

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

DEC 18 2019

PATRICIA A. McCOLM,

Plaintiff-Appellant,

v.

STATE OF CALIFORNIA; et al.,

Defendants-Appellees.

No. 19-16660

D.C. No.

2:18-cv-02092-MCE-CKD
Eastern District of California,
Sacramento

ORDER

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

Before: THOMAS, Chief Judge, BERZON and BRESS, Circuit Judges.

This court has reviewed the notice of appeal filed August 21, 2019 in the above-referenced district court docket pursuant to the pre-filing review order entered in docket No. 01-80189. Because the appeal is so insubstantial as to not warrant further review, it shall not be permitted to proceed. *See In re Thomas*, 508 F.3d 1225 (9th Cir. 2007). Appeal No. 19-16660 is therefore dismissed.

This order, served on the district court for the Eastern District of California, shall constitute the mandate of this court.

No motions for reconsideration, rehearing, clarification, stay of the mandate, or any other submissions shall be filed or entertained.

DISMISSED.

DA/Pro Se

APPENDIX: A

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

11 PATRICIA A. MCCOLM,
12 Plaintiff,
13 v.
14 STATE OF CALIFORNIA, et al.,
15 Defendants.

No. 2:18-cv-02092-MCE-CKD (PS)

ORDER

17 On February 21, 2019, the magistrate judge filed findings and recommendations (ECF No.
18 7), which were served on the parties and which contained notice that any objections to the
19 findings and recommendations were to be filed within fourteen days. Plaintiff was subsequently
20 given until March 25, 2019 to file any objections. (ECF No. 10.) On March 11 and 14, 2019,
21 plaintiff filed objections to the findings and recommendations (ECF Nos. 11, 12), which have
22 been considered by the court.

23 This court reviews de novo those portions of the proposed findings of fact to which an
24 objection has been made. 28 U.S.C. § 636(b)(1); McDonnell Douglas Corp. v. Commodore
25 Business Machines, 656 F.2d 1309, 1313 (9th Cir. 1981); see also Dawson v. Marshall, 561 F.3d
26 930, 932 (9th Cir. 2009). As to any portion of the proposed findings of fact to which no objection
27 has been made, the court assumes its correctness and decides the matter on the applicable law.
28 See Orand v. United States, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge's

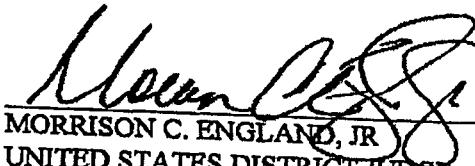
1 conclusions of law are reviewed de novo. See Britt v. Simi Valley Unified School Dist., 708 F.2d
2 452, 454 (9th Cir. 1983).

3 The court has reviewed the applicable legal standards and, good cause appearing,
4 concludes that it is appropriate to adopt the findings and recommendations in full. Accordingly,
5 **IT IS HEREBY ORDERED** that:

- 6 1. The findings and recommendations (ECF No. 7) are **ADOPTED**.
7 2. This action is **DISMISSED** as duplicative.
8 3. The Clerk of Court shall close this case.

9 **IT IS SO ORDERED.**

10 Dated: April 15, 2019


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12 MORRISON C. ENGLAND, JR
13 UNITED STATES DISTRICT JUDGE
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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

11 PATRICIA A. MCCOLM,
12 Plaintiff,
13 v.
14 STATE OF CALIFORNIA, et al.,
15 Defendants.

No. 2:18-cv-02092-MCE-CKD PS

ORDER AND FINDINGS AND RECOMMENDATIONS

17 Plaintiff Patricia A. McColm, who proceeds without counsel, filed this action on August
18 1, 2018 and requested leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (ECF
19 Nos. 1, 2.)¹ On September 18, 2018, United States Magistrate Judge Dennis M. Cota granted
20 plaintiff's motion to proceed *in forma pauperis* and indicated that the court would address
21 separately the sufficiency of plaintiff's complaint and whether service of the complaint is
22 appropriate. (ECF No. 5.) Subsequently, this matter was reassigned to the undersigned on
23 January 1, 2019, due to Magistrate Judge Cota's recusal. (ECF No. 6.)

24 Pursuant to 28 U.S.C. § 1915, the court is directed to dismiss the case at any time if it
25 determines that the allegation of poverty is untrue, or if the action is frivolous or malicious, fails
26 to state a claim on which relief may be granted, or seeks monetary relief against an immune

²⁸ ¹ This case proceeds before the undersigned pursuant to E.D. Cal. L.R. 302(c)(21) and 28 U.S.C. § 636(b)(1).



1 defendant. For the reasons discussed below, the court concludes that this action is frivolous
2 because it is duplicative of an action that was previously filed in this court. Accordingly, the
3 court recommends that the instant action be dismissed.

4 On July 30, 2012, Patricia McColm commenced an action against the State of California,
5 Trinity County, various superior courts, and several public officials. See generally McColm v.
6 Trinity County et al., 2:12-cv-01984-MCE-AC, ECF No 1. On May 30, 2018, McColm filed the
7 first amended complaint in that action, alleging that the

8 action arises out of [a] retaliatory "*protectionism*" agreement
9 among all named defendants occasioned by fear of litigation from
10 Plaintiff's complaints of defendants': 1) non-compliance with
11 American's With Disability (ADA) access requirements in Trinity
12 County building facilities, 2) non-compliance with ADA mandate to
13 provide access to the court and accommodate limitations of disability
in Trinity County Superior Court services; 3) non-compliance with
Constitutional rights of Plaintiff; including but not limited to,
requirements to provide access to the court and court services . . . [as
well as 13 other alleged and enumerated violations].

14 McColm, 2:12-cv-01984-MCE-AC, ECF No. 38 at 2-3 (emphasis in original). That matter is still
15 pending.

16 Plaintiff's October 1, 2018 complaint in this action brings claims against the State of
17 California, Trinity County, various superior courts, and several public officials, alleging that the

18 action arises out of [a] CONTINUING retaliatory "*protectionism*"
19 agreement (*letter imposition of restrictions on Plaintiff's access to*
20 *the court imposed without notice and opportunity to oppose*) among
21 all named defendants (See Related 2:12-cv-1984) occasioned by fear
22 of litigation from Plaintiff's complaints of defendants': 1) non-
23 compliance with American's With Disability (ADA) access
24 requirements in Trinity County building facilities, 2) non-
compliance with ADA mandate to provide access to the court and
accommodate limitations of disability in Trinity County Superior
Court services; 3) non-compliance with Constitutional rights of
Plaintiff; including but not limited to, requirements to provide access
to the court and court services . . . [as well as 13 other alleged and
enumerated violations].

25 (ECF No. 1 at 2-3 (emphasis in original).)

26 It is apparent that the instant matter concerns the same essential parties and nearly
27 identical allegations as McColm, 2:12-cv-01984-MCE-AC. Plaintiff even indicates that the two
28 matters are related. Additionally, much of the complaint here is identical to the first amended

1 PATRICIA A. MCCOLM
2 PO Box 113
3 Lewiston, CA 96052
(415) 333-8000

4 Plaintiff, in pro se

FILED

AUG 21 2019

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY *[Signature]*
DEPUTY CLERK

8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

ORIGINAL

11 PATRICIA A. MCCOLM

12 NO. 2:18-CV-02092-MCE-CKD

13 Plaintiff,

14 **NOTICE OF APPEAL TO THE
UNITED STATES COURT OF
APPEAL, NINTH CIRCUIT;**

15 vs.

16 STATE OF CALIFORNIA et al.

17 Defendants.

18
19
20 Notice is hereby given that PATRICIA A. MCCOLM, the plaintiff in the above named
21 case, **PROCEEDING IN FORMA PAUPERIS GRANTED IN THE DISTRICT COURT;**
22 hereby appeals to the United States Court of Appeal for the Ninth Circuit from:
23

24
25 1) The **JUDGMENT IN A CIVIL CASE** (ECF 14) entered in this action on the **16th**
26 **day of April 2019**; [The misleading "form" Judgment erroneously states: "This action came to
27 trial or hearing before the Court. The issues have been tried or heard and a decision has been

1 rendered." There was neither a trial nor hearing. The Judgement further states that: "IT IS
2 ORDERED AND ADJUDGED THAT JUDGMENT IS HEREBY ENTERED IN
3 ACCORDANCE WITH THE COURT'S ORDER FILED ON 4/16/2019."] A true and correct
4 copy of the Judgement being appealed in this case is attached hereto as **EXHIBIT 1.**

5
6 2) The **ORDER** (ECF No. 13) entered in this action on the **16th day of April 16, 2019**,
7 stating: "1. The findings and recommendations are ADOPTED; stating that: "2. This action is
8 DISMISSED as duplicative;" and 3. The Clerk of the Court shall close this case." [The Order
9 was based on the vague and ambiguous undefined term for the circumstances in this case as:
10 "duplicative," without facts or law cited in support. No exact/duplicate copy of the "original"
11 complaint in this case (ECF 1) is filed in any State or Federal Court.] No issue on the merits of
12 the case was adjudicated.] A true and correct copy of the ORDER entered 4/16/19 being
13 appealed in this case is attached hereto as **EXHIBIT 2.**

14
15 3) The magistrate judge's **ORDER AND FINDINGS AND RECOMMENDATIONS**
16 (ECF 7) entered in this action on the **21st day of February, 2019** [recommending that this action
17 be dismissed as "duplicative;" selectively commenting on language in the complaint, without
18 stating such comment is from its "Introduction," and not from the facts or causes pled]. A true
19 and correct copy of the **ORDER AND FINDINGS AND RECOMMENDATIONS** being
20 appealed in this case is attached hereto as **EXHIBIT 3.**

21
22 4) The magistrate judge's **ORDER GRANTING in part AND DENYING in part**
23 **REQUEST FOR EXTENSION OF TIME TO FILE OBJECTIONS** (ECF 10) entered in this
24 action on the **12th day of March, 2019**. A true and correct copy of the **ORDER GRANTING in**
25 **part and DENYING in part REQUEST FOR EXTENSION OF TIME TO FILE OBJECTIONS** is
26 attached hereto as **EXHIBIT 4**; which cut the amount of time requested, verified as necessary for
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1 accommodation of disability by plaintiff's physicians, is inherently potentially prejudicial.
2

3 5) The **ORDER** (ECF 17) entered in this action on the **24th day of July 2019**, DENYING
4 Plaintiff's Motion to ALTER OR AMEND ORDER OF DISMISSAL AND FOR RELIEF
5 FROM JUDGEMENT under FRCP 59(e) and 60(b); identified on the docket as a "motion for
6 reconsideration." A true and correct copy of the ORDER denying Plaintiff's Motion is attached
7 hereto as **EXHIBIT 5**

8

9 Copies of the Judgement and Orders being appealed are attached as Exhibits 1-5 hereto.

10 Plaintiff has not previously appealed the judgement and orders stated above or raised the
11 issues pertaining thereto in a prior appeal or petition. THIS NOTICE OF APPEAL IS BEING
12 FILED SUBJECT TO A NEAR 20 YEAR OLD PRE-FILING ORDER IN 01-80189; which
13 Order is being respectfully requested vacated in a separate application; to be submitted hereafter
14 when time and disability limitations allow; with showing of good cause to vacate by passage of
15 time and discovery of the previously undiagnosed medical conditions which precipitated the prior
16 ineffective filings; filings, which were a good faith effort, designed to overcome the targeted
17 "stigma," the false and defamatory media comment ("fake news") plaintiff suffered as a person
18 with disability; regrettably, futile filings, plaintiff hoped would save home and reputation; such
19 relief, essentially prevented by medical impossibility from cognitive/physical decline re
20 undiagnosed Hashimoto's Disease, which ultimately inflicted black-outs nearing myxedema
21 coma. There are years of medical and financial detriment, trying to overcome disability from the
22 missed diagnosis. Plaintiff has neither been able to fully recover from on-going effects of
23 Hashimoto's Disease or even begin to recover from the overwhelming continuing prejudicial
24 effects from the false and defamatory media comment and "stigma," that appear to wrongfully
25 govern decisions made by others pertaining to plaintiff, in all walks of life; decisions based on
26 false assumptions from some 20 years ago; which has been denied a remedy by reason of medical
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1 impossibility.

2 Now, this 73 year old, coping with age related decline and refusal to heal serious leg
3 laceration injury; has yet another debilitating disability from a second auto-immune disorder,
4 belatedly diagnosed Multiple Sclerosis; which, more likely than not, was also *not* diagnosed in
5 the 1990s and which continues to threaten ability to accomplish daily activities of life; as well as,
6 court expectations; in particular, where sufficient time is not afforded for a good faith effort to
7 overcome pain, confusion, lack of concentration/focus, memory loss of instant recall, words and
8 much past learning, inability to be organized and focus being verbose and unable to "edit"
9 effectively; all indicative of the progressive disease with declining cognitive and physical
10 functioning; with inability to cope with the "shut-down" distress at being the subject of targeted
11 abuse and deprivation of civil rights as occurred in the action at hand.

12 **JUDICIAL NOTICE is respectfully requested of verification of medical conditions /**
13 **limitations of disability and recommendation for appointment of counsel;** as set forth by
14 plaintiff's physicians under seal in 2:12-CV-01984; the civil rights action filed in **2012** re ADA
15 access and age/ADA employment discrimination.

16 **The case at hand is not the one filed in 2012;** but arises from different facts and dates re
17 incidents targeting Plaintiff in **2017**; where without notice and an opportunity to defend, onerous
18 conditions/restriction were imposed by a court clerk letter dated **June 20, 2017** on her use of
19 court services and presence in the public County building; in particular, a manifestly unjust and
20 prejudicial 15 minutes time limitation imposed under threat of being "put in cuffs" and "taken to
21 jail" by **court employee** Marshals for nothing more than exceeding the 15 minute limitation
22 sitting quietly in her wheelchair. Thus, the fear from threats and limited time of access to the
23 court has essentially prevented plaintiff from going to the County services building for nearly a
24 year.

25 A true and correct copy of select paragraphs from the 2:18-CV-02092 complaint
26 "**STATEMENT OF FACTS,**" which show the **operative facts arise in 2017;** is attached hereto
27

1 as **EXHIBIT 6** and made a part hereof. Thus, also showing that the magistrate judge's ground
2 for dismissal re "duplicative," questionably based on language from the "Introduction," is wrong.
3

4 Plaintiff timely filed on March 11, 2019, OBJECTIONS TO MAGISTRATE JUDGE'S
5 ORDER AND FINDINGS AND RECOMMENDATIONS (Doc 11), a true and correct copy of
6 which is attached hereto as **EXHIBIT 7** and made a part hereof.
7

8 Plaintiff timely filed a MOTION TO ALTER OR AMEND ORDER OF DISMISSAL
9 AND FOR RELIEF FROM JUDGMENT DISMISSING ACTION; MEMORANDUM OF
10 POINTS AND AUTHORITIES, DECLARATION OF PATRICIA A. MCCOLM WITH
11 REQUEST FOR JUDICIAL NOTICE IN SUPPORT (Doc 15), a true and correct copy of which
12 is attached hereto as **EXHIBIT 8** and made a part hereof.
13

14 Plaintiff is literally limping along begging for understanding of her medical limitations in
15 seeking justice encouraged by media to say: "*me too*" and to "*stand up for justice*" in the courts.
16 Plaintiff has tried to be brave; but must perforce, seek appointment of counsel in this important
17 appeal by separate application hereafter; with request for Judicial Notice of medical verifications
18 filed.
19

20 The statements of fact and law set forth above are incorporated by reference into the
21 Statement of Facts and Law on Appeal set forth below:
22

23 **STATEMENT OF FACTS AND LAW ON APPEAL**

24

25 This case presents the Ninth Circuit with an opportunity to tell its lower courts that
26 persons deemed "vexatious litigants" and persons with disabilities, are still entitled to due
27 process, constitutional protections and the rights and benefits provided under the laws of the
28 United States and its State courts.

29 In instant appeal, the constitutional violations running to the merits of the civil rights
30 complaint in this case, are not in issue; the District Court having made no factual/legal
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1 determination on the merits of any claim therein. It is the right to proceed in forma pauperis on a
2 proper showing pursuant to 28 U.S.C. section 1915, that this court is urged to protect against pre-
3 determined opinion bias of “frivolous” attributed to pro se complaints from the inherent “stigma”
4 attributed to such parties, precipitating unwarranted dismissals. It appears that instant action met
5 the wrongful guillotine of bias and hostile opinion pertaining to Plaintiff individually, rather than
6 any issue of fact or law. No ruling issued on the objection to the referral for cause. The
7 magistrate judge findings states she “*expresses no opinion regarding the merits of Plaintiff's*
8 *claims.*” Thus, adopting the unfounded finding of “duplicative,” tantamount to “frivolous” with
9 recommendation of dismissal (without leave to amend) is error and an apparent abuse of
10 discretion.

11 The District Court concluded that instant action was “frivolous” because it was allegedly
12 “duplicative” of a previously filed action in 2012 that is STILL PENDING in the SAME
13 DISTRICT COURT. Under these facts, the case should NOT have been dismissed; but
14 considered for consolidation or deemed a properly filed separate complaint or given leave to be a
15 separately filed “supplemental” complaint on subsequent facts to the date of the 2:12-CV-1984
16 complaint, where an “amendment” is not timely and will not relate back to the original 2012
17 complaint. It is wrong to suggest that the case is frivolous because it was not brought through an
18 amended complaint in the first action. That is not a procedure available to plaintiff by time and
19 facts presented. The magistrate judge made a false assumption of “sameness.”

20 According to the Federal Rules of Evidence, Rule 1001(e): “**A ‘duplicate’ means a**
21 **counterpart produced by a mechanical, photographic, chemical, electronic, or other**
22 **equivalent process or technique that accurately reproduces the original.**” Instant complaint
23 is NOT the “same impression as the original;” not the same as the 2-12-CV-1984 complaint. It is
24 neither “duplicative” nor “frivolous” and should not have been dismissed.

25 No Ninth Circuit case or any case is cited by the District Court in support of its
26 determination that instant case on its facts is “duplicative;” and thereby, deemed “frivolous,”
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1 resulting in what appears to be a dismissal with prejudice, WITHOUT A FIRST LEAVE TO
2 AMEND! A first leave to amend is usual. There appears to be no justification for denial of a
3 right to amend. A dismissal as allegedly "frivolous" in instant case, may have an unwarranted
4 prejudicial impact on the pending case. Perhaps there is no clear authority on the issues raised by
5 this action.

6 Plaintiff could find no case in which the Ninth Circuit has determined the 1) definition of
7 "duplicative" where two cases are filed in the same U.S. District Court some six years apart (not
8 arising out of the same facts, not arising at the same time with all the same defendants and not an
9 exact copy) with the first still pending; 2) what criteria is to be applied for determining whether
10 or not a case is "duplicative," 3) whether the second filed case may be deemed frivolous
11 under 1915 where the first filed case is not an exact copy, is still pending and not dismissed as
12 "frivolous" and where there has been no determination of fact or law applicable to the merits of
13 any cause set forth in the second complaint (where all facts/causes are not the same as that first
14 filed); 4) whether an alternative to dismissal is available; 5) consider what remedy will avoid
15 possible prejudice to a falsely alleged "same" pending action and 6) what remedy will afford
16 constitutional right of access to the court in the second action and in the Superior Court.

17 An important issue appears to be whether limitation on physical access to and time
18 limitation on access to court services, under threat of arrest in a civil context; as occurred
19 in this action, is a violation Plaintiff's constitutional rights and what remedy is available for
20 relief from such deprivation? And, is it a due process violation for the apparent retaliatory
21 onerous restrictions imposed on plaintiff's first amendment rights and all prejudice
22 resulting therefrom; in particular, right of access to court services, a due process violation?

23 There is a substantial question as to whether it is appropriate for a District Court to adopt
24 a recommendation for dismissal as allegedly "duplicative" in a pro se action under 28 U.S.C.
25 1915; where there are less drastic/prejudicial remedies available; e.g. 1) First Right to Amend; 2)
26 Consolidation, 3) Supplemental Complaint? And, where there may be other less drastic remedies
27
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1 known to this Court.

2 As referenced above, it appears that the District Court was wrong in adopting the
3 magistrate judge's position that plaintiff should have amended the 2:12-CV-1984 complaint;
4 instead of filing instant complaint. An amended complaint concerns events which took place
5 before the original pleading was filed and must be based on the same operative facts as those set
6 forth in the original complaint. A supplemental complaint sets forth allegations concerning
7 matters which have taken place since the original pleading was filed. *Keith v Volpe* (9th Cir.
8 1988) 858 F2d 467, 468. In light of the relationship back to date the action was commenced and
9 statute of limitations problems, amended complaints are not appropriate on facts/claims
10 subsequent to the commencement of the action. Supplemental complaints may have similar
11 problems and do not apply to unrelated claims; thus, the pleader is NOT required to bring
12 a supplemental complaint on separate claims that arose after the filing of the original complaint;
13 but should bring a separate lawsuit, as did Plaintiff in instant action. *Manning v City of Auburn*
14 (11th Cir. 1992) 952 F2d 1355, 1359-1360.

15 Be there any matter for which the Ninth Circuit deems additional information would be
16 helpful, Plaintiff respectfully requests an accommodation of disability/extension of time to cure
17 any deficiencies in this NOTICE OF APPEAL / STATEMENT OF FACTS AND LAW ON
18 APPEAL. Your kind consideration is appreciated.

20 Plaintiff respectfully submits: **The issues in this appeal are substantial and warrant**
21 **further review.**

23 Dated: August 19, 2019


24 **PATRICIA A. MCCOLLM**
25 Plaintiff and Appellant, pro se
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JUDGMENT IN A CIVIL CASE

PATRICIA A. MCCOLM,

v.

CASE NO: 2:18-CV-02092-MCE-CKD

STATE OF CALIFORNIA, ET AL.,

XX -- Decision by the Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

THAT JUDGMENT IS HEREBY ENTERED IN ACCORDANCE WITH THE COURT'S ORDER FILED ON 4/16/2019

Marianne Matherly
Clerk of Court

ENTERED: April 16, 2019

by: /s/ K. Zignago
Deputy Clerk

EXHIBIT 1

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

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23 This court reviews de novo those portions of the proposed findings of fact to which an
24 objection has been made. 28 U.S.C. § 636(b)(1); McDonnell Douglas Corp. v. Commodore
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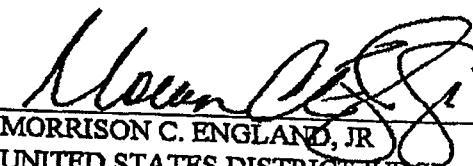
1 conclusions of law are reviewed de novo. See Britt v. Simi Valley Unified School Dist., 708 F.2d
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9 IT IS SO ORDERED.

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12 MORRISON C. ENGLAND, JR
13 UNITED STATES DISTRICT JUDGE
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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

11 PATRICIA A. MCCOLM,
12 Plaintiff

No. 2:18-cv-02092-MCE-CKD PS

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28 § 636(b)(1).

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26 It is apparent that the instant matter concerns the same essential parties and nearly
27 identical allegations as McColm, 2:12-cv-01984-MCE-AC. Plaintiff even indicates that the two
28 matters are related. Additionally, much of the complaint here is identical to the first amended

1 complaint in the previous action. (Compare ECF No. 1 with McColm, 2:12-cv-01984-MCE-AC,
2 ECF No. 38.) To the extent that plaintiff is adding new defendants and/or new claims, these are
3 properly brought through an amended complaint in McColm, 2:12-cv-01984-MCE-AC, and not
4 as a new case.

5 Therefore, the court recommends that the instant action be dismissed as duplicative. In
6 recommending dismissal of this action, the court expresses no opinion regarding the merits of
7 plaintiff's claims.

8 Accordingly, IT IS HEREBY RECOMMENDED that:

- 9 1. This action be dismissed as duplicative.
10 2. The Clerk of Court be directed to close this case.

11 In light of these recommendations, IT IS ALSO HEREBY ORDERED that all pleading,
12 discovery, and motion practice in this action are STAYED pending resolution of the findings and
13 recommendations. With the exception of objections to the findings and recommendations and
14 any non-frivolous motions for emergency relief, the court will not entertain or respond to any
15 motions and other filings until the findings and recommendations are resolved.

16 These findings and recommendations are submitted to the United States District Judge
17 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
18 days after being served with these findings and recommendations, any party may file written
19 objections with the court and serve a copy on all parties. Such a document should be captioned
20 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
21 shall be served on all parties and filed with the court within fourteen (14) days after service of the
22 objections. The parties are advised that failure to file objections within the specified time may
23 waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th
24 Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

25 Dated: February 21, 2019


26 CAROLYN K. DELANEY
27 UNITED STATES MAGISTRATE JUDGE
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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

11 PATRICIA A. MCCOLM,
12 Plaintiff,
13 v.
14 STATE OF CALIFORNIA, et al.,
15 Defendants.

No. 2:18-cv-02092-MCE-CKD (PS)

ORDER

17 On February 21, 2019, the undersigned recommended that this action be dismissed as
18 duplicative and ordered that “[w]ithin fourteen (14) days after being served with these findings
19 and recommendations, any party may file written objections with the court and serve a copy on all
20 parties.” (ECF No. 7 at 3.)

21 On March 4, 2019, plaintiff requested a sixty-day extension of time to file objections.
22 (ECF No. 8.) Plaintiff, who proceeds without counsel, asserts that she requires an extension
23 through May 10, 2019 due to “medical necessity to accommodate limitations of disability/medical
24 condition, [and] to avoid prejudice therefrom.” (Id.) Plaintiff also requests judicial notice “of
25 medical verifications/declarations filed under seal in this court” which purportedly support her
26 need for an extension. (Id.) However, plaintiff has failed to indicate where these medical
27 verifications/declarations can be found, as nothing has been filed under seal in the current case.
28 ////

1 While the court is sympathetic to plaintiff's medical condition, she has failed to
2 demonstrate good cause as to why she requires sixty additional days to file objections. The
3 pending findings and recommendations do not involve numerous or complex legal issues. Rather,
4 the undersigned has recommended closing this case after determining that it is duplicative of
5 McColm v. Trinity County et al., 2:12-cv-01984-MCE-AC, which remains open and before the
6 court. (See ECF No. 7.) Nevertheless, based upon plaintiff's limited showing and because she
7 proceeds without counsel, the court will grant plaintiff a two-week extension of time to file
8 objections.

9 Plaintiff has also filed an objection to the assignment of a United States Magistrate Judge
10 for all purposes. (ECF No. 9.) However, this case has not been assigned to a Magistrate Judge
11 for all purposes. Indeed, the court has acknowledged plaintiff's decision to decline the
12 jurisdiction of a Magistrate Judge. (See ECF No. 4.)

13 At the same time, the Local Rules provide that a Magistrate Judge shall be assigned "all
14 actions in which all the plaintiffs or defendants are proceeding in propria persona [i.e. without
15 counsel], including dispositive and non-dispositive motions and matters." E.D. Cal. L.R.
16 302(c)(21); see also 28 U.S.C. § 636(b)(1). Pursuant to this, the assigned Magistrate Judge shall
17 submit findings and recommendations to the assigned United States District Judge for all case
18 dispositive motions and matters, and the District Judge shall make the final determination
19 regarding each such issue. Therefore, the undersigned has submitted the pending findings and
20 recommendations to United States District Judge Morrison C. England, Jr., who will make the
21 final determination regarding whether this case shall be closed as duplicative.

22 Accordingly, IT IS HEREBY ORDERED that:

- 23 1. Plaintiff's request for an extension of time (ECF No. 8) is GRANTED IN PART and
24 DENIED IN PART.
- 25 2. Plaintiff shall have an additional fourteen (14) days until March 25, 2019 to file
26 written objections to the pending findings and recommendations (ECF No. 7).

27 Dated: March 12, 2019

28 14


CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10
11 PATRICIA A. MCCOLM,
12 Plaintiff,
13 v.
14 STATE OF CALIFORNIA, et al.,
15 Defendants.
16

No. 2:18-cv-02092-MCE-CKD

ORDER

17 Presently before the Court is Plaintiff Patricia A. McColm's ("Plaintiff") Motion to
18 Amend Order, ECF No. 15, asking this Court to reconsider its dismissal of her complaint,
19 ECF No. 13. A court should not revisit its own decisions unless extraordinary
20 circumstances show that its prior decision was wrong. Christianson v. Colt Indus.
21 Operating Corp., 486 U.S. 800, 817 (1988). This principle is generally embodied in the
22 law of the case doctrine. That doctrine counsels against reopening questions once
23 resolved in ongoing litigation. Pyramid Lake Paiute Tribe of Indians v. Hodel, 882 F.2d
24 364, 369 n.5 (9th Cir. 1989) (citing 18 Charles Aland Wright & Arthur R. Miller, Federal
25 Practice and Procedure § 4478). Nonetheless, a court order resolving fewer than all of
26 the claims among all of the parties "may be revised at any time before the entry of
27 judgment adjudicating all the claims and the parties' rights and liabilities." Fed. R. Civ. P.
28 54(b). Where reconsideration of a non-final order is sought, the court has "inherent

1 jurisdiction to modify, alter or revoke it." United States v. Martin, 226 F.3d 1042, 1048-49
2 (9th Cir. 2000), cert. denied, 532 U.S. 1002 (2001). The major grounds that justify
3 reconsideration involve an intervening change of controlling law, the availability of new
4 evidence, or the need to correct a clear error or prevent manifest injustice. Pyramid,
5 882 F.2d at 369 n.5.

6 Local Rule 230(j) requires a party filing a motion for reconsideration to show the
7 "new or different facts or circumstances are claimed to exist which did not exist or were
8 not shown upon such prior motion, or what other grounds exist for the motion." E.D. Cal.
9 Local Rule 230(j). Mere dissatisfaction with the court's order, or belief that the court is
10 wrong in its decision, is not grounds for relief through reconsideration. See, e.g.,
11 Twentieth Century-Fox Film Corp. v. Dunnahoo, 637 F.2d 1338, 1341 (9th Cir. 1981).

12 A district court may properly deny a motion for reconsideration that simply
13 reiterates an argument already presented by the petitioner. Maraziti v. Thorpe, 52 F.3d
14 252, 255 (9th Cir. 1995). Finally, reconsideration requests are addressed to the sound
15 discretion of the district court. Turner v. Burlington N. Santa Fe R.R., 338 F.3d 1058,
16 1063 (9th Cir. 2003).

17 Plaintiff's motion (ECF No. 15) is DENIED because she does not point the Court
18 to any basis for revisiting its prior decision. None of Plaintiff's arguments are based on
19 an "intervening change of controlling law, the availability of new evidence, or the need to
20 correct a clear error or prevent manifest injustice." Pyramid, 882 F.2d at 369 n.5.

21 IT IS SO ORDERED.

22 Dated: July 23, 2019

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MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE

1 **SELECT PARAGRAPHS FROM 2:18-CV-02092 STATEMENT OF FACTS**
2 **SHOWING THE 2017 DATE OF OPERATIVE FACTS IN ACTION.**
3 ...

4 “29. The June 20, 2017 letter is without truth, proof of fact or authority, which
5 Defendant Holliday knew and/or should have known forms no basis for the apparent retaliatory
6 restriction on the Plaintiff’s exercise of civil rights; including but not limited to her constitutional
7 right of access to the court/court services.

8 30. The June 20, 2017 letter placed discriminatory limitations/requirements on Plaintiff
9 in contravention of her needs as a person with disability with restrictions clearly **designed to**
10 **prejudice her defense in any and all matters past and pending in the Superior Court of Trinity**
11 **Court and Court of Appeal; as well as, her exercise of constitutional rights re civil rights**
12 **complaints pending before the U.S. District Court; in particular, by preventing discovery**
13 **of spoliation and/or acquisition of evidence.**

14 31. **Plaintiff objected to the letter in a response of June 21, 2017** is attached hereto as
15 **EXHIBIT B** and incorporated herein by reference as though fully set forth herein. Said letter
16 also incorporated a **PUBLIC RECORDS REQUEST**. Further, Plaintiff sent a formal PUBLIC
17 RECORDS ACT REQUEST to the Defendants CEO/BOARD OF SUPERVISORS, TRINITY
18 COUNTY and Trinity County Department of Health and Human Services. There was NO
19 RESPONSE by Defendants Staci Warner Holliday for Defendant State of California Superior
20 Court of California or Defendants CEO/Board of Supervisors for Trinity County, even though a
21 repeat/renewal request was made directly to the Trinity County Administrator. The request
22 included all ADA related documents; including but not limited to all requests, plans and
23 structural changes to comply with the ADA, none of which were supplied to Plaintiff. There
24 was a noticeably incomplete response to the **Public Records Act Request to Trinity County**
25 Health and Human Services missing all documents that pertain to Plaintiff’s records regarding
26 the issues presented in 2:12-cv-1984. Plaintiff’s requests for compliance were ignored by all
27 Trinity County/Superior Court Defendants.

28 32. At no time has Plaintiff received a response or modification of the June 20, 2018

EXHIBIT B

1 letter or restrictions set forth therein. Thereby, after 15 minutes "were up," **all defendant clerks**
2 **REFUSED TO RESPOND TO INQUIRY OR PROVIDE SERVICES** ignoring Plaintiff and/or
3 telling her she had to leave. Each knew and/or should have known that their actions were in
4 violation of Plaintiff's constitutional and civil rights.

5 33. The demands by **Defendant Court Clerks**; included, but were not limited to
6 demands that Plaintiff not just leave the **public area** adjacent to the court clerk filing windows
7 (which public area was also adjacent to other Trinity County services); but the **ENTIRE**
8 **COUNTY SERVICES BUILDING**, using **Defendant Marshall Garth Padrotti and Dep.**
9 **Marshall Bruce Black, among other Dep. Marshall Doe Defendants**, to make such demand
10 on occasion; with them making verbal insults in the process under threat of arrest and being
11 "bodily removed," if there was delay in compliance.

12 34. On June 22, 2017, Plaintiff appeared at the court building entry door in her personal
13 wheelchair which is not accessible by persons with disability by reason of non-compliance with
14 door size/openers; thereby requiring necessity for a third party to open same and as previously
15 noticed, some Marshall employees of the court; including **Defendant Bruce Black**, have refused
16 to open and/or timely open the entry door, telling Plaintiff to open the heavy doors herself: even
17 when Plaintiff had surgery on her shoulder!

18 35. The entry doors are NOT accessible by persons with disability, having no push button
19 for automatic opening. The interior courtroom and other interior doors are also without such
20 automatic access. On information and belief, it has been only within the past year, that any effort
21 was made to make the width of the courtroom entry doors wheelchair accessible.

22 36. On information and belief, the interior courtroom area tables for parties pro per or
23 attorneys remains inaccessible."

24 ...

25 "40. **Defendant Trinity County** is on notice that use of a wheelchair is difficult for
26 persons with disability in that there is a substantial incline of the walkway entrance to the court
27 services and Trinity County recorder's offices which requires Plaintiff, who cannot use her hands
28 to move a manual wheelchair, to use her feet to push the wheelchair backward up the incline; not

1 otherwise having access to the services window. Although a Group III Power Chair has been
2 ordered by an ALJ acting for the California Department of Social Services, such is awaiting
3 compliance by Partnership Health Plan and any such would be impossible for Plaintiff to carry in
4 her present vehicle; and thus, she must be able to traverse the incline to access both County and
5 Court services.

6 **41. Defendant Trinity County and the Superior Court** is also on notice that the court
7 services counter; purportedly for persons with disability, is also essentially not accessible where
8 the counter was constructed to be close to the entry door for the clerks where claimant has been
9 hit by the door being opened by **Defendant Marshall Pedrotti, Defendant Rosanna McCall**
10 and others in the process of entry.

11 42. Plaintiff has been told repeatedly to move her wheelchair by Defendant Clerks and
12 Marshal Pedrotti causing more delay and denial of timely access to services limited by the 15
13 minutes.

14 43. The limited time has been repeatedly used up by frivolous activity by the clerks to
15 cause delay and deny access to files/review of same and/or other services necessary to a fair
16 adjudication of her court matters.

17 44. **Defendant clerks** have repeatedly REFUSED to provide access to Plaintiff's ADA
18 file and have repeatedly REFUSED to call the Court Executive Officer/ADA coordinator to
19 obtain access. Clearly, 15 minutes cannot allow for review of approximately three inches of
20 ADA court records in the case on appeal or in any other matter. Thereby, Plaintiff has been
21 essentially denied access to her own ADA records.

22 45. **Defendant Clerk Cooke Haney** REPEATEDLY refused to accommodate
23 Plaintiff's hearing loss, walking away to sit in her enclosed cubicle when a question is asked;
24 thereby, forcing Plaintiff to repeat the inquiry at a louder volume, reminding said clerk supervisor
25 that she is hard of hearing, does not know how loud she speaks and needs an accommodation by
26 the clerk returning to the counter and/or having the clerk talk loud enough from her cubicle for
27 Plaintiff to hear and *comprehend* the speech. Said defendant has repeatedly ignored Plaintiff's
28 requests, either having refused to either listen to or respond to Plaintiff's inquiries causing delay

1 and then saying: "*Your time's up!*"

2 46. Without any cause whatsoever, other than perhaps that Plaintiff's "time is up,"
3 Defendant Cooke Haney has repeatedly called the Marshall from her cubicle to come and get
4 Plaintiff to leave; in particular, when there is a question, said clerk does NOT want to answer or
5 document said clerk does not want to copy for Plaintiff; whether or not the "time is up."

6 47. At the court services window on June 22, 2017, Defendant Clerk Supervisor,
7 **Laurie Cooke Haney**, failed to provide access to court services and administrative records
8 requested by Plaintiff, denying time to review any file in Plaintiff's past and/or pending
9 court/administrative matters; and instead, walked away saying: "*Your times up.*"

10 48. Defendant clerk supervisor Cooke Haney and all deputy court clerks refused services
11 following the assertion that claimant's 15 minutes had run; even though there were no other
12 customers in the office. Defendant Cooke Haney went into her sealed off cubicle; ignoring
13 Plaintiff, who **quietly sat in her wheelchair in the public anteroom of the court services** and
14 County Recorder's Office area contemplating her papers and schedule to the County Recorder's
15 Office.

16 49. Almost immediately, **Defendant Dep. Marshall Will Rovles** showed up and
17 aggressively demanded that Plaintiff leave the area without stating cause or actual order;
18 threatening arrest, if she did not leave."

19 ...

20 "60. There is no basis in law or fact for any restriction on Plaintiff's access to court
21 services. Plaintiff has NOT been given notice and opportunity to be heard at a hearing on any
22 restriction on access to the court in place at this time, a due process violation. Requests by
23 Plaintiff for due process has been ignored without a response.

24 61. Defendant court employees have regularly refused to provide court services and
25 further abused authority by using the court employee Marshall service without cause, to threaten
26 arrest and taking Plaintiff to jail; in order to, get Plaintiff to leave the public areas of the
27 court/Trinity County building; apparently as a "set up" for the threat of imposing more
28 restrictions if she exercises her constitutional right of access to the court.

62. It appears that the unlawful restrictions and threats are designed to hide the discovery of the pervasive manipulation, omissions and apparent falsification of court minutes and records to prejudice Plaintiff; to which, Plaintiff has previously and continues to object without action being taken by Defendants to correct or even respond to her written objections.

63. Thus, there is a showing that the court employee misconduct is intentional, retaliatory and malicious infliction of emotional distress, interference with exercise of civil rights and clearly ADA discrimination/retaliation and violation of Plaintiff's constitutional and civil rights."

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EXHIBIT 6 (4)

PATRICIA A. MCCOLM, J.D.
P.O. Box 113
Lewiston, CA 96052
(415) 333-8000
Fax by Appointment

June 21, 2017

RECEIVED
JUN 21 2017
TRINITY COUNTY SUPERIOR COURT
100 S. Main Street, Room 100
P.O. Box 1208
Heaverville, CA 96093 and
Fax to: (530) 623-8397 and 623-3762

Re: 10CV065, *PG&E v McColm*; OBJECTION TO UNRESPONSIVE
FALSE, DEFAMATORY, DISCRIMINATORY AND RETALIATORY LETTER OF
JUNE 20, 2017 CONDONING CLERICAL MISCONDUCT WITH REFUSAL TO
TIMELY CORRECT CLERICAL ERROR GIVING APPEARANCE OF INTENTIONAL
ACTS TO INFILCT PREJUDICE; PUBLIC RECORDS REQUEST RE APPLICATION /
INSTALLATION RE BUILDING CHANGES FOR ADA COMPLIANCE.

Dear Ms. Holliday:

I respectfully disagree with your letter of June 20, 2017; which noticeably is NOT responsive to the inquiries which make the faxes necessary, confirming the failure to give notice requested correction of clerical error by vacatur of the invalid default and failure to respond to request to calendar hearings; as well as, the failure of the Superior Court clerk(s) to timely prepare the record on appeal as required by the California Rules of Court.

Your letter merely confirms the intended - LACK OF ASSISTANCE and the discriminatory / retaliatory abuses being imposed on this Appellant; under false and defamatory pretense and innuendo, to unconstitutionally deny access to the court and prejudice the outcome of the appeal.

Accordingly, the faxes are NECESSARY to make a RECORD of the FACT of clerical misconduct and prejudicial denial of timely COURTEOUS access to public information and court services in the Trinity County Superior Court; under your direction, as shown by your remarkably false and oppressive letter.

Clearly the only "threat" you are apparently acknowledging, is one brought about by the clerical misconduct to which this Appellant OBJECTS; e.g. Filing a false Notice of

RECEIVED 3 6/8

Default/proof of service to prejudice this party. Thus, it appears you are raising the concern that your continuing misrepresentations and misconduct of the clerks of the Trinity court continue to be actionable; in particular, from the apparent intended discriminatory infliction on this party, of severe physical and emotional distress from denial of accommodation of disability, taking retaliatory advantage thereof. After all, you know my medical limitations, you were the ADA coordinator, who falsely alleged accommodation applications received were missing (without timely notice of such allegation to this party) and who acted to delay accommodation requests to judges to inflict denial of accommodations in this action!

And on point: HOW CAN YOU DEMAND THAT THIS WHEELCHAIR APPELLANT "Retain from blocking the door leading into the clerk's office," where by the design of the alleged ADA counter; use thereof, FORCES THE LOCATION OF A WHEELCHAIR TO BE NEAR THE DOOR. The inference from your questionable demand, gives the FALSE impression that the alleged "blocking," is intentional and/or that your demand is that this Appellant NOT USE YOUR ALLEGEDLY ACCESSIBLE COUNTER IN THE COURT SERVICES OFFICE!!! Accordingly, it appears use of the disability counter is inherently inaccessible in violation of the ADA and your FALSE assertion and inference of intentional "blocking" of the door is remarkably DISCRIMINATORY and nothing short of HAASSMENT! The proper action is to provide an accessible counter where there is no inherent conflict and/or change the operation of the door to avoid the conflict; a conflict YOUR COURT CREATED, by placement of the ADA counter at the door location rather than at the other side of the counter against the wall. A change to said wall location would be appropriate for accommodating use of the ADA counter! *It is unreasonable to repeatedly ask a wheelchair user to move, even when the door can be opened to allow clerk access. And, I strongly OBJECT to the misconduct of unnecessary demands to move and to court staff HITTING OF THE WHEELCHAIR WITH THE DOOR; even before asking for a move; in particular, where there is clear access provided!*

Whether you realize it or not, YOU HAVE AT ALL TIMES HAD THE AUTHORITY TO CORRECT THE CLERICAL ERRORS AND STOP THE DISCRIMINATORY ABUSE AND HARASSMENT, which the faxes and my prior requests for documents regarding the building changes creating the door conflict, have brought to your attention; yet, you have failed to so act; and instead, have acted to "kill the messenger!"

I have yet to receive the documents requested of the applications and building changes regarding the court services building bathrooms and placement of the ADA counter. YOU ARE HEREBY REQUESTED TO PROVIDE SAID DOCUMENTS PURSUANT TO THIS PUBLIC RECORDS REQUEST.

Your effort to continue the retaliatory false and misleading defamatory "set-up," to create an "excuse" to BULLY and intimidate, this senior disabled person; with unconstitutional demands; in abuse of authority, in order to avoid compliance with the law, is NOT ACCEPTABLE!

It is time you reconsidered all the FACTS reported to you by FAX and do the "right thing," in exercise of your duties as Court Executive, by correcting the clerical error and misconduct reported to you, providing requested information in a timely manner, providing accommodation of disability and by withdrawing the false and misleading letter of June 20, 2017.

Your courtesy, cooperation and early attention to this matter is appreciated.

Sincerely,


Patricia A. McColm

1 PATRICIA A. MCCOLM
2 P.O. Box 113
Lewiston, CA 96052
(415) 333-8000

3 Plaintiff, pro se
4

ORIGINAL

FILED

MAR 11 2019

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY *[Signature]*
DEPUTY CLERK

5
6 IN THE UNITED STATES DISTRICT COURT
7
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA
9

10 PATRICIA A. MCCOLM

NO. 2:18-CV-2092-MCE-CKD

11 Plaintiff,

12
13 **OBJECTIONS TO MAGISTRATE**
JUDGE'S ORDER AND FINDINGS
AND RECOMMENDATIONS;
14 **REQUEST TO VACATE REFERRAL**
FOR GOOD CAUSE EXTRAORDINARY
CIRCUMSTANCES AND TO REASSIGN
15 **PER RULE 123(e) RE RELATED CASE.**

16
17 [FRCP 72(b)(1-3); FRCP 73(b)(3);
FRCP 83, Local Rule 123]

18
19 **REQUEST FOR HEARING**

20 vs.

21 TRINITY COUNTY

22 et al.

23 Defendants.
24

25 TO HONORABLE LAWRENCE J. O'NEILL, CHIEF UNITED STATES DISTRICT
26 JUDGE:
27

28 Pursuant to Federal Rules of Civil Procedure 72(b), Local Rules 304, Plaintiff PATRICIA

1 A. MCCOLM (Plaintiff) does hereby respectfully **OBJECT**, in its *entirety and each contention*
2 *therein*, to Magistrate Judge's ORDER AND FINDINGS AND RECOMMENDATIONS
3 (O&R&R) to dismiss the "*action as duplicative*;" issued by Magistrate Judge Carolyn K. Delany
4 (Magistrate Judge) on grounds that the order, findings and recommendations are factually
5 erroneous, lack citation to authority, and appear to be against law to prejudice plaintiff, as
6 specifically stated below; **objects and moves to vacate referral** pursuant to FRCP 73(b)(3) and
7 28 U.S.C. section 636(c)(4), for good cause/extraordinary circumstances as more fully set forth
8 below and further moves for the Court's kind consideration pursuant to FRCP 83, Local Rule
9 123(c), for reassignment pursuant to prior notice and allegation by the Magistrate Judge that the
10 action is related to 2:12-cv-1984; as stated below with hearing requested:

11

12 Plaintiff objects to the lack of factual findings and prejudicial omission of fact and
13 authority in the O&R&R; as well as, to the misstatements/false assumptions in O&R&R as
14 follows:

15 The Magistrate Judge recommends that the instant action be dismissed for reason
16 that she "*concludes that this action is frivolous because it is duplicative of an action that was*
17 *previously filed in this court.*" The Magistrate Judge makes no finding of fact or law in support
18 of her conclusion that instant action is deemed "frivolous" or "duplicative" under 28 U.S.C.
19 section 1915 and subject to dismissal thereby. The action is neither "frivolous" nor
20 "duplicative."

21 The Magistrate Judge ADMITS she has "**expressed no opinion regarding the**
22 **merits of plaintiff's claims.**" There is no authority stated that shows a dismissal is appropriate
23 where there is no finding on the merit of the facts/causes of action. On the contrary, a dismissal
24 under 28 section 1915 can only be found to be "frivolous" if it lacks an arguable basis either in
25 law or in fact; in other words, dismissal is only appropriate for a claim based on an indisputable
26 meritless legal theory. *Fogel v Pierson*, CA10(Colo) 2006, 435F3d 1252. Therefore, where

27

1 there is no finding on the merits, there can be NO DISMISSAL. Where, as here, in forma
2 pauperis status has been granted, were there an obvious pleading or other defect for dismissal, it
3 more likely than not would have been raised by the prior Magistrate Judge. Dismissal is not
4 appropriate in instant matter.

5 There is no reference in the O&R&R to any authority that defines "duplicative" or
6 sets forth criteria for such a finding in support of the harsh "punishment" of dismissal and in
7 contravention of public policy for hearing of cases on the merits. Black's Law Dictionary
8 equates "duplicate" with being a "*copy...an original instrument repeated...*" Instant case is
9 clearly NOT a "copy" of a prior action. There is NO FACT OR CITATION TO AUTHORITY
10 in the O&R&R in support of a "duplicative" conclusion or that there is any basis in fact or law
11 for the recommendation of dismissal based thereon or for any reason; thus, denying any notice of
12 defect upon which an amended complaint of right would be appropriate.

13

14 **Grounds for Recusal/Vacatur of Assignment.**

15 The entire vague and ambiguous questionable process in the O&R&R by which a
16 dismissal is recommended, gives the strong appearance of bias intent to prejudice without regard
17 to the merits of the complaint and urgent need for injunctive relief to preserve constitutional right
18 of access to the court to avoid prejudice as a defendant in pending civil appeal with PG&E,
19 where it sued on false complaint alleging a recorded easement on plaintiff's real property which
20 was admitted at trial - did NOT exist! Further, the refusal in the O&R&R to entertain any
21 filings, gives the strong impression that medically necessary requests for accommodation of
22 disability/illness of Plaintiff re extension of time necessity to achieve a written project in such
23 fashion as to have a fair and equal opportunity with able-bodied litigants to achieve a favorable
24 result, will either not be filed and/or be favorably entertained by the Magistrate Judge. The
25 delay in response to pending request, leaves this Plaintiff with said impression and necessity to
26 endure extreme hardship in order to get preliminary objections filed timely to avoid prejudice.

