UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JUNE M. DOMINO, Plaintiff-Appellant, v. CALIFORNIA CORRECTIONAL HEALTH CARE SERVICES; AFSCME LOCAL 2620, Defendants-Appellees.	No. 20-16328 D.C. No. 1:19-cv-01790-NONE-SKO Eastern District of California, Fresno ORDER

Before: W. FLETCHER, BERZON, and BYBEE, Circuit Judges.

Upon a review of the record and the response to the court's August 24, 2020 order, we conclude this appeal is frivolous. We therefore dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

All pending motions are denied as moot.

DISMISSED.

MF/Pro Se

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JUNE M. DOMINO, Ph.D.,

Plaintiff,

v.

CALIFORNIA CORRECTIONAL HEALTH CARE SERVICES, et al.,

Defendants.

No. 1:19-cv-01790-NONE-SKO

ORDER ADOPTING FINDINGS AND RECOMMENDATION REGARDING "EX PARTE APPLICATION FOR ORDER TO SERVE AND STAY FIRST AMMENDED [SIC] COMPLAINT"

(Doc. No. 13)

Plaintiff June M. Domino, Ph.D., is proceeding pro se and *in forma pauperis* in this action against her former employer California Correctional Healthcare Services and labor union AFSCME Local 2620. (Doc. Nos. 2, 3, 10.) Following the screening of her original complaint, plaintiff filed her First Amended Complaint (FAC), the operative pleading, on March 24, 2020. (Doc. No. 10.) Therein, plaintiff alleges causes of action under Title VII of the Civil Rights Act of 1964, 42 U.S. C. § 2000e et seq., for hostile work environment and retaliation, and a cause of action under 42 U.S.C. § 1981 for racial discrimination. (*See id.*) Plaintiff also alleges a cause of action under state law for negligent supervision. (*See id.*)

In the May 8, 2020 second screening order, the assigned magistrate judge found that plaintiff's FAC did not state any cognizable claims and granted plaintiff one final opportunity to amend her complaint to cure its noted deficiencies. (*See* Doc. No. 11.) Pursuant to a requested extension, plaintiff's Second Amended Complaint is due July 6, 2020. (*See* Doc. No. 15.)

On May 12, 2020, plaintiff filed a document titled "Ex Parte Application for Order to Serve and Stay First Ammended [sic] Complaint," requesting that the Court "order a comprehensive Federal Investigation into Defendants [sic] alleged acts of racism and retaliation" and issue a "Temporary Order sustaining Plaintiff's compensation until such time that a complete and comprehensive discovery of the facts are made known." (Doc. No. 12.) On May 20, 2020, the assigned magistrate judge issued findings and a recommendation that the ex parte application be denied to the extent it requests the court to order a federal investigation and be denied without prejudice to the extent it seeks preliminary injunctive relief. (Doc. No. 13.) The findings and recommendations were served on plaintiff and contained notice that any objections thereto were due within twenty-one days. (*See id.*) On May 29, 2020, plaintiff filed timely objections.[1]

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a *de novo* review of the case. Having carefully reviewed the entire file, including plaintiff's objections, the court finds that the findings and recommendation are supported by the record and proper analysis.

ORDER

Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendation issued May 20, 2020 (Doc. No. 13), are ADOPTED IN FULL; and
2. Plaintiff's "Ex Parte Application for Order to Serve and Stay First Ammended [sic] Complaint," filed on May 12, 2020 (Doc. 12), is DENIED to the extent it requests the court to order a federal investigation and is DENIED WITHOUT PREJUDICE to the extent it seeks preliminary injunctive relief.

IT IS SO ORDERED.

Dated: **July 1, 2020**

Dale A. Drozd
UNITED STATES DISTRICT JUDGE

[1] Plaintiff also appealed the findings and recommendations, which appeal was dismissed for lack of jurisdiction on June 26, 2020. (*See* Doc. Nos. 16, 19.)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JUNE M. DOMINO,

Plaintiff,

v.

CALIFORNIA CORRECTIONAL HEALTH CARE SERVICES, et al.,

Defendants. /

Case No. 1:19-cv-01790-NONE-SKO

FIRST SCREENING ORDER

(Doc. 1)

21-DAY DEADLINE

Plaintiff June M. Domino, proceeding pro se, filed a complaint on December 23, 2019, against California Correctional Healthcare Services and "AFSCME Local 2620." (Doc. 1.) Plaintiff purports to allege claims for employment discrimination under unspecified "Federal Statutes" and "Federal Treaties." (*Id.*) She demands "$44 Million" in damages. (Doc. 1-1.) Plaintiff also filed an application to proceed *in forma pauperis*, which was granted on December 27, 2019. (Docs. 2 & 3.)

Plaintiff's complaint is now before the Court for screening. As discussed below, Plaintiff's allegations are conclusory and fail to plead cognizable federal claims. Plaintiff is granted leave to file a first amended complaint and is provided the pleading requirements and legal standards under which her claims will be analyzed.

I. SCREENING REQUIREMENT AND STANDARD

The Court is required to screen complaints in cases where the plaintiff is proceeding in forma pauperis. 28 U.S.C. § 1915(e)(2). Plaintiff's complaint, or any portion thereof, is subject

to dismissal if it is frivolous or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 28 U.S.C. § 1915(e)(2)(B). If the Court determines that the complaint fails to state a claim, leave to amend may be granted to the extent that the deficiencies of the complaint can be cured by amendment. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (*en banc*).

The Court's screening of the complaint is governed by the following standards. A complaint may be dismissed as a matter of law for failure to state a claim for two reasons: (1) lack of a cognizable legal theory; or (2) insufficient facts under a cognizable legal theory. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). Plaintiff must allege a minimum factual and legal basis for each claim that is sufficient to give each defendant fair notice of what Plaintiff's claims are and the grounds upon which they rest. *See, e.g., Brazil v. U.S. Dep't of the Navy*, 66 F.3d 193, 199 (9th Cir. 1995); *McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

Under Federal Rule of Civil Procedure 8(a), a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief . . . ." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). In determining whether a complaint states a claim on which relief may be granted, allegations of material fact are taken as true and construed in the light most favorable to the plaintiff. *See Love v. United States*, 915 F.2d 1242, 1245 (9th Cir. 1989). Moreover, since Plaintiff is appearing *pro se*, the Court must construe the allegations of her complaint liberally and must afford Plaintiff the benefit of any doubt. *See Karim–Panahi v. Los Angeles Police Dep't*, 839 F.2d 621, 623 (9th Cir. 1988). However, "the liberal pleading standard . . . applies only to a plaintiff's factual allegations." *Neitzke v. Williams*, 490 U.S. 319, 330 n.9 (1989). "[A] liberal interpretation of a civil rights complaint may not supply essential elements of the claim that were not initially pled." *Bruns v. Nat'l Credit Union Admin.*, 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)).

Further, "a plaintiff's obligation to provide the 'grounds' of [her] 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do . . . . Factual allegations must be enough to raise a right to relief above the speculative level." *See Twombly*, 550 U.S. at 555 (internal citations omitted); *see also Iqbal*, 556 U.S. at 678 (To avoid dismissal for failure to state a claim, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.") (internal citations omitted).

II. DISCUSSION

A. The Complaint

Plaintiff filed a 27-page complaint, comprised of a pre-printed form and one exhibit, which is a copy of an order entered in the case of *Coleman v. Newsom*, No. 2:90-cv-0520 KJM DB P, 2019 WL 6877885 (E.D. Cal. Dec. 17, 2019). (Doc. 1.) Plaintiff indicates this court has jurisdiction because she is bringing federal claims under "[F]ederal Statutes, as well as Federal Treaties provides [sic] that U.S. Citizens shall be protected from employment discrimination on the bases of Race, Age, Sex & Color for the purpose of ensuring that all citizen [sic] are treated equally as guaranteed under the laws of the U.S. Constitution." (*Id.*) Plaintiff appears to be generally alleging that she was treated unfairly at her last place of employment based on her membership in a protected class and that she was retaliated against for having taken some unspecified action against her employer. (*Id.*)

B. Analysis

The complaint does not contain a "short and plain" statement setting forth the basis for federal jurisdiction, Plaintiff's entitlement to relief, or the relief that is sought, even though those things are required by Fed. R. Civ. P. 8(a)(1)-(3). The exact nature of what happened to Plaintiff is obscured by the complaint, which contains 27 pages and no clear allegations of particular instances of violation of federal law, apart from legal conclusions that do not suffice to state a claim. There is also no indication what relevance, if any, the December 17, 2019 order in

Coleman v. Newsom, attached the complaint, has to Plaintiff's allegations.[1] Further, Plaintiff refers throughout her complaint to "Defendants" without identifying the specific wrongful acts that each Defendant performed and how each Defendant either caused Plaintiff harm or is responsible for Plaintiff's harm. In sum, the Court cannot tell from examining the complaint what legal wrong was done to plaintiff, by whom and when, or how any alleged harm is connected to the relief Plaintiff seeks.

1. Eleventh Amendment Immunity

The Eleventh Amendment bars suits against state agencies, as well as those where the state itself is named as a defendant, regardless of the relief sought. *See P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 144 (1993); *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984); *see also Dittman v. State of California*, 191 F.3d 1020, 1025-26 (9th Cir. 1999).

Plaintiff names California Correctional Health Care Services as a defendant, but, as an agency of the state, it is entitled to Eleventh Amendment immunity. *See, e.g., Gomes v. Mathis*, No. CV 17–7022, 2018 WL 2085237, at *3 (C.D. Cal. May 3, 2018). The Eleventh Amendment does not, however, bar suits seeking damages against state officials/employees in their individual capacity. *See Hafer v. Melo*, 502 U.S. 21, 30-31 (1991). Also, the Eleventh Amendment does not bar suits for prospective declaratory or injunctive relief against state officials in their official capacity. *Pennhurst*, 465 U.S. at 102-06. Therefore, it does not preclude Plaintiff from naming as defendants those individuals involved in the alleged discriminatory and/or retaliatory conduct.

2. Section 1983 and Equal Protection

To the extent that Plaintiff seeks to assert a claim under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, there is no direct cause of action for constitutional amendments. *Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 929 (9th Cir. 2001) ("[A] litigant complaining of a violation of a constitutional right does not have a direct cause of action under the United States Constitution"). However, 42 U.S.C. § 1983 ("Section

[1] The order in *Coleman v. Newsom* follows an evidentiary hearing on a whistleblower's complaint regarding the state's compliance with prior orders in a case concerning understaffing of mental health treatment in California prisons. *See id.*, No. 2:90-cv-0520 KJM DB P, 2019 WL 6877885 (E.D. Cal. Dec. 17, 2019).

1983") "is a method for vindicating federal rights elsewhere conferred." *Albright v. Oliver*, 510 U.S. 266, 271 (plurality) (1994). Thus, an individual may bring an action for the deprivation of civil rights pursuant to Section 1983, which states in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983. To maintain a Section 1983 civil rights action, a plaintiff must allege: "(1) that the conduct complained of was committed by a person acting under color of state law; and (2) that the conduct deprived the plaintiff of a constitutional right." *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990).

