

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

NAPOLEON T. ANNAN-YARTEY,)	CIVIL NO. 18-00107 HG-KJM
SR.,)	
)	
Plaintiff,)	
)	
v.)	
)	
SECURITAS SECURITY SERVICE)	
USA, INC.; HAWAII DEPARTMENT)	
OF TRANSPORTATION (AIRPORT)	
DIVISION); DEPARTMENT OF)	
STATE OF HAWAII, SHERIFF)	
DIVISION (DIS), STATE OF)	
HAWAII DEPARTMENT OF PUBLIC)	
SAFETY; and DOES 1-10,)	
)	
Defendants.)	
)	

ORDER ADOPTING MAGISTRATE JUDGE'S FINDINGS AND RECOMMENDATION TO: (1) DISMISS FIRST AMENDED COMPLAINT WITH LIMITED LEAVE TO AMEND; AND (2) DENY PLAINTIFF'S APPLICATION TO PROCEED IN DISTRICT COURT WITHOUT PREPAYING FEES OR COSTS (ECF NO. 23) AS MODIFIED

Findings and Recommendation having been filed and served on all parties on June 19, 2018, and no objections having been filed by any party,

IT IS HEREBY ORDERED AND ADJUDGED that, pursuant to Title 28, United States Code, Section 636(b)(1)(C) and Local Rule 74.2, the "Findings and Recommendation To: (1) Dismiss First Amended Complaint with Limited Leave to Amend; and (2) Deny Plaintiff's Application to Proceed in District Court without Prepaying Fees or Costs" (ECF No. 23) are adopted as the opinion and order of this Court with the following modifications:

On Page 4, lines 10 and 12, remove the quotation marks

On page 10, line 6, replace "ECF No. 1 at 2" with "ECF No. 9 at 2, 3"

On Page 11, the quote starting at line 11 shall read "hired, contracted, and paid by [DOT] to provide [airport] security services at Honolulu International Airport."

On Page 12, line 13, insert "F.3d" after "698"

On Page 15, on the last line, replace "763" with "762"

On Page 16, line 17, replace "120" with "121"

On Page 17, line 9, replace "1194" with "1186"

On Page 20, line 10 of footnote 5, replace "104, 107" with "104-107"

On page 20, line 13 of footnote 5, replace "*5" with "*4"

On Page 21, the quote starting at line 8 shall read "[T]he Fourth Amendment sets the applicable constitutional limitations on the treatment of an arrestee detained without a warrant up until the time such arrestee is released or found to be legally in custody based upon probable cause for arrest."

On Page 21, line 12, replace "Cty." with "Cnty."

On Page 21, line 16-17, remove "and convicted prisoners"

On Page 21, line 18, replace "Cty." with "Cnty."

On Page 25, line 14, replace "Co." with "Co.,"

Plaintiff also filed two new pleadings. On June 29, 2018, he filed a complaint entitled "Second Amended Complaint." (ECF No. 25). On July 2, 2018 he filed another complaint entitled "Amended Copy Second Amended Complaint." (ECF No. 26). Under the Federal Rules of Civil Procedure, after the time period to amend a complaint as of right has passed, a complaint may only be

amended by either the written consent of the opposing party or leave from the court. Fed. R. Civ. P. 15(a)(2). The time to amend as of right in this case has passed. Plaintiff has not received written consent of the opposing parties or given leave by the Court to file the two subsequent Complaints.

The filings entitled "Second Amended Complaint" (ECF No. 25) and "Amended Copy Second Amended Complaint" (ECF No. 26) **ARE STRICKEN.**

Plaintiff is given leave to amend his First Amended Complaint. In order to be clear as to the sequence of his complaints, the new complaint shall be entitled **Third Amended Complaint.** The Third Amended Complaint must cure the deficiencies of his claims as specified in the Findings and Recommendation, as modified, adopted by this Order. The Third Amended Complaint must be filed on or before **Monday, August 27, 2018.**

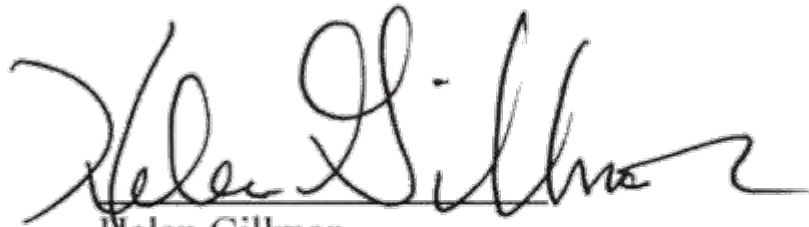
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Failure to timely amend and cure the pleading deficiencies noted herein will result in dismissal of this action with prejudice for failure to state a claim.

IT IS SO ORDERED.

DATED HONOLULU, HAWAII, July 12, 2018




Helen Gillmor
United States District Judge

Napoleon Annan-Yartey, Sr. v. Securitas Security Service USA, Inc.; Hawaii Department of Transportation (Airport Division); Department of State of Hawaii, Sheriff Division (DIS), State of Hawaii Department of Public Safety; and Does 1-10, CIVIL NO. 18-00107 HG-KJM; ORDER ADOPTING MAGISTRATE JUDGE'S FINDINGS AND RECOMMENDATION TO: (1) DISMISS FIRST AMENDED COMPLAINT WITH LIMITED LEAVE TO AMEND; AND (2) DENY PLAINTIFF'S APPLICATION TO PROCEED IN DISTRICT COURT WITHOUT PREPAYING FEES OR COSTS (ECF NO. 23) AS MODIFIED