27

28

1 Vacatur of the referral is proper under these extraordinary circumstances; in addition to, referral
2 under Rule 123.

3

4 **No Operative Facts for Dismissal.**

5 Remarkably, the only factual references made by the Magistrate Judge is to a
6 partial paragraph starting with the words: "action arises out of" from the "first amended
7 complaint" in 2:12-cv-1984 which is admitted to be "*still pending*"; and to a partial paragraph
8 starting with the words: "action arises out of" in reference to instant action. The Magistrate
9 Judge FAILS TO TELL YOUR HONOR THAT THE PARAGRAPHS ARE FROM THE
10 INTRODUCTION(S) to the Complaints! There is certainly NO AUTHORITY cited that
11 allows a dismissal based on similarity in an *introduction* between complaints. And, it appears
12 no dismissal is proper in a case, where the allegations do not reference a prior case with the same
13 facts and claim against the same defendant that was previously dismissed for being "frivolous or
14 malicious."

15 From the apparent irrelevant references in an "Introduction," and based on no
16 other actual fact stated, cause or authority cited, the Magistrate Judge contends that it is
17 "*apparent that instant matter concerns the same essential parties and nearly identical*
18 *allegations as McColm, 2:12-cv-01984-MCE-AC.*" The Magistrate Judge is wrong! Her
19 suggestion that an amended complaint in 2:12-cv-01984 to add "*new defendants and/or new*
20 *claims*" is also wrong and would prove prejudicial by time; in particular, under the new post
21 original complaint facts and defendant actions in instant case.

22 The operative facts are NOT nearly identical, do not occur prior to the filing of the
23 original complaint in 2:12-cv-01984 and are based on DIFFERENT DEFENDANT ACTOR
24 FACTS, WHICH OCCUR AFTER THE FILING OF THE ORIGINAL COMPLAINT; thereby,
25 NOT ARISING FROM THE SAME OR SUBSTANTIALLY IDENTICAL TRANSACTIONS,
26 HAPPENINGS OR EVENTS. Thereby, no "amended complaint" as suggested by the Magistrate
27

28

1 Judge re 2:12-cv-1984 is appropriate or timely. Such would clearly not avoid a statute of
2 limitations defense.

3 The O&R&R does not provide facts and authority in support of its recommended
4 action that the complaint should be dismissed as "duplicative." The recommendation is properly
5 declined.

6

7 **Related Cases: Not Amended or Supplemental Complaint but Separate Lawsuit.**

8 The Magistrate Judge comments that Plaintiff indicates that the two matters are
9 related. Thus, it appears that the Court had appropriate notice from Plaintiff and that the
10 Magistrate Judge appears to conclude that the matters may be considered by the Court as being
11 related under FRCP 83, Local Rule 123. Should such be found appropriate, then the reference
12 should be vacated and reassigned to the judge for 2:12-cv-1984 for processing as a separate
13 action in the interest of judicial economy.

14 As reference above, an amended complaint concerns events which took place
15 before the original pleading was filed and must be based on the same operative facts as those set
16 forth in the original complaint. A supplemental complaint sets forth allegations concerning
17 matters which have taken place since the original pleading was filed. *Keith v Volpe* (9th Cir.
18 1988) 858 F2d 467, 468. In light of the relationship back to date the action was commenced and
19 statute of limitations problems, amended complaints are not appropriate on facts/claims
20 subsequent to the commencement of the action. Supplemental complaints may have similar
21 problems and do not apply to unrelated claims; thus, the pleader is NOT required to bring
22 a supplemental complaint on separate claims that arose after the filing of the original complaint;
23 but should bring a separate lawsuit, as did Plaintiff in instant action. *Manning v City of Auburn*
24 (11th Cir. 1992) 952 F2d 1355, 1359-1360.

25

26 **Vacatur of Referral**

27

28

1 Clearly, the questionable approach by the Magistrate Judge in this action with
2 omission of operative fact and law to deny substantial procedural and substantive rights to this
3 Plaintiff is too harsh, evasive and discriminatory, to withstand scrutiny, showing the appearance
4 of grounds for recusal and extraordinary circumstances in support of the request that the referral
5 be vacated and recommendations rejected.

6

7

Conclusion

8

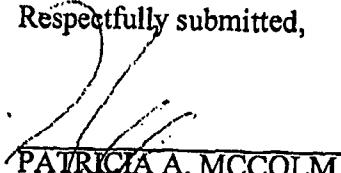
9 For the reasons outlined above, and as required by 28 U.S.C. section 636(b)(1)(C) and
10 Rule 72.3(b) of the Rules of this Court, Plaintiff objects to the Magistrate Judge's Order and
11 Findings and Recommendations alleging the action is "duplicative."

12 The Court should decline to adopt the O&R&R. Instead, it should vacate the referral and
13 reassign the action with consideration of the action as related to case number 2:12-cv-1984; not
14 as a "supplemental" pleading; but as authority allows, as a properly filed separate lawsuit in the
15 interest of party and judicial economy.

16

17 Dated: March 8, 2019

Respectfully submitted,



PATRICIA A. MCCOLM

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1 PATRICIA A. MCCOLM
2 P.O. Box 113
3 Lewiston, CA 96052
(415) 333-8000

4 Plaintiff, pro se

FILED

MAY 14 2019

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY CLERK

8
9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 PATRICIA A. MCCOLM

NO. 2:18-CV-2092-MCE-CKD

13 Plaintiff,

14 MOTION TO ALTER OR AMEND
15 ORDER OF DISMISSAL AND FOR
16 RELIEF FROM JUDGMENT DISMISSING
17 ACTION; MEMORANDUM OF POINTS
18 AND AUTHORITIES; DECLARATION
19 OF PATRICIA A. MCCOLM WITH
20 REQUEST FOR JUDICIAL NOTICE IN
21 SUPPORT.

22 vs.

23 REQUEST FOR ORAL ARGUMENT
REQUEST TO APPEAR BY TELEPHONE

24 TRINITY COUNTY

25 et al.

26 Defendants.

27
28 TO HONORABLE MORRISON C. ENGLAND, Jr., UNITED STATES DISTRICT
JUDGE:

1 NOTICE IS HEREBY GIVEN that on July 25, 2019 at 2:00 p.m. or as soon thereafter as
2 counsel may be heard by the above-entitled Court, located at 501 I Street Suite 4-200,
3 Sacramento, California 95814 in Courtroom 7, 14th Floor, Hon. Morrison C. England, Jr.;
4 plaintiff PATRICIA A. MCCOLM will move the court for an order on motion to alter or amend
5 the order of dismissal entered April 16, 2019 (13) and for relief from the judgment of dismissal
6 entered thereon April 16, 2019 (14); requests relief re vacatur with leave to file amended
7 complaint and/or permission to file an amended complaint as "*supplemental complaint*" to 2:12-
8 cv-1984 and for sua sponte appointment of counsel/ADA accommodation and/or upon further
9 application following recovery from plaintiff's acute limiting injury.

10 This motion will be brought pursuant to Federal Rules of Procedure, rules 59(e) and
11 60(b)(1)(2)(6) in that the facts and grounds upon which the complaint is based, 1) show
12 substantial merit on its individual facts and related law, which are 2) not "duplicative" or
13 "frivolous;" as well as, 3) accommodation of acute injury / limitations of permanent disability
14 showing excusable neglect and to avoid a miscarriage of justice. Further, the facts and grounds
15 upon which the complaint is based, do not comport with an order of dismissal as "duplicative"
16 being equivalent to "frivolous," in a potentially meritorious action; in particular, where
17 judgement thereon issues without a mention re leave to file a first amended complaint and/or as
18 leave to file as a supplemental complaint. Thereby, deemed an "outright refusal." The dismissal
19 and judgement thereon, is clear error and manifestly unjust where facts and law do not comport
20 with the complaint being either "duplicate" or "frivolous;" in particular, in failing to provide for
21 a first amendment and failing to afford sufficient accommodations under the American's With
22 Disability Act and related California statutes to ensure equal protection/due process and equal
23 access to the court by plaintiff, a qualified person with disability/member of stigmatized class
24 being denied equal protection, in a meritorious action for which relief is necessary to abate
25 intentional knowing discriminatory/retaliatory constitutional violations inflicted by defendants to
26 interfere with and prejudice plaintiff in the exercise of her civil rights.

27
28

This motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities filed herewith, the declaration of Patricia A. McColm/request for judicial notice with request to file all confidential exhibits under seal, the request for appointment of counsel, the pleadings and papers on file herein and upon such supplemental and other matters as may be filed hereafter and as may be presented to the Court at the time of the hearing.

Plaintiff respectfully requests oral argument in this matter and accommodation of any perceived defect or omission by reason of limited medical capacity aggravated by serious acute injury affecting preparation and presentation hereof.

Plaintiff requests appearance by telephone and will comply with court requirements for same.

DATED: May 13, 2019


PATRICIA A. MCCOLM
Plaintiff

MEMORANDUM

Plaintiff respectfully moves the court for order vacating setting aside of its Order of Dismissal (13) and Judgement thereon (14) by reason that the judgement was based upon a manifest error of fact and law, it is a manifest injustice in an action, the merit of which, was not determined and by reason that there is an appearance of discriminatory bias and/or judicial ethics violations by questionable apparent denial of leave to amend, denial of equal protection access to the court by "persons" with disability and/or discrimination against "persons" otherwise stigmatized by such disabilities, as "vexatious." Such "persons" are equally entitled to due process and equal protection as is any other citizen. Thus, any judicial officer who does not agree and harbors the same historical "hatred" toward such stigmatized classes that were similarly victimized in the past; e.g. Jews, African Americans, Irish, Chinese; should recuse.

1 It is a manifest injustice to misuse the process of the court to deny access to the court in
2 an otherwise meritorious case to ANY citizen and/or misuse the process to impose a false and
3 misleading decision to be misinterpreted, that plaintiff filed what is traditionally defined as
4 "frivolous" litigation, without regard to lack of finding on the merits or leave to amend; an abuse
5 of discretion, a questionable wrongful decision to be used by some unscrupulous judge or
6 attorney to "set-up" an unwarranted further denial/limitation of access, a constitutional violation.
7 Appointment of counsel is the remedy, not dismissal of a pro se ADA/deprivation of civil rights
8 complaint that is neither a copy of a State action nor in any other respect meets the definition of
9 "duplicative" under the law such as to trigger a finding of "frivolous" under 28 U.S.C. 1915;
10 which authority, works against such a finding; and, where public policy works in favor of trial on
11 the merits. Instant action is neither "duplicative" nor "frivolous." There is good cause to vacate
12 and set aside the Order of dismissal and judgment thereon.

13 A motion to amend or alter an order (13) and judgement (14) is authorized by Federal
14 Rules of Civil Procedure, rule 59(e) to correct an error of law and to prevent miscarriage of
15 justice. Fed.R.Civ. P. 59(e) serves the purpose of allowing a party to correct manifest errors of
16 law or fact (emphasis added). *Templet v HydroChem Inc.*, 369 F3d 473 479 (5th Cir 2004). To
17 prevent a manifest injustice, an amendment of a complaint is authorized; yet, in spite of assertion
18 by the Magistrate Judge that no determination on the merit of the claims was made, neither leave
19 to amend was provided to avoid a miscarriage of justice nor permission to amend to deem the
20 complaint a "supplemental" complaint as authorized by law; which would have been a
21 reasonable decision. Instant case also provides good cause for relief from judgment under Rule
22 60(b) for mistake, inadvertence, surprise, excusable neglect and other reason that justifies relief.

23 The above grounds apply in instant case.

24 Judicial Notice is requested of plaintiff's filings under seal that show she suffers
25 permanent limitations of disability including physical and cognitive decline which affects ability
26 to medically meet limited time impositions, appreciate and perform as directed or timely recall
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1 direction or research, as the court may expect from able-bodied parties/attorneys; thereby,
2 inflicting unwarranted prejudice. Further, on April 26, 2019, plaintiff suffered deep laceration
3 injury near the artery in the back of her leg, which inflicted seriously limiting effects of pain,
4 medication, shots re blood clot and near daily emergency room treatment with hours of IV
5 antibiotics; as well as, multiple daily wound bandage changes and drainage requiring wet bed
6 changes daily. Although the emergency room recommended admission to the hospital for several
7 days of necessary treatment, plaintiff refused knowing that a letter needed to be provided to the
8 court seeking additional time and this motion was incomplete. The sitting in contravention of
9 having the leg raised, necessary to prepare even the limited paperwork for this court, is believed
10 to have aggravated the pain, swelling and risk of blood clots. But for the pre-injury work
11 previously done to prepare this motion, it could not have been filed in *any form* timely. If there
12 is anything further the court requires of this motion in order to grant request to vacate, it is
13 respectfully requested that leave be provided to supplement as the court directs; as it is not
14 possible to accomplish anything more, prior to a jurisdictional due date of May 14, 2019.

