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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MUSU C. BENNETT,

Plaintiff,

No. CIV S-10-3320 KJM EFB PS

vs.

TETRA TECH EC, INC.; LARRY  
SPENCER; BOB WELLS,

Defendants.

FINDINGS AND RECOMMENDATIONS

\_\_\_\_\_ /  
This action, in which plaintiff is proceeding *in propria persona*, was referred to the undersigned under Local Rule 302(c)(21), pursuant to 28 U.S.C. § 636(b)(1). On April 28, 2011, the undersigned granted plaintiff’s request to proceed *in forma pauperis*, but dismissed plaintiff’s complaint with leave to amend pursuant to 28 U.S.C. § 1915(e)(2). Dckt. No. 8. The court noted that although plaintiff’s complaint did not allege a specific basis for relief, it appeared that plaintiff was purporting to sue under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5. However, the court noted that “among other problems with plaintiff’s complaint, plaintiff does not allege that she filed a charge with the U.S. Equal Employment Opportunity Commission, does not allege that she received a notice of her right to sue or attach a copy of any such notice to her complaint, and does not establish, therefore, that she exhausted her

1 administrative remedies or that this action was timely filed. *See* 42 U.S.C. § 2000e-5(e)(1),  
2 (f)(1).” *Id.* at 3. The court further noted that “it is unclear whether venue is proper in this  
3 district since the complaint alleges that the harassment and retaliation occurred in Mountain  
4 View, California, which is located in the Northern District of California.” *Id.* Accordingly, the  
5 court dismissed plaintiff’s complaint, but provided plaintiff with an opportunity to amend her  
6 complaint to the extent that she could correct the deficiencies outlined in the April 28, 2011  
7 order.

8           On May 23, 2011, plaintiff filed an amended complaint. Dckt. No. 9. However her  
9 amended complaint appears to allege a number of causes of action that plaintiff alleged against  
10 the same defendants sued herein in state court in 2007, and notably does not allege a cause of  
11 action under Title VII or any other federal statute. *Id.* at 1-2. In fact, plaintiff simply attaches a  
12 copy of the complaint that she filed in state court in 2007. *Id.* at 2. As previously explained to  
13 plaintiff, a federal court is a court of limited jurisdiction, and may adjudicate only those cases  
14 authorized by the Constitution and by Congress. *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S.  
15 375, 377 (1994). The basic federal jurisdiction statutes, 28 U.S.C. §§ 1331 & 1332, confer  
16 “federal question” and “diversity” jurisdiction, respectively. Federal question jurisdiction  
17 requires that the complaint (1) arise under a federal law or the U. S. Constitution, (2) allege a  
18 “case or controversy” within the meaning of Article III, § 2 of the U. S. Constitution, or (3) be  
19 authorized by a federal statute that both regulates a specific subject matter and confers federal  
20 jurisdiction. *Baker v. Carr*, 369 U.S. 186, 198 (1962). To invoke the court’s diversity  
21 jurisdiction, a plaintiff must specifically allege the diverse citizenship of all parties, and that the  
22 matter in controversy exceeds \$75,000. 28 U.S.C. § 1332(a); *Bautista v. Pan American World*  
23 *Airlines, Inc.*, 828 F.2d 546, 552 (9th Cir. 1987). A case presumably lies outside the jurisdiction  
24 of the federal courts unless demonstrated otherwise. *Kokkonen*, 511 U.S. at 376-78. Lack of  
25 subject matter jurisdiction may be raised at any time by either party or by the court. *Attorneys*  
26 *Trust v. Videotape Computer Products, Inc.*, 93 F.3d 593, 594-95 (9th Cir. 1996). Here,

1 plaintiff's amended complaint does not allege either federal question or diversity jurisdiction.  
2 Both plaintiff and defendant are California citizens, and plaintiff has not alleged any violations  
3 of federal statutes or the federal constitution.

4         Additionally, plaintiff's amended complaint (plaintiff's state court complaint) reveals that  
5 plaintiff was issued a right to sue letter by the California Department of Fair Employment and  
6 Housing on December 29, 2006 based on alleged employment discrimination and harassment  
7 which occurred in 2006. *Id.* at 17, 80. However, the amended complaint still does not allege  
8 that plaintiff filed a charge with the U.S. Equal Employment Opportunity Commission, does not  
9 allege that she received a notice of her right to sue or attach a copy of any such notice to her  
10 complaint, and does not establish, therefore, that she exhausted her federal administrative  
11 remedies or that this action was timely filed in federal court. 42 U.S.C. § 2000e-5(e)(1), (f)(1)  
12 Instead, it appears that plaintiff filed her charge with the California Department of Fair  
13 Employment and Housing, received a right to sue letter in 2006, and then pursued her action in  
14 state court against the three defendants named herein. A review of the docket in that state court  
15 action further reveals that a jury trial was held in that action in March 2009 and that judgment  
16 was entered in favor of the three defendants in July 2009. Therefore, even if plaintiff's amended  
17 complaint alleged a Title VII claim, it appears that plaintiff could not establish that she properly  
18 exhausted her administrative remedies, and it appears her complaint would likely be barred by  
19 the statute of limitations and/or the doctrine of res judicata. Further, plaintiff's amended  
20 complaint reveals that venue is not proper in this district since the complaint alleges that the  
21 harassment and retaliation occurred in Mountain View, California, which is located in the  
22 Northern District of California.

23         Accordingly, the court will recommend that this action be dismissed without leave to  
24 amend pursuant to 28 U.S.C. § 1915(e)(2). *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987)  
25 (While the court ordinarily would permit a pro se plaintiff to amend, leave to amend should not  
26 be granted where it appears amendment would be futile).

1 Accordingly, IT IS HEREBY RECOMMENDED that:

- 2 1. Plaintiff's amended complaint, Dckt. No. 9, be dismissed without leave to amend; and  
3 2. The Clerk be directed to close this case.

4 These findings and recommendations are submitted to the United States District Judge  
5 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
6 after being served with these findings and recommendations, any party may file written  
7 objections with the court and serve a copy on all parties. Such a document should be captioned  
8 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections  
9 within the specified time may waive the right to appeal the District Court's order. *Turner v.*  
10 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

11 DATED: July 12, 2011.

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13 EDMUND F. BRENNAN  
14 UNITED STATES MAGISTRATE JUDGE  
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