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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LORENA L. MEYER,

No. C 16-03010 WHA

Petitioner,

v.

**ORDER OF DISMISSAL**

KAREN LITZENBERG, DEAN PERCY,  
GAYLENE WONG, SELVI  
STANISLAUS, ANNE STAUSBOLL,  
FIONA MA, and BETTY T. YEE,

Respondents.

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**INTRODUCTION**

Petitioner, proceeding pro se, seeks injunctive relief pursuant to the All Writs Act against respondents in connection with deductions and levies on her retirement benefits. Three groups of respondents each move to dismiss. For the reasons that follow, all three motions to dismiss are **GRANTED**.

**STATEMENT**

Petitioner Lorena L. Meyer, a former employee of the California Department of Mental Health facility at Napa State Hospital, previously prevailed against NSH before the State Personnel Board on claims of retaliation, wrongful demotion, and wrongful termination. The SPB decision, which was affirmed by the First District Court of Appeal, Division Three, in 2011, awarded petitioner salary, benefits, and interest (Dkt. No. 1 at 5). In 2012, petitioner filed a pro se civil rights lawsuit here alleging various constitutional claims against certain personnel

1 at NSH (*id.* at 6). That case came to the undersigned judge, but failed to allege sufficient facts  
2 giving rise to a cognizable claim for relief (Order dated May 11, 2012 in Case No. 12-00734).

3 Petitioner claims respondent Wong submitted a fraudulent declaration in the 2012  
4 lawsuit in support of the defendants’ motion to dismiss that case, and that NSH submitted  
5 fraudulent IRS Form W-2s for petitioner in 2011 and 2012. Petitioner alleges those documents  
6 were fraudulent because they inaccurately reflected the amount of money she received from  
7 NSH (Dkt. No. 1 at 5–9). She further alleges the California Public Employees’ Retirement  
8 System (“CalPERS”), relying on the fraudulent documents, started deducting from her benefits  
9 in 2013, and the California Franchise Tax Board levied her bank account in April 2016 (*id.* at  
10 3–4). This petition seeks to enjoin the CalPERS deductions and FTB levy and to compel  
11 respondents to pay petitioner the amount still allegedly owed her under the SPB’s 2008  
12 decision, as well as provide evidence of all amounts already paid to her.<sup>1</sup>

### 13 ANALYSIS

#### 14 1. SUBJECT-MATTER JURISDICTION

15 Respondents move to dismiss the petition pursuant to FRCP 12(b)(1), contending this  
16 Court lacks subject-matter jurisdiction. Subject-matter jurisdiction is a threshold issue, and  
17 must exist at the time the action is commenced. *E.g., Morongo Band of Mission Indians v. Cal.*  
18 *State Bd. of Equalization*, 858 F.2d 1376, 1380 (9th Cir. 1988). Federal courts are courts of  
19 limited jurisdiction and are presumed to lack jurisdiction unless the contrary affirmatively  
20 appears. *E.g., Stock West, Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d  
21 1221, 1225 (9th Cir. 1989). As the party asserting jurisdiction, petitioner bears the burden of  
22 establishing it. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994).

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24  
25 <sup>1</sup> Respondent Stausboll’s request for judicial notice of a decision by the Office of Administrative  
26 Hearings for the State of California dated November 4, 2014, is unopposed and **GRANTED**. As that decision  
27 details, and as petitioner admits CalPERS explained to her in 2012 and 2013, CalPERS began deducting from  
28 petitioner’s benefits as reimbursement for overpayment because, as a result of petitioner’s victory before the  
SPB, her retirement date effectively changed from 2008 to 2011 and she collected both retirement benefits and  
backpay for a time (Dkt. No. 1 at 9; Stausboll’s RJN, Exh. 1). Petitioner does not dispute these facts, but argues  
CalPERS should not have effected this change without her consent (Dkt. No. 1 at 9–10). Respondents’ other  
requests for judicial notice not relied upon in this order are **DENIED AS MOOT**.

1 The All Writs Act provides, “The Supreme Court and all courts established by Act of  
2 Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions.”  
3 28 U.S.C. 1651(a). “As the text of the All Writs Act recognizes, a court’s power to issue any  
4 form of relief . . . is contingent on that court’s subject-matter jurisdiction over the case or  
5 controversy.” *United States v. Denedo*, 556 U.S. 904, 911 (2009). The All Writs Act does not  
6 provide federal courts with an independent grant of subject-matter jurisdiction. *Syngenta Crop  
7 Protection, Inc. v. Henson*, 537 U.S. 28, 33 (2002).

8 Petitioner claims this Court has subject-matter jurisdiction under the All Writs Act  
9 because “a State Employer that previously employed Petitioner supplied fraudulent financial  
10 and income information to this Court on April 19, 2012” (Dkt. No. 1 at 3). This is a non-  
11 sequitur. Petitioner cites no authority and provides no legal basis for the proposition that the  
12 All Writs Act confers subject-matter jurisdiction upon the federal courts, regardless of what a  
13 state employer did or did not do. Respondents point this out in their motions to dismiss, and  
14 petitioner’s only reply is a bald assertion that “Respondents and counsel are in the wrong for  
15 taking unfair advantage of her,” so this district court “should have jurisdiction,” citing vaguely  
16 to FRCP 60 (Dkt. No. 30 at 9–10).