15 The Order of dismissal is in contravention of the merit of each of the causes and legal
16 theories presented and in favor of public policy for hearing on the merits with allowance of the
17 amended complaint/supplemental complaint.

18 Plaintiff requests Judicial Notice of each OBJECTION raised in the Objections to
19 Magistrate Findings and Recommendations (12) as through fully set forth herein, which actually
20 lists substantial OBJECTIONS sufficient to support grounds herein to alter / amend re clear error
21 and to avoid a miscarriage of justice and good cause for relief under Rule 60(b) for mistake,
22 inadvertence, surprise, excusable neglect and other reason that justifies relief.

23
24 **Error re Language of Judgment:**

25 The wording of the Judgment re "*Decision by the Court*," appears to be error in that
26 contrary to the language of the judgment, the action did NOT come "*to trial or hearing before*

1 *the Court.*" The issues have NOT "been tried or heard." And thus, no proper "decision has been
2 rendered" Quite the contrary appears to have happened. Plaintiff had no trial or hearing, no
3 issues were considered on the merit of the complaint itself and leave to amend appears to have
4 been outright refused. There is no indication of any defect subject to amendment. If the Court
5 does not like the quoted parts of the "Introduction" which is alleged to be duplicative, it can
6 simply strike same without affecting the merit of the actual facts and law upon which the
7 complaint is based. A decision was NOT issued on the evidence. The claim of "duplicative"
8 being synonymous with "frivolous" is itself; in particular as applied on the facts in this
9 case, blatantly wrong and a miscarriage of justice. Such language is not only false and
10 misleading, it is potentially subject to misuse to prejudice plaintiff in future matters, a due
11 process violation and manifest injustice.

12

13 **Error of Law re 28 U.S.C. section 1915.**

14 Although 28 U.S.C. section 1915 provides for dismissal of an action that is "frivolous," a
15 district court may deem an *in forma pauperis* complaint "frivolous only if it lacks an
16 arguable basis in either law or in fact;" in other words, dismissal is only appropriate for a claim
17 based on an indisputable merit-less legal theory and the frivolousness determination cannot serve
18 as a fact finding process for the resolution of disputed facts. *Fogle v Pierson*, CA10 (Colo.)
19 2006, 435 F3d 1252, *Milligan v Archuleta*, CA10(Colo.) 2011, 659 F3d 1294. Accordingly,
20 where as in instant case, the Magistrate Judge stated she "*expresses no opinion regarding the*
21 *merits of Plaintiff's claims,*" adopting the recommendation of dismissal is error.

22 It appears that there is no authority under 28 U.S.C. section 1915 which authorizes
23 dismissal of a pro se *in forma pauperis* complaint as "frivolous" by being "duplicative" of
24 another action, absent the prior action having been dismissed as "frivolous" on the SAME
25 FACTS and CLAIMS previously dismissed as frivolous. The Magistrate Judge references 2:12-
26 cv-1984 as the alleged "duplicative" case and then states: "That matter is still pending." No
27

28

1 facts or issues have been decided in that action that could be considered "duplicative" for
2 dismissal. That matter is also clearly NOT frivolous! Plaintiff obtained a right to sue letter in
3 said employment discrimination case from the appropriate State agency. It is also an ADA
4 access, discrimination and retaliation matter. Employment discrimination is not at issue in
5 instant action and the operative dates are not prior to 2012; but in 2017.

6 There appears to be a questionable relationship between the handling of the 1984 case
7 after a near year delay by the Court, to coordinate with instant matter; in what appears to be an
8 effort to inflict prejudice thereby; in particular, where plaintiff's disability time limitations are
9 known. The Magistrate Judge's findings in instant case (2/21/19) preceded the new Magistrate
10 Judge's findings in 2:12-cv-1984 by a few weeks (3/20/19); findings, which remarkably assert
11 delay in the recommended dismissal of the clearly meritorious 1984 matter. (Objections to error
12 in the 1984 matter, will be filed hereafter.)

13 The dismissal order in instant case, to which this motion applies, was entered April 16,
14 2019, AFTER KNOWLEDGE OF THE PROPOSED DISMISSAL OF THE 1984 MATTER.
15 This makes the suggestion by the Magistrate Judge in instant matter and order thereon, that an
16 amended complaint was the proper procedure, rather than a separate complaint, is entirely
17 erroneous. As more fully set forth below, an amended complaint addresses facts which arose
18 PRIOR to the initial complaint and those matters which arose AFTER the initial complaint may
19 be addressed with leave by a supplemental complaint or a separate complaint, as was correctly
20 done by plaintiff in instant matter.

21 Not only is it a false assumption that an amendment was still available; but also, because
22 the facts in instant complaint occurred AFTER the date of the initial complaint. Further it is a
23 false assumption / "direction" to the plaintiff to potentially cause prejudice; because, there would
24 be no complaint to amend. Instant complaint is viable on its own and/or as a supplemental
25 complaint to 1984. Both matters dismissed at or about the same time is not only a manifest
26 injustice where there is substantial merit to the complaints; but deprives plaintiff of her
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28

1 and defamatory representations/media comment and hostile environment, saying "no more!"

2 PLEASE!

3 According to an article in the Ohio State Law Journal, there are only three types of
4 alleged duplicative law suits: 1) Where the use of "duplicative" referencing a complaint, is
5 applied where the exact SAME LAWSUIT IS FILED IN BOTH STATE AND FEDERAL
6 COURT (not applicable here); 2) Where a defendant brings what is deemed to be a "reactive"
7 lawsuit (not applicable here); and 3) Where different named plaintiff's bring separate class
8 actions or shareholder derivative suits representing the same or similar classes on the same
9 causes of action (not applicable here). PLAINTIFF'S SUITS DO NOT FIT ANY OF THESE
10 DESCRIPTIONS of alleged "duplicative" lawsuits.

11 The finding that instant case is "duplicative" is error as a matter of fact and law; as is the
12 nexus thereby, of being "frivolous." The Order of dismissal and Judgement are properly vacated
13 and with permission, amended to proceed as a supplemental complaint.

14

15 Error re Application of "Frivolous" to Dismiss:

16 As stated above, although 28 U.S.C. section 1915 provides for dismissal of an action that
17 is "frivolous," a district court may deem an *in forma pauperis* complaint "frivolous only if it
18 lacks an arguable basis in either law or in fact"; in other words, dismissal is only appropriate
19 for a claim based on an indisputable merit-less legal theory and the frivolousness determination
20 cannot serve as a fact finding process for the resolution of disputed facts. *Fogle v Pierson*, CA10
21 (Colo.) 2006, 435 F3d 1252, *Milligan v Archuleta*, CA10(Colo.) 2011, 659 F3d 1294.
22 Accordingly, where as in instant case, the Magistrate Judge findings state she "*expresses no*
23 *opinion regarding the merits of Plaintiff's claims*," adopting the recommendation of dismissal
24 is error and an apparent abuse of discretion.

25 Cornell Law School presents on line its Wex Legal Dictionary in which it defines
26 "frivolous:" *In the legal context, a lawsuit, motion, or appeal that lacks any basis and is intended*

27

28

1 *to harass, delay or embarrass the opposition... Judges are reluctant to find an action frivolous,*
2 *based on the desire not to discourage people from using the courts to resolve disputes.* It is
3 hoped this Court agrees and does not abide discrimination/retaliation under any pretext or stigma
4 by court employees. Fairness, impartiality, due process and equal protection should apply to all
5 "persons" as the Constitution mandates.

6 There is no basis in fact or law that brings into question the merit of plaintiff's 2018
7 complaint in this matter. The clear need for injunctive relief to avoid prejudice from the hostile
8 restrictive retaliatory operations of the Trinity Court employees, has been shown by the unlawful
9 time restrictions without due process imposed solely by a hostile retaliatory clerk. The defendant
10 court employees even ignored Judge Dennis Murray, who gave notice at hearing in 2013, that all
11 Trinity County clerk requested restrictions on Patricia McColm's access to court services did not
12 exist and that there was nothing before the court that would allow imposition of said restrictions;
13 yet, defendants persist in the false and defamatory harassment of plaintiff by arbitrary
14 unconstitutional restrictions, in order to retaliate for exercise of civil rights; including the filing
15 of civil rights actions in this Court, to prejudice her defense in other matters; in particular, where
16 PG&E tried to claim a non-existent recorded easement in her real property, with improper entry
17 repeatedly destroying same, to place multiple transmission poles in the middle of her deceased
18 father's planned sub-division. Most recently, without proper notice, PG&E destroyed 17 trees
19 that CalFire stated, posed no risk of harm to the power lines. The knowing unlawful restrictions
20 on physical right of access to court services by clerks is seriously prejudicial, a constitutional
21 violation. The ADA and constitutional violations by defendants need to be stopped by this court,
22 or civil rights under the laws of the United States mean nothing in California.

23
24 Error of Law re "To the extent that plaintiff is adding new defendants and/or new claims,
25 these are properly brought through an amended complaint in McColm, 2:12-cv-01984-
26 MCE-AC and not a new case.

27
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1 A dismissal on this purported interpretation of law is WRONG. As set forth above and
2 in FRCP 15(a) an amended complaint addresses events which took place BEFORE the original
3 pleading; assuming the statute of limitations has not run. Under 15(d) a supplemental pleading
4 is proper to set forth facts occurring AFTER the date of the initial complaint was filed, where the
5 statute of limitations has not run. It is wrong to assume that where there is a statute of
6 limitations defense, that an amended complaint is still viable, were an attempt be made to amend
7 the 1984 action to include instant case. Should the Court find it proper and viable, instant
8 complaint may be construed as a "supplemental" pleading that should not be dismissed.
9

10 **Error of Fact re 2:12-cv-1984 First Amended Complaint Allegations:**

11 The only statement of alleged "fact" in the Magistrate Judge's findings and
12 recommendations adopted by the Court to justify the allegation of "duplicative" was a SINGLE
13 REFERENCE TO THE INTRODUCTION to the complaints as essentially background showing
14 retaliatory intent by the defendants and NOT THE FACTS WHICH CONSTITUTED THE NEW
15 CAUSES OF ACTION which occurred AFTER initiation of the 1984 complaint. Accordingly,
16 the Court's contention that the proper procedure for plaintiff was to file an amended complaint in
17 2:12-cv-1984 is ERROR OF LAW.

18 The remainder of allegations regarding "same essential parties and nearly identical
19 allegations as McColm" is NOT supported by citation to either fact or law in either of the
20 complaints and is WRONG. It is obvious that neither the entire complaint in instant action nor
21 the first amended complaint in the 1984 matter was actually read. Clearly the facts for each
22 cause of action are based on different dates, different transactions, occurrences and actors and IS
23 NOT IDENTICAL! NOT A COPY AND NOT ARISING DURING THE SAME PERIOD OF
24 TIME. The 1984 matter initiated as a failure to hire discrimination case based on age for which
25 a right to sue letter was received and on disability discrimination, which has elements of physical
26 barrier access ADA violations; as well as, retaliation. Instant case addresses a later denial of due
27
28

1 process/equal protection/first amendment retaliatory incident and improper threats predicated on
2 an unlawful imposition by a clerk, restricting court services to 15 minutes; an unconstitutional
3 restriction imposed without due process, which will continue absent injunctive relief sought in
4 instant matter to restore full unobstructed access by time to court services, restrictions imposed
5 without due process and enforced through intimidation and threats by court employees.

6 Disabled persons should not be kept out of court, denied constitutional rights, by reason of
7 disability, retaliatory threats to liberty interest, stigma, being outspoken in exercise of free speech
8 or by reason of false and defamatory inferences from extrajudicial sources. Relief therefrom is
9 properly requested in instant action.

10

11 **Abuse of Discretion re Failure to Grant Leave to Amend.**

12 In forma pauperis complaints are liberally granted the usual first amendment of right. In
13 instant case, the Court has adopted a recommendation that is silent regarding leave to amend; and
14 by silence, fails to provide any justifying reasons that leave to amend was not addressed. Thus,
15 the Court's silence may be deemed an "*outright refusal*"; having the same result. *Foman v*
16 *Davis* (1962) 371 US 178, 182. In that the Court clearly has not identified any fact or cause that
17 needs amendment; the complaint should proceed as filed and/or with leave to deem it a
18 "supplemental complaint."

