

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WILLIAM SCHEIDLER,

Plaintiff,

v.

JAMES AVERY, et al.,

Defendants.

CASE NO. C12-5996 RBL

ORDER

THIS MATTER is before the Court on Plaintiff Scheidler's "Objection to the Court's Order" and "Motion to Disqualify WA state Bar Associates from hearing this Case" [Dkt. #56].

Scheidler's filing claims that by using the short hand version of the caption, the Court has "dismissed" the remaining defendants. This is not correct. The Ninth Circuit held:

The district court properly determined that Scheidler is not entitled to relief under the federal criminal statutes he cited.

The district court also properly determined that Scheidler's first amended complaint failed to state a federal constitutional claim, or a state criminal or constitutional claim, upon which relief could be granted. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." (internal citations and quotation marks omitted)).

However, the district court abused its discretion in dismissing the first amended complaint without leave to amend. *See U.S. v. Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir. 2011) ("[D]ismissal without leave to amend is improper unless it is clear, upon de novo review, that the complaint could not be saved by

1 any amendment.” (internal citation and quotation marks omitted)). *See Akhtar v.*
2 *Mesa*, 698 F.3d 1002, 1212 (9th Cir. 2012 (“A district court should not dismiss a
3 pro se complaint unless it is absolutely clear that the deficiencies of the complaint
4 could not be cured by amendment.” (citation and internal quotation marks
5 omitted)). We therefore reverse and remand to *allow Scheidler an opportunity to*
6 *amend his complaint.*

7 Dkt. #51; *see* 2105 WL 1404983 at *1 (Emphasis added, some internal citations omitted).

8 Consistent with the Ninth Circuit’s Memorandum Opinion, the Court has provided Plaintiff an
9 opportunity to amend his complaint to state a *viable* claim—against *any* of the current
10 defendants. He must do so by **May 19, 2015** (21 days from the date of the Order) or the case
11 will be DISMISSED.

12 The Ninth Circuit also held that Scheidler’s Complaint “incorporated by reference” a
13 “Petition for Review of the Board of Tax Appeal’s September 6, 2102 decision” and that this
14 Court had “not declined to exercise supplemental jurisdiction over that Petition.” This Court’s
15 Order [Dkt. #55] instructed Mr. Scheidler to expressly seek such a review in his amended
16 complaint, if that is, in fact, what he seeks. Scheidler’s “Objection” to this aspect of the Order is
17 not clear.

18 While Scheidler’s lengthy complaint clearly mentioned the underlying tax dispute, the
19 relief he sought (and the bulk of the allegations he has made in this Court and in the Ninth
20 Circuit) focused on the culpability of the various individual defendants. It did not address the
21 Board of Tax Appeal’s decision, or seek to have it overturned:

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VIII RELIEF

- 1) Invalidate and enjoin the Assessor's practice of using his home-grown scheme in his implementation of RCW 84.36.381 and in the calculation of "disposable income".
- 2) Mandate the Assessor comply with the express and unambiguous language of RCW 84.36.379-389 and conform its qualifying procedures and calculations to the exact language and meaning of RCW 84.36.383(5).
- 3) Enjoin the Assessor alert all county homeowners they have been provided improper instructions and to invite all homeowners to, retroactively, reapply for the Art.7, Sec.10 exemption as justice demands.
- 4) Recalculate disposable income for each and every applicant retroactively as justice requires; and
- 5) Submit the assessor and his counsel and the judge to the proper authorities for their due process violations, unlawful conduct, violations of precedent and rules of professional conduct.

IX DAMAGES:

1. Statutory damages, \$10,000 under RCW 4.24.510, against each of defendants Miles, Avery and Haberly.
2. Compensatory Damages against all defendants to be determined at trial
3. Nominal Damages against all defendants to be determined at trial
4. Costs and expenses under RCW 4.84 to be determined.
5. Any other award justice demands

[Dkt. #1-2].

Scheidler sought the opportunity to amend his complaint, and he has been invited to do so. If he seeks review of the Board of Tax Appeal's September 6, 2012 decision, his complaint should say so.

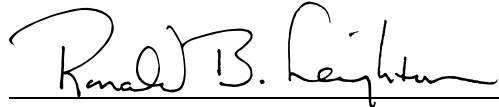
Scheidler also moves to "Disqualify WA State Bar Associates from hearing the case." This is a variation of Scheidler's motion(s) for recusal that have been previously denied. [See Dkt. Nos. 11, 28, and 37]. The Ninth Circuit affirmed that denial: "The district court did not abuse its discretion in denying Scheidler's motion for recusal of the district court judge because

1 | Scheidler failed to identify a ground for recusal.” Dkt. #51, *see* 2105 WL 1404983 at *2. The
2 | renewed motion similarly fails to state a ground for disqualification.

3 | The Motion is DENIED.

4 | IT IS SO ORDERED.

5 | Dated this 29th day of April, 2015.

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8 | RONALD B. LEIGHTON
9 | UNITED STATES DISTRICT JUDGE