

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

FEB 16 2021

PATRICIA A. McCOLM,

Plaintiff-Appellant,

v.

TRINITY COUNTY; et al.,

Defendants-Appellees.

No. 20-15646

D.C. No.

2:12-cv-01984-MCE-AC

Eastern District of California,
Sacramento

ORDER

Before: CANBY, GRABER, and FRIEDLAND, Circuit Judges.

This court has reviewed the notice of appeal filed April 3, 2020 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. 20-15646 is therefore dismissed.

All pending motions are denied as moot.

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.

APPENDIX A

FILED

APR 17 2020

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MoNy C. Dwyer, Clerk U.S. Court Of Appeals

Form 24. Motion for Appointment of Counsel *re Denial of Appeal*

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

9th Cir. Case Number(s)

20-15446

Case Name

McColm v Trinity County

Lower Court or Agency Case Number

2:12-cv-01984-MCE-AC

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:

[Large empty box for writing]

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

PO BOX 113

City **LEWISTON**

State **CA**

Zip Code **96052**

Prisoner Inmate or A Number (if applicable)

Signature

Date **APRIL 15, 2020**

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

Case No. ~~20-1984~~: ATTACHMENT TO FORM 24. Motion for Appointment of Counsel

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

- 1) the Notice of Appeal in this action with attachments re facts/issues on appeal showing discriminatory prejudice from limitations of disability requiring appointment of counsel and "disregard" of merit re causes of action and good cause for appeal; that in contravention of Magistrate Judge contention, the First Amended Complaint states a cause of action and should not have been *dismissed with prejudice* under 28 U.S.C. 1915; but given leave to amend with appointment of counsel to ensure that medically limited persons with disability are not denied due process and access to the Court by reason thereof; as would appear to have taken place in this action;
- 2) all medical verifications/requests for accommodation documents filed under seal in the U.S. District Court, Eastern District in instant case 2:12-CV-1984 with requests for appointment of counsel (See Dr. Apperson, M.D., PhD statement dated August 23, 2018 and subsequent statements re progressive cognitive decline) and for STAY due to retaliatory prosecution/incarceration by defendants' design in causing delay to prejudice plaintiff in this ADA / DFEH retaliation right to sue case;
- 3) the Magistrate Judge Order (ECF56) and plaintiff's timely motion under FRCP

59e/60b (ECF 55) from dismissal/judgment on the First Amended Complaint; regarding which, the Magistrate Judge denies consideration, an apparent due process violation and manifest injustice; in particular, because a lie of "still pending" to amend was used to dismiss 2:18-CV-02092; thus, apparently misleading this Court into a failure to grant permission to proceed on appeal in 2:18-CV-02092 (19-16660). Surely this Court does not condone false representations by its Magistrate Judges to prejudice pro se/disabled plaintiffs by dismissal of his/her case; yet, the 19-16660 was not allowed to proceed on appeal; apparently, on the false pretense that the case was dismissed because it was "duplicative" of instant action and that plaintiff should have amended instant action to include the new facts instead of filing a new case (2:18-CV-02092); a procedural impossibility and injustice. The two cases should have proceeded together; as the 2018 case was clearly supplemental facts, later in time, to those in instant case.

Appellant seeks appointment of counsel on the motion for appointment of counsel and on appeal; in that the medical verifications show that assistance is needed to determine and satisfy the requirements of the Court to achieve a favorable result.

This Court needs to ensure, that misunderstood effects of illness and progressive disability do not become a discriminatory measure for a District Court to deny a plaintiff with disability the constitutional right to due process and access to the court in this Country. If limitations of disability and refusal to afford appropriate time and other accommodation cause problems for the Court, then appointment of counsel appears to be constitutionally required to ensure fair and impartial access to the Court.

Your kind consideration is appreciated.

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

August 23, 2018

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 has been unable to complete paperwork properly for her ongoing for the court regarding a complaint filed against the state for a civil rights violation. Her cognitive problems make it very difficult for her to communicate in a linear manner. She is not willfully ignoring the court's orders, but her medical condition has made her unable to comply with the time constraints due to disorganized thinking, memory problems, lack of executive function, and poor attention / focus. She also has hand weakness and coordination problems that makes it difficult for her to type. Ms. McColm is profoundly cognitively impaired and needs to have a court appointed counsel to help prepare a more logical, concise, and complete document according to the the court's instructions.

Sincerely,



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

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PATRICIA A. MCCOLM,

v.

JUDGMENT IN A CIVIL CASE

TRINITY COUNTY, ET AL.,

CASE NO: 2:12-CV-01984-MCE-AC

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 10/15/19

Marianne Matherly
Clerk of Court

ENTERED: October 15, 2019

by: /s/ A. Kastilahn

Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PATRICIA A. McCOLM

Plaintiff:

V.

TRINITY COUNTY, et al.,

Defendants.

No. 2:12-cv-01984 MCE AC (PS)

ORDER

Plaintiff is proceeding in this action pro se and in forma pauperis. The matter was referred to a United States Magistrate Judge pursuant to Local Rule 302(c)(21).

19 On March 20, 2019, the magistrate judge filed findings and recommendations herein
20 which were served on plaintiff and which contained notice that any objections to the findings and
21 recommendations were to be filed within twenty-one days. ECF No. 43. Plaintiff has filed
22 objections to the findings and recommendations, accompanied by medical records filed under
23 seal. ECF Nos. 49, 52.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this Court has conducted a de novo review of this case. Having carefully reviewed the entire file, the Court finds the findings and recommendations to be supported by the record and by proper analysis.