19

20 **FORMS / FUNDAMENTAL ELEMENT PLEADING OF CAUSE/ CITATION TO LAW/**
21 **NOT DUPLICATE ON OPERATIVE FACTS OR THE SAME COMPLAINT.**

22 Entire practice manuals are published with forms for attorneys to use; yet, it appears that
23 when used by a pro se litigant, some unidentified something is "duplicative." Most attorneys use
24 "duplicative" forms per cause of action and insert the facts. So to say that "much of a complaint
25 is "identical" to another, is specious and raises the spector of bias rather than careful
26 consideration of the facts and elements of the cause. It more nearly reflects the lack of
27

28

1 knowledge of law and practice; by a law student intern, than a learned judicial officer.
2 There clearly are NO FACTS to back up the unfounded assertions. Plaintiff's matters appear to
3 have been disregarded without the time they deserve; giving the impression that bias and stigma
4 rather than fact and law prevailed in instant matter.

5

6 **No Ruling on Request to Vacate Referral:**

7 The Court made no ruling on Plaintiff's objection to the assignment of the Magistrate
8 Judge Carolyn K. Delaney in instant matter. The remarkable error and appearance of wrongful
9 intention therein and/or complete lack of care to perform a through review of the two cases;
10 perhaps, because the plaintiff is the stigmatized McColm in the two cases, would strongly
11 suggest that the Magistrate Judge relied for her findings on improper extrajudicial sources and/or
12 personal bias and intent to prejudice to avoid acting in the case, rather than on the actual facts
13 and law indicative of substantial merits of the action. Recusal not dismissal would have been an
14 ethical result. In that said Magistrate Judge has a history of discriminatory bias as to plaintiff and
15 her needs as a person with disability; even before a proper progressive disabling medical
16 diagnosis of M.S. issued. Thus, it is reasonable to conclude that she could not be fair and
17 impartial in instant matter and/or accommodating of the variable substantial effects and
18 limitations therefrom. Consideration re withdrawal of the reference is respectfully requested.

19

20 **General Considerations re Dismissal:**

21 In considering a dismissal of a complaint, courts must assume all general allegations
22 "embrace whatever specific facts might be necessary to support them." [*Peloza v Capistrano*
23 *Unitifed School Dist.* (9th Cir. 1994) 37 F3d 517, 521 (emphasis added)] The approach of the
24 court should be to apply this mandate throughout it's analysis. Certainly, deprivation of civil
25 rights and acts in concert to deprive plaintiff thereof are actionable under 42 U.S.C. 1983, ADA
26 and other statutes as actually stated in the complaint.

27

28

1 Plaintiff is entitled to the benefit of any doubt whatsoever. Where there are ambiguous
2 inferences, the court must adopt whichever inference supports a valid claim. [*Columbia Natural*
3 *Resources, Inc. v Tatum* (6th Cir. 1995) 58 F3d 1101, 1109.

4 Pro se complaints are entitled to special leniency and are to be liberally construed.
5 *Hughes v Rowe* (1980) 449 U.S. 5, 9.

6 A complaint poses legal theory that can best be assessed after factual development and
7 should not be subject to a Rule 12(b)(6) dismissal. *Baker v Cuomo* (2nd Cir. 1995) 58 F3d 814,
8 818-819). Nor should it be subject to any other basis for dismissal; in particular, without time as
9 medically necessary to amend and/or in instant case without any leave to amend, deemed an
10 "outright refusal."

11 The purpose of section 1983 to redress "Misuse of power, possessed by virtue of state
12 law and made possible only because the wrongdoer is clothed with the authority of state law, is
13 action taken "under color of" state law." *Monroe v Pape* (1961) 365 US 167, 184. Also a
14 person involved in a conspiracy with a state official to deprive another of a constitutional right,
15 acts under color of State law. *Dennis v Sparks* (1980) 449 US 24, 27.

16 Here there is substantial allegations of acts and omissions in concert which not only
17 retaliate under the ADA but also constitute an attempt to deprive plaintiff not only of her right to
18 accommodation; but of her liberty interests as well as right of review with use of the state
19 procedures with the significant assistance of state officials. *Tulsa Collection Serv. v Pope*
20 (1998) 485 US 478, 489. The complaint clearly shows that plaintiff was treated differently than
21 able-bodied persons and/or retaliated against for her prior complaints and filing a claim of
22 discrimination/retaliation in civil right complaint in instant court.

23
24 **Proposed Remedy:**

25 The court is respectfully requested to set aside its order and judgement of dismissal with
26 filing of amended complaint, which with permission to be deemed a "supplemental" complaint.
27
28

1 Dated: May 13, 2019

2 Respectfully submitted,

3
4 Patricia A. McColm

5
6 **REQUEST FOR ORAL ARGUMENT/APPEARANCE BY TELEPHONE**

7
8 In further support of good cause in support of the motion, oral argument is respectfully
9 requested by telephone.

10 Your kind consideration is appreciated.

11 Dated: May 13, 2019

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PATRICIA A. MCCOLM
Plaintiff

DECLARATION

PATRICIA A. MCCOLM declares:

1. I am the plaintiff in the above entitled action.
2. The statements herein are my personal knowledge and if called as a witness could and would testify competently thereto.
3. The facts stated in the above notice and motion are true and correct to the best of my knowledge and if on information and belief, believe such to be true and correct.
4. Relief from the Order of dismissal and judgement thereon is hereby respectfully requested for good cause under FRCP section 59e for error of fact and law and to prevent a miscarriage of justice and under FRCP 60(b) by reason of mistake, inadvertence, surprise, excusable neglect and other reason that justifies relief.

1 5. Your declarant is a qualified person with disability under the American's With
2 Disability Act with limitations of disability that impact ability to act competently within time
3 limitations by reason of the diagnosis making it impossible to know at any particular time,
4 whether or not, sufficient cognitive and physical function will be available to function effectively
5 to achieve any written project in such fashion as to have a fair opportunity to achieve a favorable
6 result. The diagnosis is one that was belatedly identified in 2016 as a ground of negative impact
7 on inability to meet time limitations in this action. It is progressive M.S., worsening over time.

8 6. Rather than be prejudiced thereby, the unpredictable limitations support application for
9 appointment of counsel in this meritorious ADA retaliation case. But for the substantial impact
10 of the acute injury of April 26, 2019, a proper motion for appointment of counsel would have
11 been prepared for filing with this motion; a motion, most of which, was researched/drafted prior
12 to said date. Accordingly, either sua sponte appointment and/or leave to file such motion
13 hereafter is appreciated.

14 7. It is respectfully requested that Judicial Notice be taken of the declarations in prior
15 motions for time extension; as incorporated herein by reference (See 2:12-cv-1984), because it is
16 not physically possible to repeat herein the extraordinary circumstances and medical detriment
17 that have existed, preventing ability to competently use the prior time to complete the written
18 requirements in this matter; emergency circumstances, constituting conditions of impossibility
19 and good cause of excusable neglect for granting relief requested herein.

20 7. If there is any aspect of this motion that needs augmentation for a favorable result to
21 vacate and set aside the order of dismissal and judgment, leave to supplement under your
22 direction is appreciated; as yes, I've been forced to pull from other documents that language
23 which is relevant here; in light of the scope of my acute injury, which is such that daily blood clot
24 shots and near daily emergency room care with 2+ hour I-V antibiotic treatments have been
25 required; in addition to four "horse size" antibiotic tablets two time per day have been required;
26 as well as, pain medications, and two or more daily dressing changes. The deep six inch wound
27
28

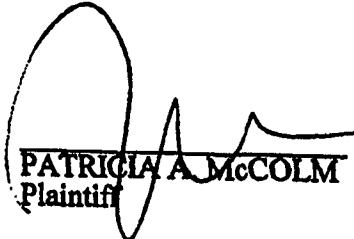
1 with its continuous huge swelling, is draining so profusely that it runs into my shoes without
2 regard to massive bandages and towel wraps and bed change needed daily and bloody liquid
3 running onto the floor sitting at the computer; thus, trying in good faith to meet Your Honor's
4 expectations.

5 8. I really don't feel well; but this case is too important not to try to edit the motion in
6 hopes of meeting the jurisdictional deadline. Hope my earlier draft with some edits is sufficient
7 for your favorable determination.

8 9. Your kind consideration is appreciated.

9 I declare under penalty of perjury under the laws of the State of California that the
10 foregoing is true and correct.

11 Dated: May 13, 2019

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PATRICIA A. McCOLM
Plaintiff

1 constitutional right to seek redress from the court, which appears to be biased Magistrate Judges' 2 intentions, not based on fact or law; but improper preconceived opinion, based on extrajudicial 3 sources and/or hostile bias and stigma against persons in plaintiff's protected class; and thus, a 4 constitutional violation. Without recourse to the court, plaintiff would not only continue to be 5 discriminated against as a person with disability in access to and services of the Trinity Superior 6 Court; but would continue to be harassed and threatened by Court employees with arrest for 7 merely sitting quietly in her wheelchair in the court services lobby. Thus, she would continue to 8 be denied her constitutional right of access to services of the court by unauthorized restrictions 9 on use thereof to 15 minutes, which is essential a complete denial preventing effective defense of 10 any litigation brought against her; and would tend to prejudice any appeal. Plaintiff timely needs 11 the injunctive relief requested in instant action to preserve her constitutional rights.

12

13 **Error of Fact/Law re Application of "Duplicative" to Dismiss:**

14 The assertion in the findings that instant complaint was "duplicative" without any 15 reference to any matter in support but a few words from the INTRODUCTION, is so vague and 16 ambiguous as to warrant being disregarded for any lawful purpose. The questionable finding 17 cites no actual facts, definitions or authority that support the contention. The finding is in error.

18 The legal definition of "duplicate," the adjective of which is "duplicative" is either of two 19 things **exactly alike** and often produced at the same time specifically: a counterpart identified in 20 the Federal Rules of Evidence Rule 1001(e) as produced by the same impression as the original 21 or from the same matrix or by means of photography, mechanical, or electronic recording, 22 chemical reproduction, or another technique which "accurately reproduces the original" 23 (emphasis added)! Black's Law Dictionary agrees, defining "Duplicate" as a verb: "To double 24 repeat, copy, make, or add a thing **exactly like a preceding one; reproduce exactly** (emphasis 25 added)." Even a first year law student intern, required to actually read the entire complaint(s) 26 should be able to determine, that instant complaint clearly is NOT AN EXACT COPY OF THE

27

1 1984 COMPLAINT! The filing dates are different. 2012 v 2018; the operative facts in instant
2 action upon which the causes are based, arise in 2017 specific to new circumstances, transaction
3 et.al; as well as, new defendant actors specific to the facts stated. If some of the defendants are
4 the same, then such is a showing that the requested injunctive relief is absolutely and urgently
5 necessary, as the "bad guys" haven't changed their ways and will continue to manipulate others
6 for infliction of harm to plaintiff, absent injunctive relief by this court. Plaintiff wants timely
7 action in instant case to preserve her civil rights.

8 Were there anything the Court believed was in some way improper, then notice of intent
9 to strike some specific part is available and/or to amend. However, nothing has been specified
10 that would give notice of any defect subject to being stricken; unless it is assumed that plaintiff's
11 introduction should not reflect the background which has led to instant detriment. An
12 introduction does not contain the operative facts supporting the causes of action. Those facts are
13 set forth separately in the complaint. Thus, reference to an introductory line as "duplicative" to
14 allege grounds for a dismissal thereby, is seriously wrong. The "Introduction" can be stricken or
15 amended, without affecting the operative facts and law upon which the case is based.

16 Attorney practice manuals, such as California Forms of Pleading and Practice and its
17 equivalent Federal pleading forms, regularly repeat essential element language of causes with the
18 different facts inserted. This does NOT make the claims/complaints EXACTLY the same. It
19 only helps practitioners evaluate the facts to insert them appropriately to meet the court's
20 pleading requirements and jury instructions. On information and belief, plaintiff's causes meet
21 both the general form pleading requirements and have the facts necessary to prevail per jury
22 instructions.

23 Court's are in good faith, generally believed to protect citizens from harm, not give the
24 "green light" to further biased retaliatory abuse and prejudicial harm through "dismissal" of
25 citizen pleas for help; in order to allow the offenders to proceed with the intended abuse and
26 destruction intended toward one who had the courage to "stand up" to the discrimination, false
27
28

FILED
NOV 20 2019

MOLLY C. DWYER
CLERK, U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 24. Motion for Appointment of Counsel

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form24instructions.pdf>

9th Cir. Case Number(s) 19-16660

Case Name McColm v State of California

Lower Court or Agency Case Number 2:18-cv-02092

1. My name is Patricia A. McColm

2. I am asking the court to appoint an attorney to help me with this case.

3. My fee status is as follows (*select one*):

The district court or this court granted my motion to proceed in forma pauperis.

I filed a motion to proceed in forma pauperis but the court has not yet ruled on the motion.

This motion is accompanied by a motion to proceed in forma pauperis.

I paid the filing fees for this case. However, I cannot afford an attorney for the following reasons:

4. Is this a civil appeal or petition for review? Yes No

If yes, attach an additional page(s) describing the issues on appeal.

My current mailing address

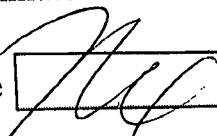
P.O. Box 113

City Lewiston

State CA

Zip Code 96052

Prisoner Inmate or A Number (if applicable)

Signature 

Date November 16, 2019

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

Case No. 19-16660: ATTACHMENT TO FORM 24. Motion for Appointment of Counsel

In support of Motion for Appointment of Counsel, it is hereby respectfully requested that this Court take Judicial Notice of:

- 1) the Notice of Appeal in this action with attachments re issues on appeal showing good cause and merit of the appeal;
- 2) all medical verification/request for accommodation documents filed under seal in the U.S. District Court, Eastern District; in particular, in 2:12-cv-1984 with related requests for appointment of counsel therein, and
- 3) in 2:12-cv-1984, the Magistrate Judge Order (ECF 56) and plaintiff's timely motions under FRCP 59e/60b (ECF 55) from dismissal/judgement of the First Amended Complaint; regarding which, the Magistrate Judge Order denies consideration, an apparent due process violation and manifest injustice. It is also relevant to the merit of this appeal; because the dismissal would appear to make mute the Magistrate Judge argument for dismissal of the underlying complaint in this appeal; e.g. that the 2:12-cv-1984 complaint is *still pending* and should have been amended rather than new case filed. As stated in the Notice of Appeal, plaintiff believes that an amendment would not have been proper.

Further good cause for appointment of counsel is set forth in Medical Exhibits A-D(3)(b); which further shows good cause for delay in bringing this motion.

Your kind consideration is appreciated.

**UC Davis Medical Center
MIDTOWN NEUROLOGY
3160 Folsom Blvd, Suite 2100
Sacramento CA 95816-7759**

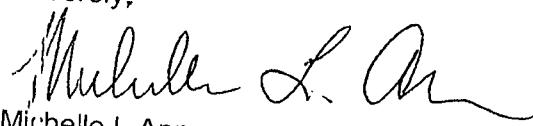
June 12, 2019

Patricia McColm
DOB: 6/5/1946

To Whom It May Concern,

My patient, Patricia McColm, has multiple sclerosis that has resulted in significant cognitive problems, weakness and mobility issues. She was seen today urgently. She had a leg injury on 4/26/19 that required ER treatment. Her entire leg became severely infected. She has had ongoing infection despite treatment with antibiotics. I recommend that she goes to the ER today for evaluation of the severe leg pain and swelling that is limiting all of her daily activities. I will need to delay the court briefing for up to 6 months.

Sincerely,



Michelle L Apperson, MD, PhD
HS Associate Clinical Professor of Neurology
(916) 734-3588

EXHIBIT A

Instructions

You have had a drain placed in your left leg today. Record daily outputs. You may shower tomorrow. Avoid soaking bath or submerging the site. Limit strenuous physical activities for the days that the dressing is on. There may be a little drainage from the site, this is normal. Please change the gauze around the drain as needed if there is visible drainage wetness. If the site drainage is not just a small amount please call your primary health care provider, or the Interventional Radiologist. Your doctor will remove the tube in the office, Or we can do it in IR for you when there is no longer any output.

For a few days after the drain is placed you may feel a bit sore or uncomfortable. You may take acetaminophen (Tylenol) or ibuprofen (Motrin) to treat the soreness if your provider allows and your platelet levels are acceptable. You may resume all normal medications and you have no diet restrictions.

Call your provider or the Interventional Radiologist at 415-353-7660, or if it is after hours, the on-call pager at 415-443-9417, if you have any of the following symptoms:

- Redness or swelling around the incision site.
- Bleeding from the incision site
- Increasing pain
- Fever over 100.5 F and/or have chills.

Thank you for choosing UCSF.

Care of Your Jackson-Pratt at Home - UCSF

Your JP (Jackson-Pratt) drain removes fluid that may collect inside your body after operation. There is a soft plastic bulb on the end of the drain to create the suction needed to pull the fluid out of your body. The bulb will not work if it gets too full.

To Empty Your JP

Do this before the bulb gets full.

- Wash your hands.
- Get the measuring cup.
- Open JP bulb cap. Try not to touch the inside of the cap with anything.
- Empty the drainage into the measuring cup. Set the measuring cup aside.
- Before closing the cap, squeeze the JP bulb as flat as possible.
- While the bulb is squeezed flat, close the cap. The bulb must be flat to work properly (to create suction).
- Record the amount of fluid every time you empty your JP.
- Flush the fluid down the toilet.
- Wash your hands

Cleaning The Skin Around the JP Tube

Do this every day.

- Wash your hands.
- Remove the old dressing.
- Clean the skin around the tube with mild soap. You may need to use a cotton swab dipped in a solution of one-half hydrogen peroxide and one-half water.

UCSF Health

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UCSF General Medicine at 1545 Divisadero

1545 Divisadero St Fl 1
San Francisco CA 94115-3010
Phone: 415-353-7900 | Fax: 415-353-2583

June 17, 2019

Patient: Patricia McColm
Date of Birth: 6/5/1946
Date of Visit: 6/12/2019

To Whom it may concern,

Patricia McColm has had a severe infection of her left leg, requiring daily ER visits and IV antibiotics for over 1 month to date. She recently underwent a procedure for this infection which requires her to keep her leg elevated and therefore she is incapacitated and unable to prepare her legal documents for her current pending legal inquiries.

Please allow her to postpone these legal proceedings for 6 months for healing from this infection and resulting incapacitation.

Sincerely,

Meghana Dipti Gadgil, MD

Electronically signed by Meghana Dipti Gadgil, MD on 6/17/2019, 2:04 PM

RE: McColm, Patricia DOB: 6/5/1946

Page 1 of 1

EXHIBIT C

Total: \$0.00
Total RX: 2
Signature Required: N
Counsel: Y

Walmart

Pharmacy



If you have any questions, please feel free to contact your Pharmacist at (530)221-3166.
Call your doctor for medical advice about side effects. You may report side effects to FDA at 1-800-FDA-1088 or use the internet at
www.fda.gov/Safety/Medwatch/

Pharmacy hours:

Mon: 09:00 AM - 09:00 PM	Wed: 09:00 AM - 09:00 PM	Fri: 09:00 AM - 09:00 PM	Sun: 10:00 AM - 06:00 PM
Tue: 09:00 AM - 09:00 PM	Thu: 09:00 AM - 09:00 PM	Sat: 09:00 AM - 07:00 PM	Lunch Time Varies

MCCOLM
PATRICIA,A

PO BOX 113
SWISTON, CA 960520113



SMZ/TMP DS 800-160 TAB AUR

DIRECTIONS: TAKE 1 TABLET BY MOUTH TWICE DAILY

WAL-MART PHARMACY 10-2537
1515 DANA DRIVE
REDDING, CA 96003 -0000

PRIORITY: FUTURE
NEW

Ref = 0

DATE: 06/06/19

Patient Pay: \$0.00

Cash: \$25.13

HUM

GADGIL,MEGHANA D

QTY: 28 DAW: 2 DAY SUPPLY: 14

TO: HUM

CEPHALEXIN 500MG CAP LUP

DIRECTIONS: TAKE 1 CAPSULE BY MOUTH 4 TIMES DAILY

MCCOLM
PATRICIA,A

PO BOX 113
SWISTON, CA 960520113



PRIORITY: FUTURE
NEW

WAL-MART PHARMACY 10-2537
1515 DANA DRIVE
REDDING, CA 96003 -0000

Ref = 0

DATE: 06/06/19

RX: 7602981

Ref = 0

DATE: 06/06/19

Patient Pay: \$0.00

Cash: \$26.61

HUM

GADGIL,MEGHANA D

QTY: 56 DAW: 2 DAY SUPPLY: 14

TO: HUM

6/6/19



CHECK YOUR SYMPTOMS

FIND A DOCTOR

FIND A DENTIST

FIND LOWEST DRUG PRICES

SEARCH



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Cephalexin Side Effects by Likelihood and Severity

COMMON side effects

If experienced, these tend to have a Less Severe expression

- Diarrhea
- Feel Like Throwing Up
- Indigestion
- Intense Abdominal Pain
- Throwing Up
- Yeast Infection Of Vagina And Vulva

INFREQUENT side effects

If experienced, these tend to have a Less Severe expression

- Burning Stomach
- Infection Due To The Candida Fungus

RARE side effects

If experienced, these tend to have a Severe expression

- Abnormal Liver Function Tests
- Acute Pustular Eruptions On Skin
- Allergic Reaction Causing Serum Sickness
- Bleeding
- Blistering Skin Diseases

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Specialists in
Lewiston, CA

Jagraj Singh. Nijjar, MD
Red Bluff, CA 96080

Stephen J.. Grant
Orland, CA 95963

More Infectious Disease Specialists



▼ Delays Due To Blood Platelets

- Deficiency Of Granulocytes A Type Of White Blood Cell
- DRESS Syndrome
- Erythema Multiforme
- Fever Caused By Administration Of A Drug
- Giant Hives
- Hallucination
- Hemolytic Anemia
- Hepatitis
- High Amount Of Bilirubin In The Blood
- Hives
- Increased Eosinophils In The Blood
- Inflammation Of The Large Intestine
- Interstitial Nephritis
- Itching
- Kidney Disease With Reduction In Kidney Function
- Kidney Failure
- Life Threatening Allergic Reaction
- Low Blood Counts Due To Bone Marrow Failure
- Rash
- Seizures
- Stevens-Johnson Syndrome
- Toxic Epidermal Necrolysis
- Yellowing Of Skin Or Eyes From Bile Flow Problems
- Yellowing Of Skin Or Eyes From Liver Problems

ADVERTISEMENT

If experienced, these tend to have a Less Severe expression (!)

- Agitation
- Anal Itching
- Confused
- Dizzy
- Genital Itching
- Head Pain
- Inflammation Or Infection Of Vagina
- Joint Pain

D(2)(h)



CHECK YOUR SYMPTOMS

FIND A DOCTOR

FIND A DENTIST

FIND LOWEST PRICE SUBSCRIBE

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SMZ-TMP DS Tablet

GENERIC NAME(S): Sulfamethoxazole-Trimethoprim

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Side Effects

Nausea, vomiting, diarrhea, and loss of appetite may occur. If any of these effects persist or worsen, tell your doctor or pharmacist promptly.

Remember that your doctor has prescribed this medication because he or she has judged that the benefit to you is greater than the risk of side effects. Many people using this medication do not have serious side effects.

Tell your doctor right away if you have any serious side effects, including: muscle weakness, mental/mood changes, signs of kidney problems (such as change in the amount of urine, blood in the urine), extreme drowsiness, signs of low blood sugar (such as sudden sweating, shaking, fast heartbeat, hunger, blurred vision, dizziness, or tingling hands/feet).

Get medical help right away if you have any very serious side effects, including: persistent headache, neck stiffness, seizures, slow/irregular heartbeat.

This medication may rarely cause serious (possibly fatal) allergic reactions and other side effects such as a severe peeling skin rash (such as Stevens-Johnson syndrome), blood disorders (such as agranulocytosis, aplastic anemia), liver damage, or lung injury. If you notice any of the following, get medical help right away: skin rash/blisters,

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infection.

EXHIBIT D (3)(a)

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This medication may rarely cause a severe intestinal condition (Clostridium difficile-associated diarrhea) due to a type of resistant bacteria. This condition may occur during treatment or weeks to months after treatment has stopped. Tell your doctor right away if you develop: persistent diarrhea, abdominal or stomach pain/cramping, blood/mucus in your stool.

Do not use anti-diarrhea products or narcotic pain medications if you have any of these symptoms because these products may make them worse.

Use of this medication for prolonged or repeated periods may result in oral thrush or a new yeast infection. Contact your doctor if you notice white patches in your mouth, a change in vaginal discharge, or other new symptoms.

This is not a complete list of possible side effects. If you notice other effects not listed above, contact your doctor or pharmacist.

In the US -

Call your doctor for medical advice about side effects. You may report side effects to FDA at 1-800-FDA-1088 or at www.fda.gov/medwatch.

In Canada - Call your doctor for medical advice about side effects. You may report side effects to Health Canada at 1-866-234-2345.

Related Links

List SMZ-TMP DS Tablet side effects by likelihood and severity.

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New Blvd, CA 90001

Uzi Moshe, Selcer, MD
Bayside, CA 95524

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Q&A/QT D(3)(b)