

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAI'I

PHILLIP B. KRIEGE,

Plaintiff,

vs.

STATE OF HAWAII CONSUMER  
PROTECTION DIVISION, *et al.*,

Defendants.

CIVIL NO. 16-00324 DKW-KJM

**ORDER REGARDING  
PLAINTIFF'S NOTICE TO  
VACATE ACTION AND ESTOPPEL**

Plaintiff Phillip B. Kriege, proceeding pro se, initiated this case on June 17, 2016 against the State of Hawaii Consumer Protection Division and its employees Gregg N. Morimoto, Michael A. Nuss, and Mark S. Kawata, as well as Iron Horse Towing and its principals Brenda Ortez Parks and Harley Parks, alleging violations of his federal civil rights, fraud, and breach of the "duty of protection." On March 12, 2018, the Court granted defendant Morimoto's Motion for Judgment on the Pleadings and permitted Kriege limited leave to file an amended complaint by no later than April 9, 2018. Dkt. No. 86 (3/12/18 Order).<sup>1</sup> Instead of filing an

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<sup>1</sup>The 3/12/18 Order instructed Kriege as follows:

The Complaint is dismissed without prejudice, and Kriege is granted leave to amend to attempt to cure the deficiencies identified above. To be clear, Kriege may not add new or different claims or parties or re-allege claims against previously dismissed parties. If Plaintiff chooses to file an amended complaint, he

amended complaint, on April 9, Kriege filed a Notice to Vacate Action and Estoppel (“Notice”), which states in part, that Kriege “hereby vacates this action to produce estoppel.” Notice, Dkt. No. 87. The Notice further indicates that, “[t]his action is hereby STAYED IN PROCEEDINGS and VACATED without leave. Thank you for your cooperation. No further action needs [to be] taken.” *Id.* Although not entirely clear, it appears that Kriege intends by his Notice to voluntarily dismiss this action, and does not intend to file an amended complaint.

Because the Court is unable to determine with certainty whether, in fact, Kriege intended by his Notice to voluntarily dismiss this action, the Court DIRECTS Kriege to notify the Court of his intent by no later than **April 25, 2018**, to either

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must comply with the Federal Rules of Civil Procedure and the Local Rules for the United States District Court for the District of Hawaii.

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The amended complaint must designate that it is the “First Amended Complaint” and may not incorporate any part of the prior complaint. Rather, any specific allegations must be retyped or rewritten in their entirety. Kriege may include only one claim per count. Failure to file an amended complaint by **April 9, 2018** may result in the automatic dismissal of this action without prejudice.

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For the foregoing reasons, Morimoto’s Motion is GRANTED. Dkt. No. 80. The Court grants Kriege limited leave to file an amended complaint in accordance with the terms of this Order by **April 9, 2018**. He may not add new claims or parties, or re-allege claims against previously dismissed parties. The Court CAUTIONS Kriege that failure to file an amended complaint by **April 9, 2018** may result in the automatic dismissal of this action without prejudice.

3/12/18 Order at 18–20.

(1) voluntarily dismiss this action, or, alternatively; (2) to proceed with this action by filing an amended complaint in accordance with the 3/12/18 Order. The Court further CAUTIONS Krieger that if he does not respond to this Order, the Court intends to enter an order dismissing this action without prejudice for failure to prosecute and/or comply with a court order pursuant to Federal Rule of Civil Procedure 41(b).

IT IS SO ORDERED.

DATED: April 10, 2018 at Honolulu, Hawai‘i.



/s/ Derrick K. Watson

Derrick K. Watson  
United States District Judge

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*Krieger v. Morimoto et al.*, CV. NO. 16-00324 DKW-KJM; **ORDER REGARDING PLAINTIFF'S NOTICE TO VACATE ACTION AND ESTOPPEL**