

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DARREL L. ESPINOSA,  
  
Plaintiff,  
  
v.  
  
WHITEPAGE, INC., a Delaware  
corporation dba whitepages.com,  
  
Defendant.

No. 2:14-cv-2829-MCE-EFB PS

ORDER

On December 4, 2014, plaintiff filed a complaint and a motion for leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915.<sup>1</sup> ECF Nos. 1, 2. On December 29, 2014, plaintiff filed an amended complaint. Then, on January 23, 2015, plaintiff filed a motion for leave to file a second amended complaint, which is currently noticed for hearing on February 25, 2015. ECF No. 6. On January 28, 2015, the court granted plaintiff's request to proceed *in forma pauperis*. The order observed that pursuant to 28 U.S.C. § 1915(e)(2), the court is directed to dismiss a case filed pursuant to the *in forma pauperis* statute if, at any time, it determines that the allegations of poverty is untrue, or if the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against an immune defendant. ECF No. 10 at 1.

---

<sup>1</sup> This case, in which plaintiff is proceeding pro se, is before the undersigned pursuant to Eastern District of California Local Rule 302(c)(21). *See* 28 U.S.C. § 636(b)(1).

1 Because that determination could not be made on the record before the court at that time, the  
2 court reserved decision on the issues until the record was sufficiently developed and directed  
3 plaintiff to submit documents for service of process to the United States Marshal. *Id.* at 1-2.

4 On February 9, 2015, defendant filed a motion to dismiss for failure to state a claim  
5 pursuant to Federal Rule of Civil Procedure 12(b)(6), which is noticed for hearing on March 18,  
6 2015. ECF No. 17. In that motion, defendant brought to the court's attention that plaintiff has  
7 been declared a vexation litigant and is subject to a pre-filing review order. P&A ISO Def.'s  
8 Mot. to Dismiss, ECF No. 18; *see Espinosa v. Marshall*, 2:06-cv-1192 MCE GGH PS. The pre-  
9 filing review order, filed on June 15, 2007, required plaintiff to file with any new action a  
10 declaration which stating why he believes his claims have merit and that the action is not  
11 frivolous or made in bad faith, listing all previous actions filed by plaintiff in this or any other  
12 court, and identifying the names of all defendants and all claims made in previous actions.  
13 *Espinosa v. Marshall*, 2:06-cv-1192 MCE GGH PS, ECF No. 92 at 2. Plaintiff was also ordered  
14 to certify that the defendants named in the proposed action have not previously been sued by  
15 plaintiff. *Id.*

16 Plaintiff has failed to comply with that order. Further, because plaintiff failed to file a  
17 copy of the court's July 15, 2007 order with his complaint, the clerk's office was unaware of the  
18 pre-filing screening order when this case was opened. Accordingly, plaintiff shall comply with  
19 the July 15, 2007 pre-filing screening order. Upon plaintiff's compliance with that order, this  
20 court will review the declaration plaintiff submits and determine whether this action may proceed.

21 Accordingly, it is hereby ORDERED that:

22 1. The hearings on plaintiff's motion to amend and defendant's motion to dismiss are  
23 continued to April 8, 2015.

24 2. Within 14 days of the date of this order, plaintiff shall file a declaration complying  
25 with the pre-filing review order issued in *Espinosa v. Marshall*, 2:06-cv-1192 MCE GGH PS,  
26 ECF No. 92.

27 ////

28 ////

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

3. Failure to comply with this order will result in a recommendation that this action be dismissed.

DATED: February 19, 2015.

  
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE