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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

AARON RAISER,  
Plaintiff,  
  
v.  
  
CHIEF JUSTICE TANI G. CANTIL-  
SAKAUYE, et al.,  
Defendants.

Case No.: 15cv1145 BTM(DHB)

**ORDER GRANTING MOTIONS  
TO DISMISS AND DENYING  
MOTION FOR PRELIMINARY  
INJUNCTION**

Plaintiff has filed a motion for preliminary injunction. Defendants Hon. Tani G. Cantil-Sakauye and Hon. Timothy Casserly have filed motions to dismiss. For the reasons discussed below, Defendants’ motions to dismiss are **GRANTED** and Plaintiff’s motion for preliminary injunction is **DENIED**.

**I. BACKGROUND**

This action arises out of a medical malpractice action, Raiser v. Tri-City Medical Center, et al., Case No. 37-2013-00070368-CU-MM-NC, filed by Plaintiff

1 in the Superior Court of California, County of San Diego, in October 2013. In his  
2 state court complaint, Plaintiff alleged that he suffered injury in connection with a  
3 CAT scan performed on his abdomen at Tri-City Medical Center's emergency  
4 room.

5 On December, 19, 2014, the defendants in the state case filed a motion to  
6 designate Plaintiff a vexatious litigant under California's Vexatious Litigant Statute  
7 ("VLS"), Cal. Civ. Proc. Code §§ 391, et seq., obtain a prefiling order, and obtain  
8 an order requiring Plaintiff to furnish security.

9 On May 2, 2015, before the state court ruled on the motion, Plaintiff  
10 commenced this action. Plaintiff alleges that the VLS as well as Cal. Civ. Proc.  
11 Code § 1013a, which does not allow a party to an action to sign a proof of service  
12 by mail, are unconstitutional. Plaintiff seeks declaratory relief regarding the alleged  
13 unconstitutionality of the statutes and also seeks injunctive relief. Plaintiff asks  
14 that the Court enjoin: (1) Chief Justice Cantil-Sakauye from placing Plaintiff's  
15 name on any vexatious litigant list or placing conditions on Plaintiff due to him  
16 having been found a "vexatious litigant"; (2) an "unknown court services analyst"  
17 employed by the California Judicial Council from placing Plaintiff's name on any  
18 vexatious litigant list; (3) an "unknown clerk" at the San Diego County Superior  
19 Court to allow Plaintiff to serve his own court papers and sign his own proofs of  
20 service; and (4) Judge Timothy Casserly, the judge assigned to Plaintiff's state

1 case, from denying Plaintiff access to the court due to being classified as  
2 “vexatious,” from requiring that Plaintiff pay a bond under the VLS, and from  
3 holding any hearings regarding whether Plaintiff is a vexatious litigant.

4 On June 4, 2015, Judge Casserly granted the defendants’ motion to declare  
5 Plaintiff a vexatious litigant. (Def. RJN in Opp. to Mot. for Prelim. Inj., Ex. B.) Judge  
6 Casserly ordered that Plaintiff furnish security on or before June 23, 2015, as a  
7 condition to being allowed to proceed with the action. Judge Casserly also entered  
8 a prefiling order, barring Plaintiff from filing any new litigation in the courts of  
9 California without approval of the presiding justice or judge of the court in which  
10 the action is to be filed.

11 On July 3, 2015, Plaintiff filed a “Notice of Appeal; Request for Permission to  
12 Appeal,” challenging Judge Casserly’s order. (Def. RJN in Opp. to Mot. for Prelim.  
13 Inj., Ex. G.) In the Notice, Plaintiff explained, “The trial judge never considered the  
14 constitutional challenges of Plaintiff and thus they need to be addressed on appeal,  
15 of CCP 391, as it is unconstitutional.” The appeal remains pending before the 4th  
16 Appellate District, Division 1.

17 On August 18, 2015, Judge Casserly granted an application by the  
18 defendants to dismiss the state case with prejudice due to Plaintiff’s failure to  
19 furnish security.

20

1 **II. DISCUSSION**

2 Plaintiff's motion for preliminary injunction seeks to (1) enjoin further  
3 enforcement of the VLS against Plaintiff; (2) to void any requirements, including  
4 requirements to post bond, imposed on Plaintiff under the VLS; and (3) void any  
5 pre-filing orders requiring Plaintiff to get permission before filing new litigation.

6 Defendants' motions to dismiss raise a number of arguments for the  
7 dismissal of Plaintiff's claims challenging the VLS as well as Plaintiff's claims that  
8 Cal. Civ. Proc. Code § 1013a is unconstitutional.

9 As discussed below, the Court finds that Plaintiff's claims regarding the VLS  
10 are subject to dismissal based on Younger abstention. Plaintiff's claims  
11 challenging the constitutionality of Cal. Civ. Proc. Code § 1013a fail as a matter of  
12 law. Therefore, the Court dismisses this action and denies the motion for  
13 preliminary injunction.

14  
15 A. Challenge to VLS

16 The VLS defines a "vexatious litigant" as a person who does any of the  
17 following:

- 18 (1) In the immediately preceding seven-year period has commenced,  
19 prosecuted, or maintained in propria persona at least five litigations  
20 other than in a small claims court that have been (i) finally determined  
adversely to the person or (ii) unjustifiably permitted to remain pending  
at least two years without having been brought to trial or hearing.

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2 (2) After a litigation has been finally determined against the person,  
3 repeatedly relitigates or attempts to relitigate, in propria persona, either  
4 (i) the validity of the determination against the same defendant or  
5 defendants as to whom the litigation was finally determined or (ii) the  
6 cause of action, claim, controversy, or any of the issues of fact or law,  
7 determined or concluded by the final determination against the same  
8 defendant or defendants as to whom the litigation was finally  
9 determined.

6 (3) In any litigation while acting in propria persona, repeatedly files  
7 unmeritorious motions, pleadings, or other papers, conducts  
8 unnecessary discovery, or engages in other tactics that are frivolous  
9 or solely intended to cause unnecessary delay.

9 (4) Has previously been declared to be a vexatious litigant by any state  
10 or federal court of record in any action or proceeding based upon the  
11 same or substantially similar facts, transaction, or occurrence.

11 Cal. Civ. Proc. Code § 391(b)(1)-(4).

12 A defendant in a pending litigation may move the court for an order requiring  
13 a plaintiff to furnish security. Cal. Civ. Proc. Code § 391.1. Such motion must be  
14 supported by a showing that the plaintiff is a vexatious litigant and that there is not  
15 a reasonable probability that he or she will prevail in the litigation against the  
16 moving defendant. Id. At the hearing on the motion, the court “shall consider any  
17 evidence, written or oral, by witnesses or affidavit, as may be material to the ground  
18 of the motion.” Cal. Civ. Proc. Code § 391.2. If, after hearing the evidence upon  
19 the motion, the court determines that the plaintiff is a vexatious litigant and that  
20 there is no reasonable probability that the plaintiff will prevail, the court shall order

1 the plaintiff to furnish security in an amount to be fixed by the court. Cal. Civ.  
2 Proc. Code § 391.3. When security that has been ordered furnished is not  
3 furnished, the litigation shall be dismissed as to the defendant for whose benefit it  
4 was ordered furnished. Cal. Civ. Proc. Code § 391.4.

5 In addition, the court may, on its own motion or the motion of any party, “enter  
6 a prefiling order which prohibits a vexatious litigant from filing any new litigation in  
7 the courts of this state in propria persona without first obtaining leave of the  
8 presiding justice or presiding judge of the court where the litigation is proposed to  
9 be filed.” Cal. Civ. Proc. Code § 391.7(a). The presiding justice or presiding judge  
10 shall permit the filing of new litigation only if it appears that the litigation has merit  
11 and has not been filed for the purposes of harassment and delay. Cal. Civ. Proc.  
12 Code § 391.7(b). The presiding justice or presiding judge may also condition the  
13 filing of the litigation upon the furnishing of security. Id. The Judicial Council shall  
14 maintain a record of vexatious litigants subject to prefiling orders and shall annually  
15 disseminate a list of those persons to the clerks of the courts of California. Cal.  
16 Civ. Proc. Code § 391.7(f).

17 Plaintiff alleges that the VLS is unconstitutional for a number of reasons,  
18 including: it is overbroad because it denies access to courts to plaintiffs who have  
19 never filed an unmeritorious lawsuit; it punishes plaintiffs for acts committed in  
20 another state or jurisdiction; it fails to give proper notice, especially to citizens of

1 other states whose conduct in the other state or jurisdiction was not wrongful; it  
2 allows judges to hold a hearing on the reasonable probability of success of a case  
3 without allowing any discovery, cross-examination of witnesses, or allowing the  
4 plaintiff a reasonable opportunity to obtain his own expert witness; it impermissibly  
5 burdens interstate travel; and it constitutes extortion and defamation.

6 The Court does not reach the merits of Plaintiff's constitutional claims.  
7 Rather, the Court abstains from deciding the claims under Younger v. Harris, 401  
8 U.S. 37 (1971). In Younger, the Supreme Court "reaffirmed the long-standing  
9 principle that federal courts sitting in equity cannot, absent exceptional  
10 circumstances, enjoin pending state criminal proceedings." Readylink Healthcare,  
11 Inc. v. State Compensation Ins. Fund, 754 F.3d 754, 758 (9th Cir. 2014).  
12 Subsequently, the Supreme Court extended Younger abstention to certain state  
13 civil proceedings. See Huffman v. Pursue, Ltd., 420 U.S. 592, 604 (1975); Judice  
14 v. Vail, 430 U.S. 327, 335 (1977).

15 In Sprint Communications, Inc., v. Jacobs, \_\_\_ U.S. \_\_\_, 134 S. Ct. 584 (2013),  
16 the Supreme Court clarified that Younger abstention is limited to the following three  
17 exceptional categories of cases: (1) parallel, pending state criminal proceedings;  
18 (2) state civil proceedings that are akin to criminal prosecutions; and (3) civil  
19 proceedings "involving certain orders that are uniquely in furtherance of the state  
20 courts' ability to perform their judicial functions," such as proceedings that

1 “implicate a State’s interest in enforcing the orders and judgments of its courts.”  
2 Id. at 588 (quoting New Orleans Public Service, Inc. v. Council of City of New  
3 Orleans, 491 U.S. 350, 373 (1989) (“NOPSI”)).

4 The Court finds that the third category applies here. The Supreme Court has  
5 upheld Younger abstention in cases where the state proceedings at issue  
6 “vindicate[d] the regular operation of its judicial system,” Juidice, 430 U.S. at 335,  
7 such as where a state’s contempt process was being challenged (Juidice) or where  
8 the plaintiff asserted that a state’s appeal bond and judgment lien provisions  
9 violated federal due process and equal protection rights (Pennzoil v. Texaco, Inc.,  
10 481 U.S. 1 (1987)).

11 Orders issued by California courts pursuant to the VLS, like contempt orders,  
12 are “uniquely in furtherance of the state courts’ ability to perform their judicial  
13 functions.” See MacLeod v. Scott, 2015 WL 4523185 (M.D. Fla. July 9, 2015)  
14 (holding that Younger abstention doctrine applied to the plaintiff’s challenge to the  
15 state court’s finding that he was a vexatious litigant under Florida law, and  
16 reiterating that the district court could not interfere with pending civil proceedings  
17 involving orders “uniquely in furtherance of the state courts ability to perform their  
18 judicial functions.”). As explained by the Ninth Circuit, “[V]exatious litigants tie up  
19 a great deal of a court’s time, denying that time to litigants with substantial cases.”

20



1 Wolfe v. George, 486 F.3d 1120, 1126 (9th Cir. 2007).<sup>1</sup>

2 By stemming the flow of groundless litigation, the VLS makes it possible for  
3 the courts to perform their normal judicial functions and “vindicates” the “regular  
4 operation of its judicial system.” To the extent that the VLS applies to litigants who  
5 repeatedly attempt to relitigate claims against defendants even though there has  
6 already been a final determination against the litigant, the VLS also implicates a  
7 state’s interest in giving force and effect to its judgments and orders.

8 Now that the Court has determined that this case falls within one of the  
9 “exceptional” circumstances fitting within the Younger doctrine, the Court looks to  
10 the additional factors set forth in Middlesex County Ethics Committee v. Garden  
11 State Bar Ass’n, 457 U.S. 423, 432 (1982): (1) whether there is “an ongoing state  
12 judicial proceeding,” (2) those “proceedings implicate important state interests,”  
13 and (3) there is “an adequate opportunity in the state proceedings to raise  
14 constitutional challenges.” In addition, the requested relief must seek to enjoin or  
15 have the practical effect of enjoining the state proceedings. AmerisourceBergen  
16 Corp. v. Roden, 495 F.3d 1143, 1149 (9th Cir. 2007).

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19 <sup>1</sup> The idea for the VLS began with the State Bar and Los Angeles County Bar  
20 Association, which argued, “The need for the adoption of this legislation is that there is an  
unreasonable burden placed upon the courts by groundless litigation, which, in turn, prevents  
the speedy consideration of deserving and proper litigation . . . .” Wolfgram v. Wells Fargo  
Bank, 53 Cal. App. 4th 43, 48 (1997).

1 All of these factors are satisfied. Plaintiff's appeal of Judge Casserly's order  
2 is pending. The proceedings implicate the important state interest of alleviating  
3 the burden placed upon the courts by groundless litigation so that courts may  
4 properly perform their functions. There has been no showing that Plaintiff lacks  
5 adequate opportunity to raise the constitutional challenges he asserts here.  
6 Finally, the requested relief would have the practical effect of enjoining the state  
7 proceedings because Plaintiff seeks to enjoin the placement of his name on any  
8 vexatious litigant list and to void Judge Casserly's orders imposing conditions on  
9 Plaintiff pursuant to the VLS.

10 Plaintiff attempts to invoke the exception to Younger abstention for  
11 "extraordinary circumstances," such as when the statute involved is "flagrantly and  
12 patently violative of express constitutional prohibitions in every clause, sentence  
13 and paragraph, and in whatever manner and against whomever an effort might be  
14 made to apply it." Younger, 401 U.S. at 53-54 (internal quotation marks omitted).  
15 This exception is "very narrow" and does not prevent abstention when "the  
16 constitutionality of the state statute is unclear or if the statute may be applied  
17 constitutionally in some cases." Dubinka v. Judges of the Superior Court, 23 F.3d  
18 218, 225 (9th Cir. 1994).

19 Plaintiff challenges the VLS as applied to him and also argues that the VLS  
20 is unconstitutional in certain circumstances, such as where individuals are

1 determined to be vexatious litigants based on filings made in other states or in  
2 federal court, or are denied an adequate opportunity to present their case at the  
3 hearing on the reasonable probability of success of plaintiff's claims. Plaintiff has  
4 not shown that the VLS is patently unconstitutional "in every clause, sentence and  
5 paragraph, and in whatever manner and against whomever an effort might be  
6 made to apply it." Indeed, the Ninth Circuit found that the VLS did not violate the  
7 Constitution in Wolfe v. George, 486 F.3d 1120 (9th Cir. 2007).

8 Accordingly, the Court abstains from deciding Plaintiff's claims challenging  
9 the constitutionality of the VLS and dismisses those claims. Because Plaintiff's  
10 motion for preliminary injunction is premised on these same claims, Plaintiff's  
11 motion for preliminary injunction is denied.

12  
13 B. Claims Based on Cal. Civ. Proc. Code § 1013a

14 Cal. Civ. Proc. Code § 1013a sets forth the requirements for proofs of service  
15 by mail. Under subsection (3), proof of service by mail may be made by:

16 An affidavit setting forth the exact title of the document served and filed  
17 in the cause, showing (A) the name and residence or business address  
18 of the person making the service, (B) that he or she is a resident of, or  
19 employed in, the county where the mailing occurs, (C) that he or she  
20 is over the age of 18 years *and not a party to the cause*, (D) that he or  
she is readily familiar with the business' practice for collection and  
processing of correspondence for mailing with the United States Postal  
Service, (E) that the correspondence would be deposited with the  
United States Postal Service that same day in the ordinary course of  
business, (F) the name and address of the person served as shown on

1 the envelope, and the date and place of business where the  
2 correspondence was placed for deposit in the United States Postal  
3 Service, and (G) that the envelope was sealed and placed for collection  
4 and mailing on that date following ordinary business practices.

5 (Emphasis added.)

