

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-09-80007 MISC

JOSEPH MCIENERNEY,
Plaintiff(s),

vs.

CITY AND COUNTY OF SAN FRANCISCO, et al.,
Defendant(s).

ORDER
PERMITTING
FILING

Plaintiff has been declared a vexatious litigant and is subject to pre-filing review by reason of an order entered on October 14, 2003, in C 02-05911 JSW, an action against a number of state court justices and judges. The pre-filing review order provides that plaintiff “shall not file any new litigation in propria persona” before this court “without first obtaining leave of the Chief Judge of the Court”. The matter was referred to this judge as the General Duty Judge.

The vexatious litigant pre-filing order was affirmed on appeal, see 120 Fed.Appx.89 (9th Cir. 2005), despite its sweeping breadth and the Circuit’s citation to DeLong v. Hennessey, 912 F.2d 114 (9th Cir.1990). DeLong sets forth the acceptable parameters of a pre-filing order, instructing among other requirements that it be “narrowly tailored to fit the specific vice encountered”. Id. at 1147.

The case from which the pre-filing review order emanated was an action against a large number of state court justices and judges many of whom had been the target of other lawsuits filed by plaintiff. The instant case is an action against the City and County of San Francisco and several police officers and others. It involves claims of an alleged false arrest and deprivation of rights

1 arising out of an incident occurring at a local hotel on January 14, 2008.

2 To read the pre-filing order to include this case is to cast too wide a net in view of this
3 Circuit's holding in DeLong. Therefore, without taking up the likely merits of plaintiff's claims or
4 entitlement to *in forma pauperis* status, this court finds that plaintiff should be permitted to file the
5 complaint in CV 09-80007MISC .

6 The Clerk of Court shall file the complaint and assign the action pursuant to the court's
7 assignment system.

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9 IT IS SO ORDERED.

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12 Date: January 27, 2009

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MARILYN HALL PATEL
Judge
United States District Court
Northern District of California

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ENDNOTES