

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

10 JANETTA SCONIERS,) 1:08-cv-1288-LJO-SMS
11 Plaintiff,)
12 v.) ORDER ADOPTING FINDINGS AND
13) RECOMMENDATIONS REGARDING
14) PLAINTIFF'S COMPLAINT (DOCS. 6,
15) 1, 9)
16)
17 CLARENCE WHITMORE, SR., et) ORDER DIRECTING PLAINTIFF TO FILE
18 al.,) A FIRST AMENDED COMPLAINT NO
19) LATER THAN THIRTY DAYS AFTER THE
20) DATE OF SERVICE OF THIS ORDER
21)
22) ORDER DEEMING OBJECTIONS TO
23) INCLUDE A MOTION FOR LEAVE TO
24) FILE AN AMENDED COMPLAINT AND A
25) MOTION FOR LEAVE TO FILE OTHER
26) APPLICATIONS FOR RELIEF (DOC. 9)
27)
28) ORDER DENYING PLAINTIFF'S MOTIONS
Plaintiff is proceeding pro se with an action for damages
and other relief concerning alleged civil rights violations. The
matter was referred to the Magistrate Judge pursuant to 28 U.S.C.
§ 636(b) and Local Rules 72-302 and 72-304.

1 I. Request for Leave to File Amended Complaint and Other
2 Applications for Relief; First Amended Complaint

3 On December 1, 2008, Magistrate Judge Sandra M. Snyder filed
4 findings and a recommendation that the Court dismiss Plaintiff's
5 complaint in part without leave to amend and dismiss Plaintiff's
6 complaint in part with leave to amend because of various legal
7 deficiencies; further, Plaintiff's claims based on state law,
8 which have not yet been screened, could be restated in an amended
9 complaint. Plaintiff was granted thirty days within which to file
10 objections. The findings and recommendation were served on all
11 parties on December 1, 2008.

12 On February 3, 2009, Plaintiff filed what was entitled
13 "OBJECTIONS TO MAGISTRATE JUDGE FINDINGS AND RECOMMENDATIONS." Review of this document reveals that in it Plaintiff sought leave
14 to file an amended complaint and other requests for relief,
15 apparently including a motion for a temporary restraining order,
16 writ of mandate, and order to show cause re: preliminary
17 injunction. (Objs. ¶¶ 2-5.) The Court therefore DEEMS Plaintiff's
18 objections to include a request for leave to file an amended
19 complaint and other requests for relief.

20 Further, on February 3, 2009, after having sought permission
21 to do so but without having received such permission, Plaintiff
22 filed a purported first amended complaint as well as a motion for
23 temporary restraining order (TRO) and supporting declaration.
24 (Docs. 12, 10-11.)

25 The Court will deny Plaintiff's present motion for leave to
26 file an amended complaint. This is because the Court herein
27 adopts the Magistrate Judge's pending findings and
28

1 recommendations and thus permits Plaintiff to file an amended
2 complaint, but only in compliance with the Court's findings and
3 recommendations. Therefore, another request for leave to file an
4 amended complaint is unnecessary. In addition, the first amended
5 complaint that Plaintiff will file in the future must comply with
6 the Court's determinations in the adopted findings and
7 recommendations, which include dismissal of some claims without
8 leave to amend; thus, Plaintiff is only granted leave to amend to
9 the extent permitted by the Court's determination in connection
10 with the original complaint. Plaintiff will not be permitted to
11 bypass the determinations of the Court with respect to the
12 adequacy of the claims pled in the original complaint or
13 otherwise to render meaningless the already significant
14 expenditure of the Court's resources in the process of screening
15 Plaintiff's complaint. A court has inherent power to control its
16 docket and the disposition of its cases with economy of time and
17 effort for both the court and the parties. Landis v. North
18 American Co., 299 U.S. 248, 254-255 (1936); Ferdik v. Bonzelet,
19 963 F.2d 1258, 1260 (9th Cir. 1992). The Court exercises its
20 discretion to require Plaintiff's first amended complaint to be
21 filed only in compliance with this order.

22 Further, because no complaint that has been screened and
23 served is presently pending, Plaintiff's motion for a TRO is
24 prematurely filed.

25 Plaintiff IS INFORMED that in a case in which the Plaintiff
26 is proceeding in forma pauperis, the Court is required to screen
27 the complaint and shall dismiss the case at any time if the Court
28 determines that the allegation of poverty is untrue, or the

1 action or appeal is frivolous or malicious, fails to state a
2 claim on which relief may be granted, or seeks monetary relief
3 against a defendant who is immune from such relief. 28 U.S.C. §
4 1915(e) (2). Therefore, the Court will direct the United States
5 Marshal to serve Plaintiff's complaint only after the Court has
6 screened the complaint and determined that it contains cognizable
7 claims for relief against the named defendants. It is premature
8 to file law and motion matters before any first amended
9 complaint, which Plaintiff will file, is screened by the Court,
10 an order to serve the complaint has issued from the Court, and
11 the complaint has been served. Because of the large number of
12 pending matters before it, the Court will screen Plaintiff's
13 complaint in due course.

14 Accordingly, the motion to file a first amended complaint
15 will be denied, and the first amended complaint filed on February
16 3, 2009, will be stricken without prejudice to Plaintiff's filing
17 a first amended complaint as directed in this order.

18 The motion for temporary restraining order, writ of mandate,
19 etc., and the declaration of Plaintiff in support thereof, filed
20 on February 3, 2009, will also be stricken as prematurely filed.

21 II. Adoption of the Findings and Recommendations

22 The undersigned has considered the objections and has
23 determined there is no need to modify the findings and
24 recommendations based on the points raised in the objections.

25 In accordance with the provisions of 28 U.S.C. § 636
26 (b) (1) (C) and Britt v. Simi Valley United School Dist., 708 F.2d
27 452, 454 (9th Cir. 1983), this Court has conducted a *de novo*
28 review of the case. Having carefully reviewed the entire file,

1 the Court finds that the findings and recommendation are
2 supported by the record and proper analysis.

3 Accordingly, IT IS HEREBY ORDERED that:

4 1. The findings and recommendations filed December 1, 2008,
5 are ADOPTED IN FULL; and

6 2. With respect to claims two through seven of Plaintiff's
7 complaint, Plaintiff's complaint IS DISMISSED WITHOUT LEAVE TO
8 AMEND for failure to state a basis for subject matter
9 jurisdiction in this Court and/or because this Court should
10 abstain from exercising jurisdiction; and

11 3. With respect to claims eight through eleven, Plaintiff's
12 complaint IS DISMISSED WITHOUT LEAVE TO AMEND for failure to
13 state a claim upon which relief may be granted and/or failure to
14 state a basis for subject matter jurisdiction in this Court; and

15 4. With respect to claims one, twelve through twenty-nine,
16 and thirty, and related derivative claims seeking injunctive or
17 declaratory relief (claims thirty-one and thirty-two),
18 Plaintiff's complaint IS DISMISSED WITH LEAVE TO AMEND; and

19 5. With respect to Plaintiff's pendent state claims in the
20 original complaint, claims thirty-three through fifty-one, which
21 have not yet been screened by the Court, Plaintiff MAY RESTATE
22 such claims in the amended complaint; and

23 6. Plaintiff's first amended complaint (Doc. 12); motion for
24 temporary restraining order, writ of mandate, etc. (Doc. 10); and
25 supporting declaration (Doc. 11) ARE STRICKEN; and

26 7. Plaintiff IS GRANTED thirty days from the date of service
27 of this order to file a first amended complaint that complies
28 with this order, the requirements of the pertinent substantive

1 law, the Federal Rules of Civil Procedure, and the Local Rules of
2 Practice; the amended complaint must bear the docket number
3 assigned this case and must be labeled "First Amended Complaint";
4 failure to file an amended complaint in accordance with this
5 order will be considered to be a failure to comply with an order
6 of the Court pursuant to Local Rule 11-110 and will result in
7 dismissal of this action. Further, failure to file an amended
8 complaint that states a claim upon which relief may be granted
9 will be considered to be grounds for dismissing the complaint
10 pursuant to 28 U.S.C. § 1915(e)(2) and will result in dismissal
11 of the action.

12 IT IS SO ORDERED.

13 Dated: February 5, 2009

14 /s/ Lawrence J. O'Neill
15 UNITED STATES DISTRICT JUDGE

16
17
18
19
20
21
22
23
24
25
26
27
28