6 Plaintiff claims that the prohibition against a party serving his own court  
7 documents unconstitutionally burdens a poor person's right to access the state  
8 courts. Plaintiff alleges that even though he has been able to get his documents  
9 served, with the exception of one time, there have been many times when he has  
10 almost missed deadlines. (Compl. ¶ 17.) According to Plaintiff, it is difficult for him  
11 to find someone to serve his documents for free, so over the years, he has had to  
12 spend over \$800 to have people sign his proofs of service. (Compl. ¶ 18.)

13 Plaintiff's constitutional challenge to § 1013a fails as a matter of law. Access  
14 to the courts is not a right that is, in all circumstances, guaranteed by the Due  
15 Process Clause. Boddie v. Connecticut, 401 U.S. 371, 383 (1971). In Boddie, the  
16 Supreme Court held that the due process clause entitles indigents to file for divorce  
17 even if they cannot pay a filing fee due to the fundamental nature of the right to  
18 divorce. In contrast, in United States v. Kras, 409 U.S. 434 (1973), the Supreme  
19 Court held that there is no constitutional right to obtain a discharge of one's debts  
20 in bankruptcy and applied the rational basis standard to determine whether the  
challenged fee requirement denied indigents equal protection of the laws.  
Similarly, in Wolfe, the Ninth Circuit reviewed the VLS for a rational basis because

1 the Ninth Circuit found that the VLS did not deprive Wolfe, who had brought a  
2 number of civil suits against taxicab companies, of “the opportunity to vindicate a  
3 fundamental right in court.” 486 F.3d at 1126.

4 Applying the rational basis test, the Court finds that § 1013a is rationally  
5 related to a legitimate state purpose. See Pennell v. City of San Jose, 485 U.S. 1,  
6 14 (1988). As explained by the California Court of Appeal in the context of Cal.  
7 Civ. Proc. Code § 414.10, which provides that a summons may be served by “any  
8 person who is at least 18 years of age and not a party the action”: “The long-  
9 standing prohibition on personal service by the opposing party arises from the  
10 adversarial interest present in legal actions and the concern for discouraging  
11 fraudulent service.” Caldwell v. Coppola, 219 Cal. App. 3d 859, 864 (1990).  
12 Safeguarding against fraudulent service is a legitimate state interest and  
13 prohibiting parties to actions from serving papers is rationally related to this  
14 interest.

15 Pro per plaintiffs are not required to pay a service to serve papers. They can  
16 ask third parties to serve the documents or, if granted a fee waiver by the state  
17 court (as was the case with Plaintiff), may direct the Sheriff to serve court papers  
18 without charge. Cal. Gov’t Code § 68631, Cal. Rules of Ct., Rule 3.55(6). That it  
19 may be difficult or inconvenient for some indigent pro per plaintiffs to find someone  
20 to serve their papers or to rely on the Sheriff for service does not render § 1013a

1 an irrational bar to access.

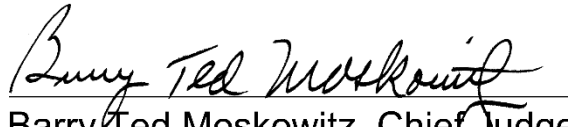
2 Therefore, the Court grants Defendants' motion to dismiss as to Plaintiff's  
3 claims challenging the constitutionality of Cal. Civ. Proc. Code § 1013a.

4  
5 **III. CONCLUSION**

6 For the reasons discussed above, Plaintiff's motion for preliminary injunction  
7 is **DENIED** and Defendants' motions to dismiss are **GRANTED**. Plaintiff's  
8 Complaint is **DISMISSED** in its entirety. Although leave to amend should ordinarily  
9 be granted, leave to amend may be denied if the court determines that  
10 "allegation[s] of other facts consistent with the challenged pleading could not  
11 possibly cure the deficiency." Schreiber Dist. Co. v. Serv-Well Furniture Co., Inc.,  
12 806 F.2d 1393, 1401 (9th Cir. 1986). Given the nature of Plaintiff's claims, the  
13 Court does not believe that Plaintiff can allege other facts that could possibly  
14 salvage his claims. Therefore, the Court denies leave to amend and orders the  
15 Clerk to enter judgment dismissing this case.

16 **IT IS SO ORDERED.**

17 Dated: November 30, 2015

18   
19 Barry Ted Moskowitz, Chief Judge  
20 United States District Court