

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

TATYANA VOGEL,

Plaintiff,

vs.

OCEANSIDE UNIFIED SCHOOL DIST.,
et al.,

Defendant.

CASE NO. 11cv2322-LAB (JMA)

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

SCREENING ORDER

On October 7, 2011, Plaintiff filed her complaint along with a motion to proceed *in forma pauperis* (“IFP”) and a motion for appointment of counsel. On October 28, the Court dismissed the complaint without prejudice for failure to invoke the Court’s jurisdiction, denied the IFP motion as incomplete, and also denied the motion for appointment of counsel.

On January 12, 2012, Ms. Vogel filed a new IFP motion and an amended complaint. The Court has reviewed the IFP motion, finds Ms. Vogel cannot afford to pay the filing fee, and **GRANTS** the motion.

The Court is required to screen a complaint by a plaintiff proceeding IFP, and to dismiss it to the extent it is frivolous or malicious, fails to state a claim, or seeks monetary relief from an immune defendant. See § 1915(e)(2)(B); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000). Although the original complaint sought relief from over thirty Defendants, the caption in this case names only two, followed by “et al.” Under Fed. R. Civ.

1 P. 10(a), the title of every pleading must name all the parties. The amended complaint's
2 allegations only refer to the two named Defendants. Even though Ms. Vogel might have
3 intended to name other Defendants or make allegations against them, she didn't. Claims
4 against the remaining Defendants are therefore deemed abandoned.

5 The two named Defendants are the Oceanside Unified School District and the
6 California School Employees Association. The only allegation concerning the CSEA,
7 however, is that the union failed to address her complaints about harassment. This is
8 insufficient to state a claim, and is **DISMISSED**. Because this is the only claim against the
9 CSEA, it is **DISMISSED** as a party, without prejudice.

10 Attached to the complaint is a right-to-sue letter from the EEOC, telling Ms. Vogel she
11 has the right to sue the school district. This letter suggests that Ms. Vogel in fact intends to
12 sue the school district over the matters she complained about. One problem with this letter
13 is that it appears to be the original. The Clerk is therefore directed to file a copy of this letter
14 in the docket, and return the original to Ms. Vogel.

15 The Court has reviewed the complaint and finds it satisfies the minimal requirements
16 to survive mandatory screening under 28 U.S.C. § 1915A. Ms. Vogel should be mindful,
17 however, that this review is merely a preliminary matter and does not foreclose the possibility
18 that her amended complaint may be dismissed later, should grounds for dismissal become
19 evident. *See Teahan v. Wilhelm*, 481 F. Supp.2d 1115, 1119 (S.D.Cal. 2007) ("[T]he sua
20 sponte screening and dismissal procedure is cumulative of, not a substitute for, any
21 subsequent Rule 12(b)(6) motion that the defendant may choose to bring.")

22 Accordingly, the Court finds Ms. Vogel is entitled to U.S. Marshal service on her
23 behalf. *See* 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve all process,
24 and perform all duties in [IFP] cases."); FED.R.CIV.P. 4(c)(3) ("[T]he court may order that
25 service be made by a United States marshal or deputy marshal . . . if the plaintiff is
26 authorized to proceed in forma pauperis under 28 U.S.C. § 1915.").

27 The Clerk shall issue a summons as to Ms. Vogel's amended complaint upon
28 Defendant Oceanside Unified School District and shall forward it to her along with a blank

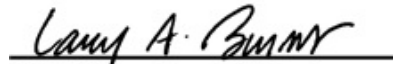
1 U.S. Marshal Form 285. In addition, the Clerk shall provide Plaintiff with a certified copy of
2 this Order and a certified copy of his amended complaint and the summons for purposes of
3 serving the Oceanside Unified School district. Upon receipt of this "IFP Package," Plaintiff
4 is directed to complete the Form 285 as completely and accurately as possible, and to return
5 them to the United States Marshal according to the instructions provided by the Clerk in the
6 letter accompanying the IFP package.

7 Thereafter, the U.S. Marshal shall serve a copy of the amended complaint and
8 summons upon Oceanside Unified School District as directed by Plaintiff on the USM Form
9 285. All costs of service shall be advanced by the United States. See 28 U.S.C. § 1915(d);
10 Fed. R. Civ. P. 4(c)(3).

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED.

DATED: January 19, 2012


HONORABLE LARRY ALAN BURNS
United States District Judge