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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

YOLANDA LEWIS,  
Plaintiff,  
v.  
CRAIG GRIFFORD,  
Defendant.

No. 2:19-mc-00022 TLN CKD (PS)

FINDINGS AND RECOMMENDATIONS

Plaintiff is proceeding in this action pro se. She has filed a petition to perpetuate testimony pursuant to Fed. R. Civ. P. 27 and paid the corresponding filing fee of \$47.00.

Rule 27 provides:

A person who wants to perpetuate testimony about any matter cognizable in a United States court may file a verified petition in the district court for the district where any expected adverse party resides. The petition must ask for an order authorizing the petitioner to depose the named persons in order to perpetuate their testimony. The petition must be titled in the petitioner's name and must show:

- (A) that the petitioner expects to be a party to an action cognizable in a United States court but cannot presently bring it or cause it to be brought;
- (B) the subject matter of the expected action and the petitioner's interest;
- (C) the facts that the petitioner wants to establish by the proposed testimony and the reasons to perpetuate it;

1 (D) the names or a description of the persons whom the petitioner  
2 expects to be adverse parties and their addresses, so far as known;  
and

3 (E) the name, address, and expected substance of the testimony of  
4 each deponent.

5 Fed. R. Civ .P. 27. “Courts have held that the requirements of Rule 27(a) have been met where  
6 an individual seeking discovery: 1) shows he is acting in ‘anticipation of litigation in federal  
7 court’; 2) ‘adequately explain[s]’ the substance of the testimony he seeks to obtain; and 3)  
8 presents evidence that there is a ‘significant risk’ that the evidence will be lost if it is not  
9 perpetuated.” In re Provident Life and Acc. Ins. Co. to Perpetuate Testimony, 2013 WL 3946517,  
10 \*1 (C.D. Cal. 2013), citing Tennison v. Henry, 203 F.R.D. 435, 440 (N.D. Cal. 2001); see Martin  
11 v. Reynolds Metals Corp., 297 F.2d 49, 55 (9th Cir. 1961) (federal courts have power under Rule  
12 27 to order deposition where party seeking the deposition is unable to bring the suit or cause it to  
13 be brought).

14 The Ninth Circuit has found that a petitioner’s “attempt to invoke Rule 27 to perpetuate  
15 testimony was inappropriate, considering that [he] is presently able to bring his action and will be  
16 able to conduct discovery subsequently. Therefore, the district court properly construed [his]  
17 pleading as an admissible complaint and dismissed his Rule 27 motion[.]” Green v. Robinson, 53  
18 F.3d 338 (9th Cir. 1995) (unpublished), citing Shore v. Acands, Inc., 644 F.2d 386, 388 (5th Cir.  
19 1981). In State of Nevada v. O’Leary, 63 F.3d 932, 933 (9th Cir. 1995), the Court held that “Rule  
20 27 is not appropriate where, as here, the petitioner seeks discovery of unknown information that  
21 the petitioner hopes will assist it in the future when the petitioner applies for judicial relief.”

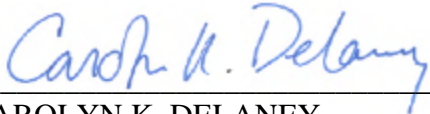
22 In this case, the petition does not meet the Rule 27 requirements, nor is it clear what  
23 petitioner hopes to achieve by filing it. “The grant or denial of a petition to preserve testimony is  
24 within the discretion of the Court.” In re Provident Life, 2013 WL 3946517, \*1, citing State of  
25 Nevada v. O’Leary, 151 F.R.D. 655, 657 (D. Nev. 1993) aff’d, 63 F.3d 932 (9th Cir.1995).  
26 Because the petition is grossly deficient and does not appear curable by amendment, the  
27 undersigned will recommend that it be denied and this action dismissed. See In re Provident Life,  
28 2013 WL 3946517, \*3 (denying petition and dismissing action without prejudice).

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Accordingly, IT IS HEREBY RECOMMENDED that the petition be denied and this action dismissed without prejudice.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, plaintiff may file written objections with the court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: April 2, 2019

  
\_\_\_\_\_  
CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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