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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GRACIELA CONTRERAS,
Plaintiff,
v.
JOHN M. MCHUGH, et al.,
Defendants.

No. 2:15-cv-1549-MCE-KJN PS

ORDER AND
FINDINGS AND RECOMMENDATIONS

Plaintiff Graciela Contreras, who proceeds in this action without counsel, has requested leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (ECF No. 2.)¹ Pursuant to 28 U.S.C. § 1915, the court is directed to dismiss the case at any time if it determines that the allegation 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.

In this case, plaintiff, a former Equal Employment Specialist with the California Military Department’s Equal Employment Office, alleges discrimination and retaliation based on race, color, national origin, sex, and disability by several federal and state officials. (ECF No. 1.) However, a careful review of the complaint in this case reveals that the action is duplicative of an

¹ This case proceeds before the undersigned pursuant to E.D. Cal. L.R. 302(c)(21) and 28 U.S.C. § 636(b)(1).

1 earlier action brought by plaintiff which remains pending in this court. (Compare ECF No. 1 to
2 Contreras v. National Guard Bureau, 2:14-cv-1282-MCE-EFB, ECF No. 9.) The actions appear
3 to involve the same events, the same parties, and the same types of claims, except that the
4 operative first amended complaint in the prior action contains significantly more facts and details
5 underlying plaintiff's claims.

6 Therefore, the court recommends that this action be dismissed as duplicative. In
7 recommending dismissal of this action, the court expresses no opinion regarding the merits of
8 plaintiff's claims, which plaintiff may pursue in the earlier action.

9 Accordingly, IT IS HEREBY RECOMMENDED that:

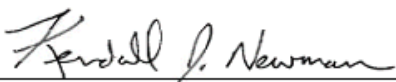
- 10 1. This action be dismissed as duplicative.
- 11 2. Plaintiff's motion to proceed *in forma pauperis* (ECF No. 2) be denied as moot.
- 12 3. The Clerk of Court be directed to close this case.

13 In light of these recommendations, IT IS ALSO HEREBY ORDERED that this action is
14 stayed pending resolution of these findings and recommendations. Other than objections to the
15 findings and recommendations, the court will not entertain or respond to any pleadings or motions
16 until the findings and recommendations are resolved.

17 These findings and recommendations are submitted to the United States District Judge
18 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
19 days after being served with these findings and recommendations, any party may file written
20 objections with the court and serve a copy on all parties. Such a document should be captioned
21 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
22 shall be served on all parties and filed with the court within fourteen (14) days after service of the
23 objections. The parties are advised that failure to file objections within the specified time may
24 waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th
25 Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

26 IT IS SO ORDERED AND RECOMMENDED.

27 Dated: August 24, 2015

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2 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE