Appendix A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 7 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CHRIS WARD KLINE,

Plaintiff-Appellant,

v.

MATTHEW JOHNS, Regional Health Administrator for the Office of the Assistant Secretary for Health, United States Department of Health and Human Services,

Defendant-Appellee.

No. 21-16316

D.C. No. 4:21-cv-03924-KAW
Northern District of California,
Oakland

ORDER

Before: O'SCANNLAIN, THOMAS, and TALLMAN, Circuit Judges.

Upon a review of the record and the response to the court's September 21, 2021 order, we conclude this appeal is frivolous. We therefore deny appellant's motions to proceed in forma pauperis (Docket Entry Nos. 3 & 4), *see* 28 U.S.C. § 1915(a), and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

All other pending motions are denied as moot.

DISMISSED.

AT/MOATT

Appendix B

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CHRIS WARD KLINE,

Plaintiff,

v.

MATTHEW JOHNS,

Defendant.

Case No. 21-cv-03924-KAW

ORDER GRANTING MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER AND DISMISS CASE

Re: Dkt. No. 7

The instant case arises from Plaintiff Chris Ward Kline's request for a civil harassment restraining order against Defendant Matthew Jones. (Not. of Removal ¶ 1, Exh. 1, Dkt. No. 1.) On April 14, 2021, the San Francisco Superior Court issued the temporary restraining order ("TRO"). (Not. of Removal ¶ 2, Exh. 2.) On May 25, 2021, Defendant removed the case to federal court because Defendant is a federal employee and the TRO arises out of and relates to his federal employment. (Not. of Removal ¶ 7, Exh. 4 ("Johnson Decl.").)

Pending before the Court is Defendant's motion to dismiss and dissolve the TRO. (Def.'s Mot. to Dismiss, Dkt. No. 7.) The Court deems this matter suitable for disposition without a hearing pursuant to Civil Local Rule 7-1(b), and VACATES the July 15, 2021 hearing. Having reviewed the parties' filings and the relevant legal authority, the Court GRANTS Defendant's motion.

I. BACKGROUND

On April 13, 2021, Plaintiff filed a request for a civil harassment restraining order against Defendant Jones. (Not. of Removal, Exh. 2.) Defendant Jones is the Regional Health Administrator for the Office of the Assistant Secretary for Health, United States Department of Health and Human Services ("HHS"), Region IX. (Jones Decl. ¶ 1, Dkt. No. 10.) Plaintiff alleged

that the harassment arose from the "professional relationship" between himself and Defendant Jones. (Not. of Removal, Exh. 1 at 2.) Plaintiff further alleged that Defendant "continually threaten[ed Plaintiff] with random acts of violence to obstruct, intimidate, harass due to filing criminal complaints," and that Defendant used "electronic surveillance to send Rhetoric to influence others [sic] actions. They hack on to personal devices, cell phones, computers to send Rhetoric often violent Rhetoric." (*Id.*) Plaintiff accused Defendant of using "various weapons," and that Plaintiff had "2 cell phones full of evidence with Rhetoric that was programed or sent [t]o devices." (*Id.*) Plaintiff also alleged harm including the blocking of timely delivery of mail and damage to his teeth and ankles caused by electronic surveillance. (*Id.*)

On April 14, 2021, the San Francisco Superior Court granted Plaintiff a TRO. (Not. of Removal, Exh. 2.) The TRO was to "expire[] at the end of the hearing scheduled for" May 28, 2021. (Not. of Removal, Exh. 2 at 1, Exh. 3.)

On May 25, 2021, Defendant removed the case to federal court on the ground that the action was against a federal employee and the TRO related to his federal duties. (Not. of Removal ¶ 7.) Defendant included a "Scope of Federal Employment Declaration," stating that Defendant is an employee of HHS and that he was acting within the scope of his federal employment at all relevant times. (Johnson Decl. ¶ 4.)

On May 26, 2021, Defendant filed the instant motion to dissolve the TRO and to dismiss the case. Defendant also requested that the Court warn Plaintiff to stop harassing Defendant, as Defendant asserted that it was Plaintiff who had been harassing him. (Def.'s Mot. to Dismiss at 8.) Defendant stated that Plaintiff had sent him hundreds of disturbing e-mails, threatened to "go after individuals inside HHS," filed FBI reports against him, and threatened to perform a "citizen's arrest" on him. (Johns Decl. ¶¶ 4, 6, 7, 11, 13.) Defendant also noted that Plaintiff had harassed Defendant's predecessor, including filing a lawsuit that was eventually dismissed. (Johns Decl. ¶ 12; *see also Kline v. Koppaka*, 17-cv-7118-VC, 18-cv-4925-VC.)

On June 7, 2021, Plaintiff filed his opposition, asserting that Defendant was using "Public Health Communication equipment to influence Plaintiff . . . and members of the Northern California Federal Court system by using text to talk, talk to text, voice to voice, rhetoric, [and]

neuro-rhetoric . . . ." (Pl.'s Opp'n at 3, Dkt. No. 15.) On June 14, 2021, Defendant filed his reply. (Def.'s Reply, Dkt. No. 17.)[1]

II. DISCUSSION

A. Dissolution of Temporary Restraining Order

As an initial matter, it appears that the TRO expired on May 28, 2021. (*See* Not. of Removal, Exh. 2 at 1; Def.'s Reply at 2.) Specifically, the TRO was set to expire at the end of the May 28, 2021 state court hearing, although that hearing was presumably vacated once the instant case was removed to federal court.

To resolve any doubts about the validity of the TRO, the Court finds that the TRO must be dissolved and that there is no basis for renewing it. As an initial matter, the Court finds that the case was properly removed under 28 U.S.C. § 1442(a)(1). This section permits removal of a state civil action that is against "[t]he United States or any agency thereof or any officer (or any person acting under that officer) of the United States or of any agency thereof, in an official or individual capacity, for or relating to any act under color of such office . . . ." Here, Defendant is a federal employee, and the basis of the TRO was his "professional relationship" with Plaintiff. (Not. of Removal, Exh. 1 at 2.) The Deputy Assistant Secretary for Health – Regional Health Operations has declared under penalty of perjury that Defendant is a federal employee and that he "was acting within the scope of his federal employment at all times material to the alleged conduct set forth" in Plaintiff's TRO application. (Johnson Decl. ¶ 4.) Finally, as discussed below, Defendant has raised colorable federal defenses of sovereign immunity and the Supremacy Clause. *See Mesa v. California*, 489 U.S. 121, 129 (1989) ("federal officer removal must be predicated on the allegation of a colorable federal defense").

On the merits, "[s]overeign immunity shields the United States and its officers from suit, unless an express congressional waiver of that immunity applies. An action seeking a judgment that would interfere with the public administration or restrain the Government from acting

[1] On June 17, 2021, Plaintiff filed his "reply," continuing to assert that "he is on electronic surveillance by Defendant" and HHS. (Pl.'s Reply, Dkt. No. 18.) The Court will not consider this "reply," as Plaintiff did not ask for leave to file additional briefing.

constitutes a suit against the United States." *Figueroa v. Baca*, Case No. ED CV 17-1471 PA (AGRx), 2018 WL 2041383, at *2 (C.D. Cal. Apr. 30, 2018) (internal quotation and citations omitted). Likewise, "[a]n action against a government employee constitutes a suit against the United States assuming it would have one of these effects." *FBI v. Superior Court of Cal.*, 507 F. Supp. 2d 1082, 1094 (N.D. Cal. 2007). Here, the TRO would require Defendant to stay at least 100 yards away from Plaintiff. (Not. of Removal, Exh. 2 at 2.) Defendant, however, explains that Plaintiff lives approximately one mile from Defendant's workplace, and that Plaintiff has sent pictures of himself in front of Defendant's workplace. (Johns Decl. ¶ 8.) If Plaintiff is around or near Defendant's workplace, Defendant would be unable to go to work because of the TRO. (Johns Decl. ¶ 8.) Additionally, Defendant has had to take time away from his official duties to deal with the TRO. (Johns Decl. ¶ 11.) Thus, the TRO interferes with Defendant's ability to perform his job as a federal employee. Accordingly, the state court lacked jurisdiction to impose terms that would impair the performance of Defendant's federal duties. *Compare with Figueroa*, 2018 WL 2041383, at *3 (finding that the state court lacked jurisdiction to issue a restraining order that restricted the defendant's communications and movement at his federal workplace).

Likewise, "the Supremacy Clause was designed to ensure that states do not . . . 'impede, burden, or in any manner control' the execution of federal law." *Denson v. United States*, 574 F.3d 1318, 1345 (11th Cir. 2009) (quoting *McCulloch v. Maryland*, 17 U.S. 316, 436 (1819)). "[T]he Supremacy Clause precludes state courts from enforcing orders that interfere with the performance of federal officers." *Figueroa*, 2018 WL 2041383, at *3. As discussed above, enforcement of the TRO violates the Supremacy Clause because it interferes with Defendant's performance of his federal duties.

Finally, on the merits, Plaintiff has not established a right to a TRO. A temporary restraining order may be issued to prevent "immediate and irreparable injury, loss, or damage . . . to the movant." Fed. R. Civ. P. 65(b). The standard for issuing a temporary restraining order is "substantially identical" to that of a preliminary injunction. *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). Thus, Plaintiff had the burden of establishing that "he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence

of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Klein v. City of San Clemente*, 584 F.3d 1196, 1199 (9th Cir. 2009) (internal quotation omitted). All four factors must be established for an injunction to issue. *Alliance of the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).

In applying for the TRO, Plaintiff provided no evidence that Defendant "used electronic surveillance to send Rhetoric to influence others [sic] actions," that Defendant "hack[ed] the personal devices, cell phones, computers to send Rhetoric often violent Rhetoric," or threatened Plaintiff "with various weapons." (Not. of Removal, Exh. 1 at 3.) Instead, the record shows that it is Plaintiff who harassed Defendant, his predecessor, and his colleague. (Johns Decl. ¶¶ 4-13.) Thus, Plaintiff has not met his burden of establishing that he is likely to succeed on the merits.

