

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

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|-------------------------|---|------------------------|
| RONALD HALE MCELROY, |) | CIVIL 17-00009 LEK-RLP |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | |
| LOGAN MCBARNET; ET AL., |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

ORDER DENYING PLAINTIFF'S MOTION FOR CLARIFICATION

On August 21, 2017, this Court issued the "Order Granting in Part and Denying in Part Defendants' Motion to Dismiss Plaintiff's Amended Complaint [Dkt 16] Filed February 1, 2017" ("8/21/17 Order"). [Dkt. no. 154.] Before the Court is Plaintiff Ronald Hale McElroy's ("Plaintiff") motion for clarification of the 8/21/17 Order ("Motion"), filed September 19, 2017. [Dkt. no. 155.] The Court has considered the Motion as a non-hearing matter pursuant to Rule LR7.2(e) of the Local Rules of Practice of the United States District Court for the District of Hawai'i ("Local Rules"). Plaintiff's Motion is hereby denied for the reasons set forth below.

DISCUSSION

In the 8/21/17 Order, this Court dismissed Count II of Plaintiff's First Amended Complaint ("Amended Complaint"), [filed 2/1/17 (dkt. no. 16),] for lack of subject matter jurisdiction because Plaintiff failed to establish standing to bring the

claim. [8/21/17 Order at 11-12.] This Court dismissed Count I for failure to state a claim upon which relief can be granted because "it is possible that Plaintiff has not sued the proper party in this matter." [Id. at 13-14.] The dismissal of Counts I and II was without prejudice.¹ [Id. at 12, 14.] This Court granted Plaintiff leave to file a second amended complaint by September 19, 2017. [Id. at 15.]

In the Motion, Plaintiff asserts that the State of Hawai`i - or one of its agencies, such as the Department of Transportation - ("the State") is the proper defendant for the claim alleged in Count I of the Amended Complaint. However, if Plaintiff adds the State as a defendant, diversity jurisdiction would no longer exist. Plaintiff therefore "intends to file a Complaint in the Second Circuit Court of the State of Hawaii, which will include the State of Hawaii, Department of Transportation as a Defendant, and allege sufficient allegations establishing his standing to assert the claim set forth in Count II." [Mem. in Supp. of Motion at 4.] The Motion seeks a ruling that the 8/21/17 Order "will not prejudice McElroy's right to file a Complaint in the Second Circuit Court; [and] that dismissals of claims in the Amended Complaint with prejudice shall have no res judicata or collateral estoppel effect on

¹ This Court also dismissed Count III with prejudice, [8/21/17 Order at 14-15,] but the Motion does not seek clarification of this Court's rulings as to Count III.

McElroy's claims in the Second Circuit Court." [Id. at 8.]

Plaintiff's request for clarification of the 8/21/17 Order is puzzling and denied because the 8/21/17 Order contains sufficiently detailed analysis of Plaintiff's Amended Complaint. As to the request for an advisory ruling, this Court cannot predict in a vacuum what may happen in the state court case which Plaintiff apparently intends to file. Moreover, it would not usurp the state court's authority by deciding whether or not the rulings in this case have any res judicata or collateral estoppel effect in a state court case.

CONCLUSION

On the basis of the foregoing, Plaintiff Ronald Hale McElroy's, motion for clarification of this Court's August 21, 2017 order, which Plaintiff filed on September 19, 2017, is HEREBY DENIED. In light of the filing of the motion for clarification, this Court will extend Plaintiff's deadline to file his second amended complaint to **October 16, 2017**. If Plaintiff fails to file his second amended complaint by that date, this Court will dismiss Counts I and II of the Amended Complaint with prejudice and will direct the Clerk's Office to enter final judgment and close the case.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, September 29, 2017.



/s/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States District Judge

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