

E-Filed 8/23/2010

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

JOHN A. ROMAYOR,

Plaintiff,

v.

DEBORAH HOLLAND, EXECUTIVE VICE
PRESIDENT AT PUBLISHERS
CLEARINGHOUSE,

Defendant.

Case Number C 10-0091 JF (PVT)

ORDER¹ DISMISSING FIRST
AMENDED COMPLAINT WITH
LEAVE TO AMEND AND DENYING
APPLICATION TO PROCEED IN
FORMA PAUPERIS

[RE: Doc. No. 2, 14]

On January 7, 2010, Plaintiff, proceeding *pro se*, filed a complaint and an application to proceed *in forma pauperis*. On January 21, 2010, Magistrate Judge Patricia V. Trumbull issued an order to reassign the case and a Report and Recommendation concluding that Plaintiff's complaint should be dismissed with leave to amend. Plaintiff did not file any objections to Judge Trumbull's Report and Recommendation. On April 13, 2010, the Court adopted the Report and Recommendation and pursuant thereto dismissed the instant action with leave to amend. The Court directed Plaintiff to file any amended pleading within thirty (30) days. Instead of filing an amended complaint within the allotted time, Plaintiff filed a motion for summary judgment on June 3, 2010. The Court denied that motion as premature because there was no operative complaint. Given Plaintiff's *pro se* status and his evident desire to pursue the action, the Court did not dismiss the case for failure to prosecute, but instead granted Plaintiff additional time

¹ This disposition is not designated for publication in the official reports.

1 within which to file an amended complaint setting forth with specificity his claims against
2 Defendant. The Court directed Plaintiff to file any amended pleading on or before July 27, 2010
3 and stated that if Plaintiff failed to do so the Court would dismiss the action for failure to
4 prosecute.

5 On July 22, 2010, Plaintiff filed a first amended complaint consisting of several
6 documents, including copies of opinions issued in other unrelated cases against Defendant,
7 articles written about Defendant, copies of consumer complaints written about Defendant posted
8 on a consumer affairs website, and various documents sent to Plaintiff from Defendant. None of
9 these documents sets forth with particularity Plaintiff's own factual allegations against
10 Defendant. Because Plaintiff alleges that defendant has committed fraud, such specific
11 allegations are required by Federal Rule of Civil Procedure 9(b).

12 Generally, a district court must give *pro se* litigants an opportunity to amend their
13 complaint. Courts shall give leave to amend "when justice so requires." Fed. R. Civ. P. 15(a)(2).
14 Additionally, a federal court liberally may construe the inartful pleading of parties appearing *pro*
15 *se*. *Hughes v. Rowe*, 449 U.S. 5, 9 (1980). Applying these standards, the Court will grant
16 Plaintiff a final opportunity to attempt to state a valid claim. Any amended pleading must be
17 filed within thirty (30) days of the date this order is filed.

18 Under 28 U.S.C. § 1915, a district court may authorize the commencement of a civil
19 action *in forma pauperis* if the court is satisfied that plaintiff cannot pay the filing fees necessary
20 to pursue the action. 28 U.S.C. § 1915(a)(1). The court may deny *in forma pauperis* status,
21 however, if it appears from the face of the proposed complaint that the action is frivolous or
22 without merit. *O'Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990); *Tripati v. First Nat'l Bank*
23 *& Trust*, 821 F.2d 1368, 1370 (9th Cir. 1987). Plaintiff has not presented any information
24 regarding his financial status. Moreover, as explained above, both Plaintiff's original complaint
25 and his first amended complaint are so uncertain that it is impossible to determine whether
26 Plaintiff ever would be able to set forth a cognizable claim. Accordingly, Plaintiff's request to
27 proceed *in forma pauperis* will be denied without prejudice.

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ORDER

(1) Plaintiff's first amended complaint is DISMISSED WITH LEAVE TO AMEND.
Any amended complaint shall be filed within thirty (30) days after the filing of this order.
(2) Plaintiff's request for leave to proceed *in forma pauperis* is DENIED without
prejudice.

IT IS SO ORDERED.

DATED: 8/23/2010



JEREMY FOGEL
United States District Judge

1 Copies of Order served on:

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3 Mr. John Romayor
4 2032 Southwest Expressway Apt. 49
5 San Jose, CA, 95126

6 Ms. Deborah Holland
7 101 Winners Circle
8 Port Washington, NY 11050

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