17 FRCP 60 does not confer subject-matter jurisdiction. *In re Hunter*, 66 F.3d 1002, 1005  
18 (9th Cir. 1995). Subject-matter jurisdiction of the district courts flows from statutes, not rules.  
19 *See Cary v. Curtis*, 44 U.S. 236, 245 (1845). Possibly, petitioner may be attempting to invoke  
20 FRCP 60(b)(3) to challenge the undersigned judge’s prior order dismissing her 2012 lawsuit. A  
21 motion under FRCP 60(b)(3), however, must be made “no more than a year after the entry of  
22 the judgment or order or the date of the proceeding,” according to FRCP 60(c)(1). The prior  
23 order was dated May 11, 2012. The time for challenging that order under FRCP 60(b)(3) has  
24 long since passed.

25 Moreover, insofar as petitioner seeks judicial intervention in the FTB’s levying  
26 activities, this Court is jurisdictionally barred from considering her petition by the Tax  
27 Injunction Act, 28 U.S.C. 1341. The Tax Injunction Act provides, “The district courts shall not  
28 enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a

1 plain, speedy and efficient remedy may be had in the courts of such State.” 28 U.S.C. 1341.  
2 Our court of appeals has recognized that this statute “embodies a strong federal policy of  
3 noninterference with state taxation and tax administration,” and that “any efforts to obtain tax  
4 exemption or adjustment in federal court interferes with the fiscal operations of the state.”  
5 *Dillon v. State of Mont.*, 634 F.2d 463, 465 (9th Cir. 1980). Such efforts, including requests of  
6 the sort petitioner makes here, are therefore “jurisdictionally barred” in federal courts so long as  
7 state courts provide a “plain, speedy and efficient remedy.” *Ibid.*

8 The Supreme Court has deemed California’s administrative and judicial procedures a  
9 “plain, speedy and efficient remedy” within the meaning of the Tax Injunction Act. *California*  
10 *v. Grace Brethren Church*, 457 U.S. 393, 413–14 (1982). Petitioner claims she made various  
11 attempts to communicate with respondents to resolve her financial problems, but did not seek  
12 administrative or judicial review or allege any reason why she could not do so (Dkt. No. 1 at 3,  
13 9–12; Dkt. No. 20 at 9–11). Her petition to interfere with the FTB’s levy is therefore barred by  
14 the Tax Injunction Act.

## 15 2. PETITIONER’S MISCELLANEOUS REQUESTS

16 In three separate filings (Dkt. Nos. 32, 48, and 51), petitioner further seeks to, among  
17 other things, disqualify Supervising Deputy Attorney General Courtney Lui, who represents  
18 respondents Litzenberg, Percy, Wong, and Stausboll. Petitioner cites to various ethical  
19 considerations that affect criminal prosecutions and claims “the prosecutor is supposed to be  
20 fair and impartial in civil cases and seek justice.” Thus, she argues, Attorney Lui is responsible  
21 for ensuring the accuracy of respondent Wong’s declaration, collecting backpay for petitioner,  
22 and investigating petitioner’s claims against respondents (Dkt. No. 30 at 7–9). This argument is  
23 unavailing. The attorneys representing respondents are not prosecutors, and ethical  
24 considerations for prosecutors in criminal cases are inapplicable here. Moreover, this request  
25 was already considered and denied by Judge William Orrick on August 1, 2016 (Dkt. No. 26).  
26 Petitioner cannot circumvent that denial simply by repeating her request before a different  
27 judge. Her request for disqualification of counsel is **DENIED**.

28

1 Petitioner also requests pro bono counsel (Dkt. Nos. 49, 51). As the undersigned judge  
2 previously explained in two separate orders in petitioner’s 2012 lawsuit, “in a civil case,  
3 appointment of counsel is a privilege and not an absolute right” (Order dated Sept. 6, 2012 in  
4 Case No. 12-00734). *See Mallard v. United States District Court*, 490 U.S. 296, 305 (1989).  
5 As in the 2012 lawsuit, petitioner here has demonstrated she is indigent but fails to identify any  
6 exceptional circumstances sufficient to warrant appointment of pro bono counsel (*see* Dkt. No.  
7 2). Her request for pro bono counsel is therefore **DENIED**.<sup>2</sup>

8 Petitioner further requests an exemption from fees associated with using PACER (Dkt.  
9 Nos. 35, 51). She says she cannot afford to pay the fees, which prevents her from electronically  
10 filing documents or timely viewing new developments in this case. These activities do not  
11 require PACER and can be accomplished through the court’s electronic filing system.  
12 Petitioner is presumably familiar with that system, since she signed up for it in her 2012 lawsuit  
13 but subsequently obtained this Court’s permission to return to manual filing and service because  
14 she had no computer (Order dated Sept. 6, 2012 in Case No. 12-00734). Petitioner has not  
15 shown why she needs an exemption from PACER fees. Her request for a fee exemption is  
16 therefore **DENIED**.

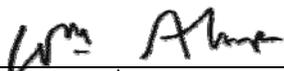
17 **CONCLUSION**

18 For the reasons discussed above, this action is **DISMISSED**. Leave to amend may not be  
19 sought because further amendment would be futile. Petitioner’s requests to disqualify opposing  
20 counsel, for appointment of pro bono counsel, and for an exemption from PACER fees are  
21 **DENIED**.

22 Judgment will follow. The Clerk shall please **CLOSE THE FILE**.

23 **IT IS SO ORDERED.**

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25 Dated: October 13, 2016.

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27 \_\_\_\_\_  
28 WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE

28 <sup>2</sup> Petitioner’s filings describe at length the various difficulties encountered by pro se litigants in the legal system, but challenges common to pro se litigation in general are, by definition, not exceptional circumstances unique to petitioner’s case.