Accordingly, the TRO must be dissolved.

B. Dismissal of Case

The Court also finds that dismissal of the case is warranted. As discussed above, the state court lacked jurisdiction to issue the TRO due to sovereign immunity and the Supremacy Clause. When a case is removed from state court pursuant to § 1442, the federal court's "jurisdiction is derivative of the state court's jurisdiction." *In re Elko Cty. Grand Jury*, 109 F.3d 554, 555 (9th Cir. 1997); *see also Beeman v. Olson*, 828 F.2d 620, 621 (9th Cir. 1987) ("a federal court [i]s without jurisdiction over a suit removed to it from state court if the state court from which it was removed lacked subject matter jurisdiction, even though the federal court would have had jurisdiction had the suit been brought there originally"). Thus, because the state court lacked jurisdiction, this Court also lacks jurisdiction, requiring dismissal. *See FBI*, 507 F. Supp. 2d at 1094 (finding that the federal court had no jurisdiction because the state court lacked jurisdiction to enforce its subpoenas or order against the federal defendants).

To the extent Plaintiff seeks leave to amend, amendment is not appropriate. Plaintiff appears to request leave to add a claim under the Federal Tort Claims Act ("FTCA") for $150 million. (Pl.'s Opp'n at 2.) The basis of Plaintiff's federal tort claim would be obstruction by HHS by: (1) "placing coding/electronic surveillance on US Attorney Michelle Lo, Judge handling the case and the 9th Circuit Court," (2) using "coding/electronic surveillance to discredit me

personal, professionally to include friends, family and with my non profit PAVEN (paven.us)," (3) "restricting, blocking mail for the above listed reasons," (4) "blocking grants, donations and wages," (5) "blocking, restricting and interfering in social media relationship," (6) "restricting travel to family emergencies like funerals, birthdays," (7) "restricting access to government grants," (8) "blocking, restricting, police reports to local, state and federal agencies reporting the above," and (9) "using coding/electronic surveillance to cause loss of public elections, and a host of other items to discredit, damage and bankrupt, etc." (Pl.'s Opp'n, Exh. 2.)

As an initial matter, it appears Plaintiff's FTCA claim is untimely. Plaintiff's claim was denied on December 9, 2020; thus, Plaintiff had until June 9, 2021 to file a FTCA claim. Plaintiff could have filed his FTCA claim in federal court independent of this action; nothing prevented him from filing it, and Plaintiff did not have to wait for a court ruling to file a separate suit.

Further, even if Plaintiff's FTCA claim was timely, "federal courts are without power to entertain claims otherwise within their jurisdiction if they are so attenuated and unsubstantial as to be absolutely devoid of merit." *Hagans v. Lavine*, 415 U.S. 528, 536 (1974). Here, Plaintiff alleges that Defendant and HHS used coding and electronic surveillance to track and discredit Plaintiff, as well as cause the loss of public elections. Plaintiff also asserts that Defendant hacked devices to send "violent Rhetoric." "These are precisely the type of frivolous claims that are subject to dismissal for lack of jurisdiction." *Bivolarevic v. U.S. CIA*, Case No. 09-cv-4620-SBA, 2010 WL 890147, at *2 (N.D. Cal. Mar. 8, 2010) (dismissing case where the plaintiff alleged that "the CIA ha[d] subjected her to 'voice to skull technology' which it is using as a 'mind control weapon'"); *Liu v. CIA*, Case No. 8:17-cv-343-PSG (SHK), 2018 WL 11304203, at *3 (C.D. Cal. May 9, 2018) (dismissing case as obviously frivolous where the plaintiff claimed that he had been under "illegal surveillance" and "tight mind-control"), *affirmed by Liu v. CIA*, 738 Fed. Appx. 511 (9th Cir. 2018); *Foster v. Carter*, Case No. 16-cv-2336-LB, 2016 WL 785472, at *3 ("District courts in this and other circuits dismiss cases with prejudice when they—like this case—involve claims regarding implausible government conspiracies, alleged government control or mental interference, and alleged planting of microchips."); *Terry v. United States*, No. ED CV 14-1881-VBF (E), 2014 WL 5106984, at *1 (C.D. Cal. Oct. 10, 2014) (dismissing case where the plaintiff

alleged that the National Security Agency and others were "using radio frequency 'directed energy' weapons to send 'voices' to Plaintiff's head"). Thus, amendment would be futile.

III. CONCLUSION

For the reasons stated above, the Court GRANTS Defendant's motion and DISMISSES the case with prejudice. The Court also warns Plaintiff that the filing of further frivolous actions against Defendant in federal court may result in the issuance of an order to show cause as to why Plaintiff should not be declared a vexatious litigant who is subject to a pre-filing screening order.

IT IS SO ORDERED.

Dated: August 2, 2021

KANDIS A. WESTMORE
United States Magistrate Judge

Additional material from this filing is available in the Clerk's Office.