392 F.3d 1009, 1022 (9th Cir. 2004).

23 ² The FAC also alleged that the Court must resolve “inconsistent and contradictory
24 State Court rulings ... in accordance with the Federal Child Welfare Act.” Dkt. 13 at 6
25 (citing FAC ¶ 40). It is unclear whether Plaintiff’s reference to “Federal Child Welfare
26 Act” was intended to refer to the Indian Child Welfare Act of 1978, 25 U.S.C. § 1901 et
seq. In any event, the Magistrate noted that there were no facts regarding any conflicting
state court decisions. Id.

27 ³ The accompanying envelope indicates a postmark of December 14, 2017. For
28 purposes of this Order, the Court will construe Plaintiff’s objections as timely. See Fed. R.
Civ. P. 6(d) (deadline to act extended by three days when service by clerk is accomplished
by mail).

1 Factual findings are reviewed for clear error. Quinn v. Robinson, 783 F.2d 776, 791 (9th
2 Cir. 1986). The Court may “accept, reject, or modify, in whole or in part, the findings or
3 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1).

4 **III. DISCUSSION**

5 Plaintiff complains that the Magistrate erred in finding there were no facts
6 demonstrating conflicting legal obligations imposed by Utah and California. Though not
7 entirely clear, it appears that Plaintiff may be attempting to rely on the Parental Kidnapping
8 Prevention Act (“PKPA”), 28 U.S.C. § 1738A, which imposes a duty on the states to
9 enforce a child custody determination entered by a court of a sister state if the
10 determination is consistent with the provisions of the Act. Thompson v. Thompson, 484
11 U.S. 174, 175-76 (1988). All states must accord full faith and credit to the first state’s
12 ensuing custody decree. Id. at 177. The PKPA, however, does not create a private cause
13 of action to determine which of two conflicting state custody decrees is valid. Id. at 187.

14 The above notwithstanding, the SAC and its supporting exhibits (i.e., Exhibits A
15 through C to the SAC) fail to support Plaintiff’s contention that he is subject to conflicting
16 custody or support orders. Exhibit A appears to be a statement from Utah’s Office of
17 Recovery indicating “past-due support” in the amount of \$50,136.38. Exhibit B is a “Good
18 Cause Notification to District Attorney Exception to California Penal Code 278.5” issued
19 by the Sonoma County District Attorney’s Office. California Penal Code § 278.5 makes
20 parental abduction either a felony or misdemeanor. The notice appears to be a form
21 document that Plaintiff countersigned and acknowledged receiving. Exhibit C is a copy of
22 a letter from the Sonoma County Department of Child Support addressed to Plaintiff,
23 asking him to provide notarized documents to support its request to the State of Utah to
24 “help [it] establish child support and health insurance for [his] child.” Notably, none of the
25 documents even remotely supports Plaintiff’s assertion that California and Utah have
26 imposed conflicting support orders, let alone conflicting custody orders.

27 In sum, the Court has afforded Plaintiff notice of the deficiencies of his pleadings
28 and multiple opportunities to cure them. The Court concludes that the Magistrate’s

1 recommendation to dismiss the SAC is appropriate and that no further leave to amend is
2 warranted. Telesaurus VPC, LLC v. Power, 623 F.3d 998, 1003 (9th Cir. 2010) (“A district
3 court may deny a plaintiff leave to amend if it determines that allegation of other facts
4 consistent with the challenged pleading could not possibly cure the deficiency . . . , or if the
5 plaintiff had several opportunities to amend its complaint and repeatedly failed to cure
6 deficiencies.”) (internal quotations and citations omitted).

7 **IV. CONCLUSION**

8 For the reasons set forth above,

9 IT IS HEREBY ORDERED THAT the Plaintiff’s objections to the R&R are
10 OVERRULED. The Court ACCEPTS the Magistrate’s R&R, which shall become the
11 Order of the Court. Therefore, the Court dismisses the instant action without prejudice to
12 Plaintiff’s ability to present his claims in a paid complaint. Any appeal taken from this
13 ruling will not be in good faith within the meaning of 28 U.S.C. § 1915(a)(3).

14 IT IS SO ORDERED.

15 Dated: 2/8/2018


SAUNDRA BROWN ARMSTRONG
Senior United States District Judge

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