

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

KATHRYN CSERNA,
Plaintiff,
v.
MORGAN HILL POLICE DEPT. CHIEF
DAVID SWING,
Defendant.

Case No. 5:14-cv-00236 HRL

**ORDER GRANTING MOTION TO
PROCEED IN FORMA PAUPERIS**

**REPORT AND RECOMMENDATION
THAT MOTION TO REMOVE CASE
BE DENIED**

Kathryn Cserna, proceeding pro se, filed a civil rights suit in Santa Clara County Superior Court that she now seeks permission to remove here. Although it is not entirely clear, her one-page motion indicates that she wishes to remove her state court case to correct mistakes in motions and other papers. Additionally, she says “The Judge’s Decision on Dec. 10, 2013 to set aside judgment-void judgment, I will Appeal it.” Cserna also requests leave to proceed in forma pauperis (IFP).

A court may authorize the commencement of a civil action in forma pauperis (“IFP”) if the court is satisfied that the applicant cannot pay the requisite filing fees. 28 U.S.C § 1915(a)(1). In evaluating such an application, the court should “gran[t] or den[y] IFP status based on the applicant’s financial resources alone and then independently determin[e] whether to dismiss the complaint on the grounds that it is frivolous.” Franklin v. Murphy, 745 F.2d 1221, 1226-27 n.5 (9th Cir. 1984). A court may dismiss a case filed without the payment of the filing fee whenever it

1 determines that the action “(i) is frivolous or malicious; (ii) fails to state a claim on which relief
2 may be granted; or (iii) seeks monetary relief against a defendant who is immune from such
3 relief.” 28 U.S.C. § 1915(e)(2)(B)(i)-(iii).

4 Having reviewed plaintiff’s financial affidavit, the court finds that she lacks sufficient
5 resources to pay the filing fee, and her IFP application is granted. Even so, her attempt to remove
6 this case is improper and her motion to do so should be denied. Only defendants have the right to
7 remove a case from state to federal court. 28 U.S.C. § 1441(a). Additionally, insofar as Cserna
8 seeks to have this court review any state court orders, it is not evident that any such appeal
9 properly would be before this court.

10 Because not all parties have consented to the undersigned’s jurisdiction, this court
11 ORDERS the Clerk of the Court to reassign this case to a District Judge. The undersigned further
12 RECOMMENDS that the newly assigned judge deny her “Motion to Remove Case From Superior
13 Court To Federal Court.” Any party may serve and file objections to this Report and
14 Recommendation within fourteen days after being served. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P.
15 72.

16 SO ORDERED.

17 Dated: January 23, 2014

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20 HOWARD R. LLOYD
21 UNITED STATES MAGISTRATE JUDGE
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5:14-cv-00236-HRL Notice sent by U.S. Mail to:

Kathryn Cserna
P.O. Box 1601
Morgan Hill, CA 95038