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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

GARY W. HAYNIE,	)	Case No.: 10-CV-02621-LHK
	)	
Plaintiff,	)	ORDER DISMISSING CASE WITH
v.	)	PREJUDICE AND VACATING MARCH
	)	10, 2011 HEARING
RONALD M. WHYTE, U.S. DISTRICT	)	
JUDGE,	)	
	)	
Defendant.	)	

Presently before the Court are two motions filed by Plaintiff Gary W. Haynie (“Plaintiff”). Pursuant to Civil Local Rule 7-1(b), the Court finds these motions appropriate for resolution without oral argument. Accordingly, the March 10, 2011 motion hearing is vacated. As explained below, Plaintiff’s complaint is DISMISSED WITH PREJUDICE.

**I. BACKGROUND**

On June 15, 2010, Plaintiff, proceeding *pro se*, filed a complaint and application to proceed *in forma pauperis*. See Dkts. #1 and 2. In his verified complaint, Plaintiff alleges that the Honorable Ronald M. Whyte was biased and rude in handling a prior case involving Plaintiff. On June 24, 2010, Magistrate Judge Patricia V. Trumbull filed a Report and Recommendation, which concluded that Plaintiff’s complaint should be dismissed for failure to state a claim with leave to amend. See Dkt. #5. On July 15, 2010, Judge Jeremy Fogel adopted Magistrate Judge Trumbull’s Report and Recommendation in its entirety, noting that Plaintiff did not file any objections to Magistrate Judge Trumbull’s June 24, 2010 Report and Recommendation. See Dkt. #7. Judge

1 Fogel dismissed Plaintiff's complaint with leave to amend within thirty (30) days of his July 15,  
2 2010 Order. On August 2, 2010, this case was reassigned to this Court for all further proceedings.

3 On August 6, 2010, Plaintiff filed an "Objection to Judge Fogel's Order," which stated that  
4 he never received Magistrate Judge Trumbull's June 24, 2010 Order. *See* Dkt. #9. Plaintiff did,  
5 however, receive Judge Fogel's July 15, 2010 Order. In his August 6, 2010 filing, Plaintiff  
6 requested the opportunity to object to Magistrate Judge Trumbull's Report and Recommendation,  
7 and then went on to provide those objections. *See id.* at 1-2 (where Plaintiff states that he "never  
8 assigned this case to a Magistrate Judge," and "[a]fter reading Judge Patricia V. Trumbull's Order  
9 [he] found that there was nothing wrong with plaintiff's claim.").

10 In a November 15, 2010 Order, this Court ruled that Plaintiff's objections did not provide a  
11 valid legal objection to Judge Trumbull's Report and Recommendation. *See* Dkt. #15.  
12 Accordingly, the Court agreed with Judge Fogel's July 15, 2010 Order adopting Magistrate Judge  
13 Trumbull's Report and Recommendation in its entirety, and dismissed the complaint. Out of  
14 respect for Plaintiff's representations that his receipt of Magistrate Judge Trumbull's Report and  
15 Recommendation was delayed, however, the Court granted Plaintiff an additional thirty days to  
16 amend his complaint.

17 Plaintiff did not amend his complaint. Instead, on December 13, 2010, Plaintiff filed a  
18 "Notice of Hearing Motion for De Novo Determination of Dispositive Matter Referred to  
19 Magistrate Judge" [dkt. #16], and on December 29, 2010 filed a "Motion for Entry of Default"  
20 [dkt. #22]. Plaintiff noticed these motions for a March 10, 2011 hearing date.

## 21 II. ANALYSIS

22 The Court recognizes that it has "a duty to construe pro se pleadings liberally, including pro  
23 se motions as well as complaints." *Bernhardt v. Los Angeles County*, 339 F.3d 920, 925 (9th Cir.  
24 2003). Even liberally construed as an amended pleading, neither of Plaintiff's additional filings  
25 provides any factual allegations sufficient to state a claim. In the "De Novo Determination" filing,  
26 Plaintiff repeats his objection to Judge Trumbull's original Report and Recommendation.  
27 However, in its prior Order on November 15, 2010, this Court already adopted the Report and  
28 Recommendation as its own ruling. In other words, the Court granted leave to amend to allow


1 Plaintiff the opportunity to allege *additional facts* upon which relief could be granted, not to have  
2 Plaintiff repeat the same objections this Court has already overruled.

3 Similarly, Plaintiff's motion for entry of default includes no additional factual allegations  
4 upon which relief may be granted. As Plaintiff has not established a valid claim or right to relief,  
5 default judgment is not appropriate. *See Fed. R. Civ. P. 55(d)* ("A default judgment may be  
6 entered against the United States, its officers, or its agencies only if the claimant establishes a claim  
7 or right to relief by evidence that satisfies the court.").

8 Plaintiff's allegations have now been reviewed four times by three different Judges.  
9 Despite multiple opportunities to do so, Plaintiff has been unable to provide sufficient factual  
10 allegations to state a claim upon which relief may be granted. In these circumstances, further leave  
11 to amend is futile. *See Telesaurus VPC, LLC v. Power*, 623 F.3d 998, 1003 (9th Cir. 2010) ("A  
12 district court may deny a plaintiff leave to amend if it determines that 'allegation of other facts  
13 consistent with the challenged pleading could not possibly cure the deficiency,' or if the plaintiff  
14 had several opportunities to amend its complaint and repeatedly failed to cure deficiencies.").  
15 Accordingly, Plaintiff's complaint is DISMISSED WITH PREJUDICE. The Clerk shall close the  
16 file and terminate any pending motions. The March 10, 2011 hearing is vacated.

17 **IT IS SO ORDERED.**

18  
19 Dated: March 4, 2011



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LUCY H. KOH  
United States District Judge