

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

PHILLIP N. JAAX,)	Civ. NO. 08-00456 SOM/KSC
)	
Plaintiff,)	
)	ORDER DISMISSING COMPLAINT;
vs.)	ORDER DENYING AS MOOT
)	PLAINTIFF'S APPLICATION TO
UNITED STATES OF AMERICA,)	PROCEED WITHOUT PREPAYMENT OF
)	FEEES AND MOTION FOR TEMPORARY
Defendant.)	RESTRAINING ORDER
_____)	

ORDER DISMISSING COMPLAINT; ORDER DENYING AS MOOT PLAINTIFF'S
APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF FEES AND MOTION FOR TEMPORARY RESTRAINING ORDER

On October 10, 2008, Plaintiff Phillip N. Jaax filed a Complaint, an Application To Proceed Without Prepayment of Fees ("Application"), and a Motion for Temporary Restraining Order. Jaax named the United States of America as Defendant and seeks an order suspending trading on all United States stock markets to allow emergency regulatory reform to stabilize the United States and global economies.

Earlier in the day on October 10, 2008, Jaax filed an identical suit in the Central District of California. See Jaax v. United States, Civ. No. 08-06666 MMM-AGR. On October 14, 2008, the court attempted to hold a telephone conference with Jaax and the Government to discuss scheduling of this matter, as well as this court's concerns over whether Jaax had properly named defendants in this matter. Although Jaax was aware of this telephone conference, this court has been unable to reach Jaax

and has left multiple messages for Jaax to contact this court regarding this case. Jaax may have decided to pursue the matter in the California district court in which he filed an identical complaint. Whatever the reason that Jaax has become unreachable, this court dismisses this action for failure to join an indispensable party. The court therefore denies as moot Jaax's Application and his motion for temporary restraining order.

When a plaintiff files an application to proceed in forma pauperis, 28 U.S.C. § 1915(e)(2) allows this court to dismiss the case if it appears from the facts of the complaint that the action is frivolous, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2); see Denton v. Hernandez, 504 U.S. 25, 32 (1992) (the in forma pauperis statute "accords judges not only the authority to dismiss a claim based on an indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless"); accord Tripathi v. First Nat'l Bank & Trust, 821 F.2d 1368, 1370 (9th Cir. 1987) (citing Reece v. Wash., 310 F.2d 139, 140 (9th Cir. 1962)).

Jaax's Complaint is difficult to comprehend. What is clear is that it fails to allege a viable factual or legal theory of relief against the United States that could afford Jaax the

relief he seeks--the suspension of trading on all United States stock markets to allow emergency regulatory reform to stabilize the United States and global economies. Jaax does not name as a party to this action anyone who controls any private stock market. Accordingly, there is no defendant that this court could possibly order to shut down the stock markets.

Rule 19 of the Federal Rules of Civil Procedure governs compulsory joinder in federal district courts. EEOC v. Peabody W. Coal Co., 400 F.3d 774, 778 (9th Cir. 2005). In relevant part, Rule 19(a)(1) provides:

(a) Persons Required to Be Joined if Feasible.

(1) Required Party. A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:

(A) in that person's absence, the court cannot accord complete relief among existing parties; or

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:

(i) as a practical matter impair or impede the person's ability to protect the interest; or

(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

Rule 19(b) provides that, if it is not feasible for the court to join a person meeting the requirements of Rule 19(a), the court

must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed. The factors for the court to consider include:

(1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;

(2) the extent to which any prejudice could be lessened or avoided by:

(A) protective provisions in the judgment;

(B) shaping the relief; or

(C) other measures;

(3) whether a judgment rendered in the person's absence would be adequate; and

(4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

The Ninth Circuit interprets Rule 19 as requiring "three successive inquiries." Peabody, 400 F.3d at 778. "First, the court must determine whether a nonparty should be joined under Rule 19(a)." Id. "If the absentee is a necessary party under Rule 19(a), the second stage is for the court to determine whether it is feasible to order that the absentee be joined." Id. "Finally, if joinder is not feasible, the court must determine at the third stage whether the case can proceed without

the absentee, or whether the absentee is an 'indispensable party' such that the action must be dismissed." Id.

Jaax fails to name indispensable parties that should be joined under Rule 19(a). For example, in seeking to suspend trading on all United States stock markets, Jaax necessarily seeks to halt trading on the New York Stock Exchange. However, the New York Stock Exchange's interests are not represented in this matter, as no defendant is named representing its interests. Even if such a defendant were named or could be joined, Jaax fails to allege facts demonstrating how this court would have personal jurisdiction over it or how venue would be appropriate. Such a defendant would likely be a citizen of New York, not Hawaii, and Jaax's pleading indicates that he lives in Missouri, not Hawaii. Jaax's Complaint does not even allege that any act or harm to Jaax has occurred in Hawaii. It therefore does not appear to be feasible to join a defendant representing the stock market's interest in this matter.

Because it does not appear that Jaax could properly name a defendant to represent the New York Stock Exchange in this action, and because joinder of such a party is necessary to grant Jaax the relief he seeks, the court dismisses this action, as the factors listed in Rule 19(b) favor dismissal. Certainly, enjoining trading on the New York Stock Exchange would prejudice it if it were not a party to this action, and there is no means

by which this court could lessen that prejudice. This court also doubts that it could require the United States to somehow shut down all stock exchanges merely because it regulates them. Such an order would be akin to having the United States shut down an airline without the airline's interest being represented in a suit merely because the Government regulates the airline industry. The court also notes that, although it is dismissing this action, Jaax has an identical action proceeding in California, indicating that dismissal of this action will not prejudice Jaax.

The Complaint fails to state a claim upon which relief can be granted because it fails to assert claims against a defendant that could be ordered to close the stock markets. Accordingly, the court dismisses the Complaint and denies as moot the Application and the motion for temporary restraining order. Although this court would normally grant Jaax leave to amend the Complaint, it declines to do so in light of the ongoing,

identical complaint filed in the Central District of California.

See Jaax v. United States, Civ. No. 08-06666 MMM-AGR.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, October 15, 2008.



/s/ Susan Oki Mollway
Susan Oki Mollway
United States District Judge

Jaax v. United States of America, Civil No. 08-00456 SOM/KSC; ORDER DISMISSING COMPLAINT; ORDER DENYING AS MOOT PLAINTIFF'S APPLICATION TO PROCEED WITHOUT PREPAYMENT OF FEES AND MOTION FOR TEMPORARY RESTRAINING ORDER.