Private conduct, however discriminatory or wrongful, is not proscribed by Section 1983. *See Aasum v. Good Samaritan Hospital*, 542 F.2d 792, 794 (9th Cir. 1976); *see also Jensen v. Lane Cty.*, 222 F.3d 570, 574 (9th Cir. 2000) ("Because § 1983 and the Fourteenth Amendment are directed at the states, the statute supports a claim only when the alleged injury is caused by 'state action' and not by a merely private actor, against whom tort remedies may be sought in state court."). For private conduct to constitute state action, there must be "such a close nexus between the State and the challenged action that seemingly private behavior may be fairly treated as that of the State itself." *Lee v. Katz*, 276 F.3d 550, 554 (9th Cir. 2002) (internal quotes omitted). In the absence of this nexus, private conduct cannot constitute state action, and thus cannot violate an individual's constitutional rights, no matter how discriminatory that conduct may be. *See Aasum* 542 F.2d at 794 (finding that private conduct constitutes state action only when "the asserted discriminatory conduct is of constitutional dimension and results from action under color of state law and the State has 'significantly' involved itself with invidious discrimination that the prohibition results.") (citing *Reitman v. Mulkey*, 387 U.S. 369 (1967)). Here, Plaintiff has named as a defendant "AFSCME Local 2620," but has not alleged any facts that this defendant's actions should be considered those of the state for purposes of the Equal Protection Clause or Section 1983 liability. Therefore, she has not met her burden to plead an essential element of her Section

1983 claim against this defendant. *See, e.g., Pinkney v. Am. Med. Response, Inc.*, 520 F. App'x 502, 503–504 (9th Cir. 2013) (holding that the district court properly dismissed a Section 1983 claim against a service employees' union because the plaintiff failed to allege facts showing that the union was acting under color of state law); *Ramos v. Tacoma Community College,* No. C06-5241FDB, 2006 WL 2038050, at *2 (W.D. Wash. July 19, 2006) ("A labor organization that represents public employees is not by virtue of that fact a state entity for the purposes of Section 1983 claims.") (citing *Jordan v. Haw. Gov't Emp. Ass'n*, 472 F. Supp. 1123, 1130–1131 (D. Haw. 1979)).

Finally, "[t]he Equal Protection Clause requires the State to treat all similarly situated people equally." *Shakur v. Schriro*, 514 F.3d 878, 891 (9th Cir. 2008). To state an equal protection claim under Section 1983, a plaintiff must typically allege that "'defendants acted with an intent or purpose to discriminate against the plaintiff based upon membership in a protected class.'" *Furnace v. Sullivan*, 705 F.3d 1021, 1030 (9th Cir. 2013) (quoting *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998)). Alternatively, where the claim is not that the discriminatory action is related to membership in an identifiable group, a plaintiff can establish an equal protection "class of one" claim by alleging that she as an individual "has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment" in the departure from some norm or common practice. *See Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). However, allegations that a defendant has merely done some harmful act against the plaintiff, without more, fail to state an equal protection "class of one" claim. *See Nails v. Haid*, No. SACV 12–0439 GW (SS), 2013 WL 5230689, at *3–5 (C.D. Cal. Sept. 17, 2013).

Here, Plaintiff does not allege that any defendant took any action because of Plaintiff's membership in an identifiable group or that any defendant treated her differently than other specifically-identified similarly situated people with no rational basis. Indeed, it is unclear whether Plaintiff is basing her equal protection claim on her membership in an identifiable class—as she fails to identify the class to which she belongs—or as a "class of one." Plaintiff has therefore failed to state a cognizable claim for a violation of the Fourteenth Amendment's Equal

Protection Clause.

3. Employment Discrimination

To the extent Plaintiff is pursuing a discrimination and/or retaliation action pursuant to Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e-5, *et seq.*, she must establish federal subject matter jurisdiction. *See Cerrato v. San Francisco Community College Dist.,* 26 F.3d 968, 976 (9th Cir. 2009) (Congress has abrogated Eleventh Amendment immunity with respect to Title VII claims). To establish such jurisdiction for a Title VII claim, a plaintiff must exhaust her remedies by filing an administrative charge of discrimination with the Equal Employment Opportunity Commission (EEOC) before commencing an action in federal court. *B.K.B. v. Maui Police Dept.*, 276 F.3d 1091, 1099 (9th Cir. 2002); *Sommatino v. United States*, 255 F.3d 704, 708 (9th Cir. 2001). Plaintiff has made no indication in her complaint that she has complied with the exhaustion requirement. Furthermore, implicit in 42 § U.S.C. § 2000e–2 is that there must be an employment relationship between the plaintiff and defendant for Title VII protections to apply. *See Adcock v. Chrysler Corp.*, 166 F.3d 1290, 1292 (9th Cir. 1999). The complaint is devoid of facts to establish the existence of an employment relationship with either of the named defendants.

Lastly, to have a valid Title VII cause of action, Plaintiff must assert *factual* allegations in her complaint that she was discriminated and/or retaliated against because of her race, color, religion, sex, age, disability or national origin. In her complaint, Plaintiff merely states that Defendants have "knowingly and willfully participated in criminal conduct designed to relegate Plaintiff into object poverty" and that she is a "member of a protected class." (Doc. 1 at 5, 6.) Plaintiff does not include facts as to what person or entity subjected her to discrimination and/or retaliation, and on what basis.

4. Jurisdiction of State Law Claims

Finally, Plaintiff is advised that federal courts can only adjudicate civil cases authorized by the United States Constitution and Congress. Generally, this includes cases in which: 1) diversity of citizenship is established (the matter in controversy exceeds $75,000 and is between citizens of different states), 2) a federal question is presented, or 3) the United States is a party. *See* 28 U.S.C. §§ 1331 and 1332; *see also Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994).

If Plaintiff is unable to state a cognizable federal claim, such as a Section 1983 or Title VII claim, the only way Plaintiff would be able to bring a state law claim (such as defamation and negligence, *see* Doc. 1 at 6) in federal court is to establish complete diversity of citizenship, which would require that the parties are citizens of different states. *See Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 553 (2005). Here, Plaintiff and all defendants are citizens of California. (*See* Doc. 1 at 2.) Therefore, diversity of citizenship cannot be established and this Court cannot adjudicate any state law claims unless Plaintiff states a cognizable federal claim.

III. CONCLUSION AND ORDER

The Court finds Plaintiff has failed to state a cognizable federal claim against any defendant. As noted above, the Court will provide Plaintiff with an opportunity to amend her claims and cure, to the extent possible, the identified deficiencies. *Lopez*, 203 F.3d at 1130. Plaintiff may not change the nature of this suit by adding new, unrelated claims in her amended complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (no "buckshot" complaints).

Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but it must identify what causes of action are being pursued, identify the improper actions or basis for liability of each defendant, and the factual allegations must demonstrate plausible claims, *Iqbal*, 556 U.S. at 678–79. Although accepted as true, the "[f]actual allegations must be [sufficient] to raise a right to relief above the speculative level . . . ." *Twombly*, 550 U.S. at 555 (citations omitted). Finally, Plaintiff is advised that an amended complaint supersedes the original complaint. *Lacey v. Maricopa Cty.*, 693 F.3d 896, 927 (9th Cir. 2012) (*en banc*). Therefore, Plaintiff's amended complaint must be "complete in itself without reference to the prior or superseded pleading." Rule 220, Local Rules of the United States District Court, Eastern District of California.

Based on the foregoing, it is HEREBY ORDERED that:

1. Plaintiff is granted leave to file a first amended complaint;
2. **Within twenty-one (21) days from the date of service of this order**, Plaintiff must file a first amended complaint curing the deficiencies identified by the Court in this order, or a notice of voluntary dismissal; and
3. **If Plaintiff fails to file an amended complaint in compliance with this order,**

the undersigned will recommend to the assigned district judge that this action be dismissed for failure to state a claim, to prosecute, and to obey a court order.

IT IS SO ORDERED.

Dated: **March 3, 2020**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

APPENDIX D

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JUNE M. DOMINO

CASE: **1:19-CV-01790-NONE-SKO**

vs.

CALIFORNIA CORRECTIONAL HEALTH CARE SERVICES, ET AL.

ORDER UNASSIGNING DISTRICT JUDGE

_____ /

The court, having considered the inactive senior status of District Judge Lawrence J. O'Neill, finds the necessity for unassigning the above captioned case, and for notice to be given to the affected parties.

IT IS THEREFORE ORDERED that:

The above captioned case shall be and is hereby **UNASSIGNED** and shall remain unassigned until a new district judge is appointed. The new case number for this action, which must be used on all documents filed with the court, is: **1:19-CV-01790-NONE-SKO**

All dates currently set in this reassigned action shall remain effective subject to further order of the court. Parties are referred to the attached Standing Order in Light of Ongoing Judicial Emergency in the Eastern District of California for more information.

DATED: February 3, 2020

KIMBERLY J. MUELLER, CHIEF
U.S. DISTRICT COURT JUDGE

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JUNE M. DOMINO ,

Plaintiff,

v.

CALIFORNIA CORRECTIONAL HEALTH CARE SERVICES , ET AL. ,

Defendant.

No. **1:19–CV–01790–NONE–SKO**

STANDING ORDER IN LIGHT OF ONGOING JUDICIAL EMERGENCY IN THE EASTERN DISTRICT OF CALIFORNIA

The judges of the United States District Court for the Eastern District of California have long labored under one of the heaviest caseloads in the nation even when operating with a full complement of six authorized District Judges.[1] Each of those six District Judges has regularly carried a caseload double the nationwide average caseload for District Judges. Even while laboring under this burden, the judges of this court have annually ranked among the top 10 districts in the country in cases terminated per judgeship for over 20 years. *See* Letter regarding Caseload Crisis from the Judges of the Eastern District of California (June 19, 2018), http://www.caed.uscourts.gov/CAEDnew/index.cfm/news/important–letter–re–caseload–crisis/. On December 17, 2019, District Judge Morrison C. England took Senior status. On December 31, 2019, Senior District Judge Garland E. Burrell, Jr. assumed inactive Senior status. On February 2, 2020, District

[1] For over a decade the Judicial Conference of the United States has recommended that this district be authorized up to six additional judgeships. However, those recommendations have gone unacted upon. This is the case despite the fact that since the last new District Judgeship was created in the Eastern District in 1978, the population of this district has grown from 2.5 million to over 8 million people and that the Northern District of California, with a similar population, operates with 14 authorized District Judges.

Judge Lawrence J. O'Neill will assume inactive Senior status.[2] As a result of these long anticipated events, the shortfall in judicial resources will seriously hinder the administration of justice throughout this district, but the impact will be particularly acute in Fresno, where the undersigned will now be presiding over all criminal and civil cases previously assigned to Judge O'Neill as well as those already pending before the undersigned. As of the date of this order, this amounts to roughly 1,050 civil actions and 625 criminal defendants. Until two candidates are nominated and confirmed to fill this court's two vacant authorized district judgeships, this situation can only be expected to get progressively worse.

The gravity of this problem is such that no action or set of actions undertaken by this court can reasonably be expected to alleviate it. Nonetheless, this order will advise litigants and their counsel of the temporary procedures that will be put in place for the duration of this judicial emergency in cases over which the undersigned is presiding. What follows will in some respects be contrary to the undersigned's default Standing Order in Civil Actions,[3] and may also differ from the Local Rules of the Eastern District of California. To the extent such a conflict exists, the undersigned hereby invokes the court's authority under Local Rule 102(d) to issue orders supplementary or contrary to the Local Rules in the interests of justice and case management.

A. DESIGNATION OF CIVIL CASES

As of February 3, 2020, all civil cases previously assigned to Judge O'Neill, and all newly filed cases that will be assigned to his future replacement, will be unassigned. Those cases will bear the designation "NONE" as the assigned district judge and will continue to bear the initials of the assigned magistrate judge. Until new judges arrive, the undersigned will preside as the district judge in the cases so designated. Judge O'Neill's chambers staff will remain in place for seven months following his departure from the court. Accordingly, his remaining staff will continue to work on the cases bearing the "NONE" designation and Courtroom Deputy Irma Munoz (559–499–5682; imunoz@caed.uscourts.gov) will continue to be the contact person with respect to any questions regarding those cases. Proposed orders in those cases are to be sent to

---

[2] In short, a Senior District Judge is one who has retired from regular active service, usually based on age and length of service, but continues to preside over cases of a nature and in an amount as described in 28 U.S.C. § 371(e). A Senior District Judge taking inactive status is one who has ceased to perform such work.

[3] The undersigned's standing order in civil cases is available at http://www.caed.uscourts.gov/caednew/assets/File/DAD%20Standing%20Order052019.pdf

noneorders@caed.uscourts.gov. Finally, any hearings or trials before the undersigned in cases bearing the "NONE" designation will continue to be held in Judge O'Neill's former courtroom, Courtroom #4 on the 7th Floor at 2500 Tulare Street in Fresno, California.

B. CIVIL LAW AND MOTION

It has been the strong preference of the undersigned over the past twenty–three years to hear oral argument on all civil motions. In the undersigned’s experience, doing so allows the court to more fully grasp the parties' positions and permits the parties to address the court's concerns without the need for supplemental briefing. However, given the judicial emergency now faced by this court, such hearings on civil law and motion matters will no longer be feasible. Accordingly, all motions filed before the undersigned in civil cases will be deemed submitted upon the record and briefs pursuant to Local Rule 230(g). The hearing date chosen by the moving party will nonetheless govern the opposition and reply filing deadlines pursuant to Local Rule 230(c). In cases bearing the "DAD" designation, the noticed hearing dates will remain the first and third Tuesdays of each month. In cases designated as "NONE," the noticed hearing dates may be any Tuesday through Friday. In the unlikely event that the Court determines a hearing would be helpful and feasible, the court will re–schedule a hearing date in accordance with its availability.

In addition to the motions already assigned to magistrate judges by operation of Local Rule 302(c), the undersigned now orders that the following categories of motions in cases bearing "DAD" and "NONE" designations shall be noticed for hearing before the assigned magistrate judge:

1. Motions seeking the appointment of a guardian *ad litem;*
2. Motions for class certification and decertification pursuant to Federal Rule of Civil Procedure 23;
3. Motions seeking preliminary or final approval of collective or class action settlements; and
4. Motions to approve minors' compromises.[4]

The undersigned will surely refer other motions to the assigned magistrate judge for the issuance of findings and recommendations by separate orders in particular cases.

/////

/////

[4] Magistrate judges may resolve motions seeking the appointment of a guardian *ad litem* by way of order, while all other motions may be resolved by issuance of findings and recommendations. *See* 28 U.S.C. § 636(b)(1)(A).

C. CIVIL TRIALS

In the two civil caseloads over which the undersigned will be presiding for the duration of this judicial emergency, there are currently trials scheduled through the end of 2021. Given the enormous criminal caseload that will be pending before the undersigned and based upon the reasonable assumption that at least some of those criminal cases will proceed to trial, it is unlikely that those civil cases will be able to proceed to trial on the currently scheduled date.[5] Thus, the setting of new trial dates in civil cases would be purely illusory and merely add to the court's administrative burden of vacating and re–setting dates for trials that will not take place in any event. **Accordingly, for the duration of this judicial emergency and absent further order of this court in light of statutory requirements or in response to demonstrated exigent circumstances, no new trial dates will be scheduled in civil cases assigned to "DAD" and "NONE" over which the undersigned is presiding.**[6] As such, scheduling orders issued in civil cases over which the undersigned is presiding will not include a trial date. Rather, the final pretrial conference will be the last date to be scheduled.[7]

Particularly in light of this judicial emergency, parties in all civil cases before the undersigned are reminded of their option to consent to magistrate judge jurisdiction pursuant to 28 U.S.C. § 636(c). The magistrate judges of this court are highly skilled, experienced trial judges. Moreover, because magistrate judges cannot preside over felony criminal trials, trial dates in civil cases can be set before the assigned magistrate judge with a strong likelihood that the trial will commence on the date scheduled.

/////

---

[5] Even in those instances where a trial date has been set, such trial dates will be subject to vacatur with little to no advance notice due to the anticipated press of proceedings related to criminal trials before this court, which have statutory priority over civil trials. In any civil action that is able to be tried before the undersigned during the duration of this judicial emergency, the trial will be conducted beginning at 8:30 a.m. Tuesday through Thursday. The court will have calendars for criminal cases bearing a "DAD" assignment on Monday at 10:00 a.m. and for those criminal cases bearing the "NONE" designation on Friday at 8:30 a.m.

[6] Any party that believes exigent or extraordinary circumstances justify an exception to this order in their case may file a motion seeking the setting of a trial date. Such motions shall not exceed five pages in length and must establish truly extraordinary circumstances. Even where such a showing is made, the parties are forewarned that the undersigned may simply be unable to accommodate them in light of the court's criminal caseload.

[7] Final Pretrial Conference dates may be later vacated and rescheduled depending on the court's ability to rule on dispositive motions that are filed. Moreover, in those "NONE" and "DAD" designated civil cases with trial dates, the parties are hereby ordered not to file any pretrial motions *in limine* prior to the issuance of the Final Pretrial Order and to do so only in compliance with the deadlines set in that order.

CONCLUSION

These are uncharted waters for this court. The emergency procedures announced above are being implemented reluctantly. They are not, in the undersigned's view, conducive to the fair administration of justice. However, the court has been placed in an untenable position in which it simply has no choice. There will likely be unforeseen consequences due to the implementation of these emergency procedures and the court will therefore amend this order as necessary.

DATED: February 3, 2020

Dale A. Drozd

DALE A. DROZD
U.S. DISTRICT COURT JUDGE

June M. Domino, Ph D.
IN PRO SE
Post Office Box 1262
Madera, CA 93639
(310) 591-6145

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JUNE M. DOMINO, Ph. D

Plaintiff,

vs.

CALIFORNIA CORRECTIONAL HEALTH CARE SERVICES; AFSCME LOCAL 2620; and, DOES 1-50 et al.

Defendants.

CASE NO. 1:19-cv-01790-NONE-SKO

MOTION TO SET-ASIDE COURT INSTRUCTION

MEMORANDUM OF POINTS & AUTHORITIES

DECLARATION OF JUNE M. DOMINO

The Honorable Shelia K. Oberto, Presiding.

1. INTRODUCTION

COMES NOW Plaintiff, June M. Domino petitioning the Court in a Motion to Set-Aside its latest Court Instruction described by the Court Docket as a Text Entry Only, Item Number 32; wherein the Court Instructs Plaintiff to submit a Second Amended Complaint. Plaintiff originally filed her initial Complaint by using the District Court's Packet entitled, SIMPLE GUIDE TO FILING A CIVIL ACTION. UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF CALIFORNIA. Once again, we note that the title of documents used to file the initial Complaint is significant, because contained within said package on Page 5, Section III, Statement of Claim are found in pertinent part these words "*Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each Plaintiff is entitled to the damages or other relief sought.*" Notwithstanding Plaintiff's submission of her Complaint utilizing the Court's pre-printed forms, the Court insist upon holding this moving party to a higher legal standard. Plaintiff remains a litigant in Pro Se and continues to invoke the following reserves that are applied to all Pro-Se Litigants:

> Haines v. Kerner, 404 U.S. 519 (1972) which states in pertinent part "...allegations such as those asserted by a petitioner, however, unartfully pleaded, are sufficient," "...which we hold to less stringent standards of perfection as lawyers."
>
> Plaintiff in Pro Se also recalls by reference herein Jenkins v. McKeithen, 395 U.S. 411, 421 (1959); Picking v. Pennsylvania R.Co., 151 Fed 2nd 240; Pucket v. Cox, 456 2nd 233. "Pro se pleadings are to be considered without regard to technicality: pro se litigants' pleadings are not to be held to the same high standards of perfection as lawyers."
>
> Finally, Plaintiff also asserts "...the right to file a lawsuit Pro Se is one of the most important rights under the constitution and laws." [Elmore v. McCammon (1986) 640 F. Supp. 905.]

Therefore, Plaintiff request that the Court shall take Notice of the circumstances which motivated the Court's latest instruction. On Wednesday, October 19, 2020, the U.S. Court of Appeal dismissed a Notice of Interlocutory Appeal. This litigant in Pro Se never filed a Notice of Interlocutory Appeal, rather this remains a term of art used by the Court not by the litigant. More specifically, the problem with the Appellate Court's Dismissal is that the Court made its decision without ever looking at the "**evidence**". Herein lies the problem, anytime a Court of law renders a legal decision without examining the "evidence" it is an attack on our "rule of law" and a defilement of our "Democracy". Sadly enough, such a radical move by our Courts creates for this litigant both a Legal and Civic obligation to sound the alarm not only for myself, and for others who lacked the courage and the wherewithal to notify the Courts; but perhaps even more importantly, in a genuine attempt to protect our Democracy. For this reason, this aggrieving Plaintiff is forced to file a Petition for a Writ of Certiorari and has begun this legal process.

This discussion is most relevant because on November 12, 2020, merely Two (2) days after the Appellate Court issued a Mandate on this subject, the lower Court at the direction of Magistrate Judge Shelia K. Oberto issued a Minute Order instructing this Plaintiff to file a second amended complaint. Said Minute Order would deprive this Litigant in Pro Se from pursuing a Writ of Certiorari within the timeframe historically established by the United States Supreme Court Rules of Civil Procedure Sections 10-14. Said citation allows a Plaintiff, regardless of their Race, Sex or Creed a Ninety (90) day window within which a Petition for Writ of Certiorari must be filed. In the specific case now pending before this court, the Plaintiff's Petition for Writ of Certiorari would be due Ninety (90) days from November 10, 2020 which is the date that the Appellate Court issued its Mandate.

This latest instruction from the U. S Eastern District Court attempts to hold this Litigant-in Pro-Se to "a higher legal standard" by insisting that Plaintiff forfeit her right to be heard in a higher Court and demanding the litigant resolve this matter before the lower court. Should this be the case, such an Instruction would constitute a

violation of Plaintiff's Constitutional Right of Due Process of Law. Simply stated it would curtail Plaintiff from exercising her Constitutional Right to be heard before the United States Supreme Court.

Moreover, a review of the Court's Docket further demonstrates that this aggrieved Plaintiff originally filed her Complaint on December 23, 2019. During that time Thirty-Two (32) interactions with the Court has occurred. This evidentiary fact clearly demonstrates Plaintiff's earnest efforts to receive her day in court. Plaintiff maintains that from December 23, 2019 until November 12th, 2020 the Eastern District Court had at its' disposal several means of resolving this dispute. Case Management Conferences, Evidentiary Hearings, Discovery Motions, Mandatory Settlement Conference all were available at the Court's discretion yet were never scheduled. Such legal interactions are designed to assist the court in determining the true merits of the case by providing the court with concrete *evidence*. Despite Plaintiff's good faith efforts to seek relief from the Court, the Court Docket reflects that the Court elected to "punish" the Plaintiff at the initial onset of Plaintiff's Complaint by attempting to suppress the evidence and insisting that the Litigant-in-Pro-Se be held to a higher legal standard. These actions caused Plaintiff to endure further financial, emotional, and irreparable injuries and this time; inflicted by the hands of the Eastern District Court.

Plaintiff's evidence consists of witnesses, documents, e-mails, CD tape recordings none of which were ever viewed by the Court because the Eastern District Court continued to suppress and deny Plaintiff's Constitutional Right to be heard. Thirty-Two (32) entries to the lower Court's Docket demonstrate Plaintiff's earnest effort to comply with the Court's rules as a layperson and a Litigant acting in Pro Se. As the moving party in this matter, Plaintiff has sufficiently met the legal standard as a **"Pro-Se-Litigant"** and has more than earned her Constitutional right to be heard. The Court would have a more transparent understanding of this case if it had only looked at the evidence. May I hasten to add, this Plaintiff's determination to litigate this case should not be viewed as a personal affront against our esteemed Eastern District Court, but rather serves strictly as this litigant's perseverance to seek Justice within our judicial system wherever it can be found.

///

///

///

II. THE EVIDENCE SHALL GUIDE THIS CASE

The Court shall take notice that there remains a preponderance of evidence already submitted to the District Court which clearly demonstrate that Defendants by and through their own admission (1) acted in *"bad faith"* by separating plaintiff from her employment as a direct cause of a pattern of ongoing racism; and (2) these acts of racism continued by the California State Personnel Board further demonstrate through a furtherance of their acts that said racism is nothing less than systemic. The evidence will prove that all Defendants in this case willfully and intentional violated Plaintiffs Constitutional rights as a direct violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e et seq., as amended.

In conclusion, it is important to acknowledge that Democracy is the greatest gift that all Americans have fought and labored to achieve. Each of us are gifted with the responsibility to contribute to the society which we have inherited. We all owe a debt of gratitude to those who have given their lives so that we might live in a democracy. As a nation we define a celestial quilt comprised of many different shades and colors. Our job is to become a more perfect union. To achieve this collective goal, we hold a reasonable expectation that our Courts will apply the rule of law without out difference of race, sex, or political affiliation. This is the bedrock upon which Democracy stands. To systematically force African Americans like myself, into abject poverty is a crime against our lineage, our Republic, and our Democracy.

Californians now witness the voices of COVID-19 protestors informing and attesting to us all, they would prefer to die rather than live in poverty. I am reminded of these words from the Founding Fathers as they refrained "Give me liberty or give me death". Yet for years African Americans continue to live in poverty not by choice, but rather because of the absence of justice. This lawsuit is a prime example of the pain and suffering which has long been visited upon all African Americans. The problem is systemic. We need not look farther than the Central Valley. Here in the Central Valley less than 100 miles from the United States District Court, Eastern District we find further historical evidence. The remnants', of a once held African American Township at Allensworth that was utterly destroyed by racism. This Court cannot ignore the voice of History. The Historical Evidence continues to permeate throughout the counties, the cities, and within California Correctional Health Care Services Institutions throughout the Central Valley. This is the history that continues to infuse racism against African Americans. To ignore the many acts of racism would be a travesty to all residents of the Central Valley and would only serve to undermine our American Democracy.

This Court would show extreme bias if it were to remain silent in their receipt of the existing evidence already presented as Exhibits in this case. The fact remains that experienced attorneys for the Defendants, as well as Attorneys at the State Personnel Board willfully and deliberately failed to act on such basic legal tenants of law, serves as further evidence that Defendants' only motivation was to violate this Plaintiff's Civil Rights. Whereas, Plaintiff continued to research and further understands that the United States Eastern District maintains a shortage of Federal Court Justices, this historical admission does not abort Plaintiff's Constitutional Right to be heard. Given the proper Discovery this instant Court may have discovered that this case would possibly be resolved without the need to go to Trial. However, suppressing the evidence would only lead to a failed remedy.

The rule of law cannot be applied where there is no Discovery. The Court is far more aware of the need to present evidence in deciding a case than a litigant stifled by oppression. Plaintiff maintains that the evidence in this case is so egregious that a competent and litigious attorney could have solved this case in fifteen minutes. It is baffling to think that the merits of the instant case were deliberately ignored in an apparent effort to burry this case, thus resulting in a depravation of Plaintiff's Constitutional Rights. For all of the reasons as stated herein, Plaintiff respectfully request that the Court Set-Aside its latest Court Instruction for the purpose of protecting Plaintiff's Constitutional Right to file a Writ of Certiorari in the United States Supreme Court.

DATED: 12-1-2020

Respectfully submitted,

By: June M. Domino

June M. Domino, Ph.D.
Plaintiff in Pro Se

///

///

MEMORANDUM OF POINTS ND AUTHORITIES

Plaintiff originally filed a Civil Complaint before this Court on December 23, 2019. On February 3, Judge Drozd petitioned and received an Order to unassign this case. Plaintiff maintains that the Court errored in applying said Order *retroactively.* Plaintiff continued to make a good faith effort to cooperate with the Court. On May 29th, 2020 Plaintiff filed an "Ex Parte Motion In Lieu of Objections to Magistrate Judge's Findings and Recommendations." By this application and based on solid evidence currently maintained within the Court's file incorporated by reference as Exhibit 1 and Exhibit 2; Plaintiff respectfully requested that the Court issue a Temporary Order to reinstate Plaintiff's salary. By and through their own admission, Defendants separated Plaintiff from her employment for Bad Cause. Defendants described their reason for separation as "Non-Punitive Termination. As a result of Defendant's actions Plaintiff has suffered (2) TWO years of loss income. But for Defendants actions Plaintiff would not have suffered financial losses without recourse throughout a global Pandemic. A review of the evidence further demonstrates that Defendants, each of them and all of them were informed by Plaintiff of a pattern of racism directed by employees who were made to act on at the direction of the employer. It is my genuine belief that had other employees failed to carry out Upper Management's illegal acts, they also would have been fired. Therefore, there is no evidence that supports a claim of protection of Defendants due to any employee acting without their knowledge and awareness. Instead, the evidence supports Plaintiff's claim that Defendants acted out of malice, racism, and retaliation. Such bad cause is evidenced by the Defendants total contradiction of their written explanation by the California Correctional Health Care Services Professional Credentialing Department, a copy of which has already been submitted to this Court. Plaintiff's evidence includes e-mails, documents, recordings made by the California State Personnel Board, witnesses, and writings previously submitted to the Federal EEOC office.

Plaintiff is a United States Citizen entitled to the protection of Constitutional law. (Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e et seq., as amended). The evidence will demonstrate that if in fact 100 Clinicians throughout the California Mental Health Correctional Health Care Services were in actuality out of compliance, such a claim would have created a need to notify the Court in the form of a Class Action Lawsuit.

///

///

A review of the evidence will also demonstrate that in this instant case currently pending before this Court, the California State Personnel Board failed to address legal issues pursuant to the Rule of Law. Instead the Personnel Board insisted upon chasing red herrings throughout all Administrative reviews. A review of the actual CD of the hearing will prove why the Board fail to meet its burden of proof.

DATED: 12-1-2020

Respectfully submitted,

By: June M. Domino

June M. Domino
Plaintiff in Pro Se

///

///

///

DECLARATION OF JUNE M. DOMINO

I, June M. Domino, declare as follows:

1. I am the Plaintiff in the above-referenced matter. When I am dutifully called before the Court, I am capable and would willingly testimony before the Court as a litigant acting in Pro Se. I declare that I have personal knowledge and awareness of the facts as set forth below. When called as a witness, I could and would competently testify thereto.

2. On or about January 5, 2020 I received information from a reputable employee stating that a Cease and Desist Order had been issued to Defendants. This information is especially significant because Defendants previously reported to the Federal EEOC Office that the Defendants had searched their files and no such document existed.

3. On or about March 16, 2020 I learned that a reputable employee is in possession of concrete evidence that proved a Cease and Desist Order at an earlier date was in fact entered as part of a Personnel File.

4. This new evidence indicates that Defendants by and through their agents, willfully and deliberately destroyed essential evidence in an effort to avoid prosecution of this case by and through the Federal EEOC jurisdiction.

5. This is not the first time that Defendants have misrepresent the evidence in this case. Previously submitted and currently located in the Court's file for your consideration is Exhibit 1, (All Exhibits are incorporated by reference herein) an e-mail from the Defendant's Credentialing Department which proves that Plaintiff was not required to re-credential. Thus, Plaintiff had one more year before becoming licensed.

6. Defendants acted with malice and racism by setting in motion a Non-Punitive Termination which caused this Plaintiff irreparable harm. (Please refer to Exhibit 2)

7. Defendants maliciously violated their own Order by not serving Plaintiff with Timely Notice of Defendant's decision to

separate Plaintiff from employment, while at the same time issuing Plaintiff an Administrative Time Off Order. Please refer to Exhibit 3.

8. On June 5, 2020 Plaintiff received the District Court's Order Granting a Partial acceptance of Plaintiffs Ex Parte Motion.

The Court referred ruling on Plaintiff's objection to the currently unassigned district judge.

9. On June 9, 2020 Plaintiff filed a Notice of Appeal with the District Court.

10. On June 12, 2020 Plaintiff received a docket number from the Office of the Clerk for the United States court of Appeals

for the Ninth Circuit.

11. On June 26, 2020 the 9th Circuit Court of Appeal notified Plaintiff-Appellant that they could not hear this case because

the decision from the District Court was not final.

12. On July 6, 2020 Plaintiff filed an additional 30-Day Extension of Time to File Second Amended Complaint with the District

court due to a remainder level of review by the currently unassigned District Judge.

13. On Oct. 19, 2020 the Appellate Court dismissed a Notice of Interlocutory Appeal. A review of the Court's Docket

demonstrates that Plaintiff has never filled a Interlocutory Appeal. Instead the Court continues to use this term in an effort to discredit the merits of this case.

///

///

14. On November 10, 2020, the Appellate Court issued a mandate on an Appeal which was mistakenly characterized by the

United States District Court, as evidence by the Face Page of Plaintiff's pleading.

15. Two days later, on November 12, 2020 the lower Court issued an Instruction to Plaintiff that would deprive this Litigant-In

Pro-Se from exercising her right to file a Petition for Writ of Certiorari before the United States Supreme Court. Plaintiff now comes before the Eastern District Court requesting that the Court Set-Aside its latest Instruction for the purpose of pursuing said Writ.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 12-01-2020, **in Madera, California.**

BY: June M. Domino

June M. Domino, Ph.D.
Plaintiff in Pro Se

Additional material from this filing is available in the Clerk's Office.