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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MELANIE C. LATRONICA,

Plaintiff,

v.

MERRILL LYNCH, et al.,

Defendants.

Case No. 1:16-cv-01352-LJO-SAB

FINDINGS AND RECOMMENDATION
RECOMMENDING DENYING
PLAINTIFF’S MOTIONS FOR ARREST
WARRANTS AND INJUNCTIONS

(ECF No. 12, 14)

OBJECTIONS DUE WITHIN FOURTEEN
DAYS

Plaintiff Melanie C. Latronica, proceeding pro se and in forma pauperis, filed this action on September 12, 2016.

I.

PROCEDURAL HISTORY

On September 26, 2016, the Court dismissed Plaintiff’s complaint with leave to amend. (ECF No. 5.) On September 27, 2016, Plaintiff filed a complaint dated September 23, 2016, and therefore, it was filed prior to Plaintiff receiving the Court’s order dismissing the complaint with leave to amend. (ECF No. 6.) On October 11, 2016, Plaintiff filed a notice that she had received the Court’s order dismissing her complaint and that she would be filing an amended complaint. (ECF No. 8.) On October 21, 2016, Plaintiff filed a first amended complaint and a

1 motion for an injunction. (ECF Nos. 9, 10.)

2 On November 7, 2016, the undersigned issued a findings and recommendations
3 recommending that Plaintiff's first amended complaint be dismissed without leave to amend and
4 Plaintiff's motion for an injunction be denied as moot. (ECF No. 11.) On that same date, the
5 findings and recommendations was served on Plaintiff.

6 On November 7, 2016, Plaintiff filed a motion for arrest warrants and injunctions. (ECF
7 No. 12.) Plaintiff set a hearing on the motion for December 14, 2016, at 10:00 a.m. before the
8 undersigned. On November 22, 2016, the Court vacated the December 14, 2016 hearing and
9 took the matter under submission. (ECF No. 17.)

10 On November 17, 2016, Plaintiff filed a document which the Court construed as a motion
11 for the undersigned to recuse himself. (ECF No. 15.) On November 22, 2016, the undersigned
12 denied Plaintiff's motion for recusal. (ECF No. 16.)

13 On November 17, 2016, Plaintiff filed a document titled "Petition Motion: Writ of
14 Prohibition Mandamus." (ECF No. 14.) The Court construes this motion as another motion for
15 arrest warrants and injunctions.

16 For the reasons discussed below, the Court recommends that Plaintiff's motions for arrest
17 warrants and injunctions (ECF Nos. 12, 14) be denied.

18 II.

19 LEGAL STANDARD

20 "A preliminary injunction is an extraordinary remedy never awarded as of right." Winter
21 v. Natural Resources Defense Council, Inc., 129 S. Ct. 365, 376 (2008) (citation omitted). "A
22 court may grant a preliminary injunction only if the plaintiff establishes four elements: (1)
23 likelihood of success on the merits; (2) likelihood of suffering irreparable harm absent a
24 preliminary injunction; (3) the balance of equities tips in plaintiff's favor; and (4) injunctive
25 relief is in the public interest." Leigh v. Salazar, 677 F.3d 892, 896 (2012); Alliance for Wild
26 Rockies v. Cottrell, 622 F.3d 1045, 1049 (9th Cir. 2010). An injunction may only be awarded
27 upon a *clear showing* that the plaintiff is entitled to relief. Winter, 129 S. Ct. at 376 (citation
28 omitted) (emphasis added).

1 **III.**

2 **DISCUSSION**

3 Plaintiff states in her November 7, 2016 motion for arrest warrants and injunctions that
4 she is seeking arrest warrants against numerous people, including a number of judges. (ECF No.
5 12 at 3-4.)¹ It appears that Plaintiff alleges that defendants are conducting ongoing torture and
6 are filing unlawful detainer cases and evictions. Plaintiff’s November 7, 2016 filing contains a
7 number of delusional, fanciful, and incomprehensible statements similar to the statements she
8 made in her first amended complaint and other filings. For example, Plaintiff states, “human
9 trafficking against Miss Latronica has been going on since she was stolen as a baby and she’s
10 NOT-IN-HER-BODY ongoing torture and gross life deprivation. **As of this day; she’s still**
11 **being tortured in UX bodies.**” (ECF No. 12 at 6 (emphasis in the original).)

12 In Plaintiff’s November 17, 2016 motion for arrest warrants and injunctions, Plaintiff
13 asks the Court to stop the named people from torturing Plaintiff. (ECF No. 14.) Plaintiff states
14 that she wants the Court to “dismiss Robert Cole[’]s filing of a fraudulent unlawful detainer case
15 only, to please dismiss the summary judgment by means of a Tentative Ruling Announcement
16 signed by John D Freeland and that these Respondents immediately be apprehended for
17 prosecution and that Plaintiff be restored back to her Cottage Home Unit for further Court
18 proceedings in Modesto and in Fresno.” (ECF No. 14 at 2.)

19 **A. No Likelihood of Success on Plaintiff’s Claims**

20 In order to qualify for injunctive relief, Plaintiff must, at minimum, demonstrate a “fair
21 chance of success” that her claims will ultimately prevail on their merits. See, e.g., Johnson v.
22 Calif. State Bd. Of Accountancy, 72 F.3d 1427, 1430 (9th Cir. 1995). This means that Plaintiff
23 must demonstrate some likelihood of obtaining a favorable result in her case in chief. Original
24 Appalachian Artworks v. Topps Chewing Gum, 642 F. Supp. 1031, 1034 (N.D. Ga. 1986); A&M
25 Records, Inc. v. Napster, Inc., 239 F.3d 1004, 1005, fn. 3 (9th Cir. 2001). No matter how severe
26 or irreparable the injury asserted, an injunction should never issue if the moving party’s claims

27 ¹ All references to pagination of specific documents pertain to those as indicated on the upper right corners via the
28 CM/ECF electronic court docketing system.

1 are so legally untenable that there is virtually no chance of prevailing on the merits. State of
2 Texas v. Seatrain Int'l, S.A., 518 F.2d 175, 180 (5th Cir. 1975).

3 The implausibility of the claims asserted by Plaintiff makes it impossible for this Court to
4 conclude there is any likelihood she will ultimately prevail on the merits. The undersigned
5 recommended that Plaintiff's first amended complaint be dismissed without leave to amend on
6 November 7, 2016. (ECF No. 11.) Objections to the findings and recommendations are due by
7 December 12, 2016. If the District Judge adopts the undersigned's findings and
8 recommendations, Plaintiff's first amended complaint will be dismissed without leave to amend
9 and the action will be closed. Therefore, Plaintiff's motions for arrest warrants and injunctions
10 should be denied. Below, the Court sets forth several additional reasons why the Court cannot
11 issue Plaintiff's requested arrest warrants and injunctions.

12 **B. Court Cannot Initiate a Criminal Prosecution**

13 The United States Constitution delegates powers of the Federal Government into three
14 defined categories: the Legislative Branch, the Executive Branch, and the Judicial Branch.
15 Bowsher v. Synar, 478 U.S. 714, 721 (1986). It is the Executive Branch of the United States that
16 has exclusive authority and absolute discretion to decide whether to prosecute a case. United
17 States v. Nixon, 418 U.S. 683, 693 (1974). As the Judicial Branch, this Court does not have the
18 power to criminally prosecute any individual or issue an order for the arrest of the people
19 Plaintiff requests.

20 **C. Federal Court Cannot Direct State Court to Issue Arrest Warrants**

21 Similarly, under our federal system of government the allocation of powers sets the
22 responsibilities of the states and the federal government. Bond v. United States, 131 S.Ct. 2355,
23 2364 (2011). This allocation of powers "preserves the integrity, dignity, and residual
24 sovereignty of the States." Id. "The federal balance is, in part, an end in itself, to ensure that
25 States function as political entities in their own right." Id. Plaintiff cites a number of sections of
26 the California Penal Code in her motions for arrest warrants and injunctions. Accordingly, to the
27 extent that Plaintiff is asking the federal court to direct the state court to issue arrest warrants, the
28 federal court does not have the authority to order the state court judges to issue arrest warrants.