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APPENDIX D

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1 Accordingly, IT IS HEREBY ORDERED that:

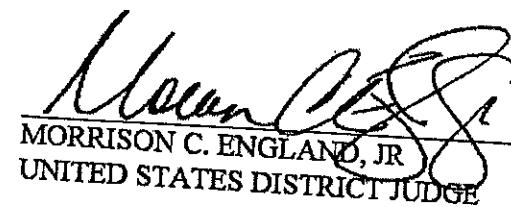
2 1. The findings and recommendations filed March 20, 2019 (ECF No. 43), are
3 ADOPTED IN FULL;

4 2. The First Amended Complaint (ECF No. 38) is DISMISSED with prejudice for failure
5 to state a claim; and

6 3. The Clerk of the Court is directed to close the case.

7 IT IS SO ORDERED.

8 Dated: October 11, 2019

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11 MORRISON C. ENGLAND, JR.
12 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 TRINITY COUNTY, et al.,
15 Defendants.

No. 2:12-cv-01984 MCE AC PS

FINDINGS AND RECOMMENDATIONS

17 Plaintiff is proceeding pro se, and the action is accordingly referred to the magistrate
18 judge by E.D. Cal. R. 302(c)(21). Plaintiff was previously granted leave to proceed in forma
19 pauperis ("IFP") pursuant to 28 U.S.C. § 1915. ECF No. 6. Plaintiff's initial complaint was
20 dismissed with leave to amend by Magistrate Judge Craig M. Kellison on February 12, 2016.
21 ECF No. 11. Following several extensions of time at the request of plaintiff, Magistrate Judge
22 Kellison recommended dismissal of plaintiff's case for lack of prosecution on January 12, 2017.
23 ECF No. 24. The recommendation was adopted by District Judge Morrison C. England on June
24 23, 2017, and the case was closed. ECF No. 28. On March 29, 2018, Judge England granted
25 plaintiff's request for reconsideration, and re-opened the case on the basis of newly-presented
26 medical records that indicated plaintiff had a medical condition that prevented her from timely
27 filing an amended complaint. ECF No. 37 at 6. Plaintiff was given 60 days to file an amended
28 complaint (making it due May 28, 2018), with the warning that no further extensions of time

1 would be granted. Id. Plaintiff filed her first amended complaint on May 30, 2018. ECF No. 38.
2 The case was reassigned to the undersigned on January 31, 2019. ECF No. 19.¹ The First
3 Amended Complaint is now before the court for screening.

4 **I. SCREENING**

5 A determination that a plaintiff qualifies financially for in forma pauperis status does not
6 complete the inquiry required by the statute. The federal IFP statute requires federal courts to
7 dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which
8 relief may be granted, or seeks monetary relief from a defendant who is immune from such relief.
9 28 U.S.C. § 1915(e)(2). Plaintiff must assist the court in determining whether or not the
10 complaint is frivolous, by drafting the complaint so that it complies with the Federal Rules of
11 Civil Procedure (“Fed. R. Civ. P.”). Under the Federal Rules of Civil Procedure, the complaint
12 must contain (1) a “short and plain statement” of the basis for federal jurisdiction (that is, the
13 reason the case is filed in this court, rather than in a state court), (2) a short and plain statement
14 showing that plaintiff is entitled to relief (that is, who harmed the plaintiff, and in what way), and
15 (3) a demand for the relief sought. Fed. R. Civ. P. 8(a). Plaintiff’s claims must be set forth
16 simply, concisely and directly. Fed. R. Civ. P. 8(d)(1).

17 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
18 Neitzke v. Williams, 490 U.S. 319, 325 (1989). In reviewing a complaint under this standard, the
19 court will (1) accept as true all of the factual allegations contained in the complaint, unless they
20 are clearly baseless or fanciful, (2) construe those allegations in the light most favorable to the
21 plaintiff, and (3) resolve all doubts in the plaintiff’s favor. See Neitzke, 490 U.S. at 327; Von
22 Saher v. Norton Simon Museum of Art at Pasadena, 592 F.3d 954, 960 (9th Cir. 2010), cert.
23 denied, 564 U.S. 1037 (2011).

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25 ¹ Following reassignment, plaintiff filed a document captioned “Objections to Assignment of
26 Magistrate Judge ‘For All Purposes,’” noting that she had previously declined consent to
27 magistrate judge jurisdiction. ECF No. 42. Plaintiff is informed that magistrate judge assignment
28 encompasses only those purposes contemplated by Local Rule 302(c)(21), and does not mean that
the magistrate judge is the presiding judge. U.S. District Judge England remains the judge
ultimately responsible for dispositive decisions in this case.

1 The court applies the same rules of construction in determining whether the complaint
2 states a claim on which relief can be granted. Erickson v. Pardus, 551 U.S. 89, 94 (2007) (court
3 must accept the allegations as true); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974) (court must
4 construe the complaint in the light most favorable to the plaintiff). Pro se pleadings are held to a
5 less stringent standard than those drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520
6 (1972). However, the court need not accept as true conclusory allegations, unreasonable
7 inferences, or unwarranted deductions of fact. Western Mining Council v. Watt, 643 F.2d 618,
8 624 (9th Cir. 1981). A formulaic recitation of the elements of a cause of action does not suffice
9 to state a claim. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57 (2007); Ashcroft v. Iqbal,
10 556 U.S. 662, 678 (2009). To state a claim on which relief may be granted, the plaintiff must
11 allege enough facts “to state a claim to relief that is plausible on its face.” Twombly, 550 U.S. at
12 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the
13 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”
14 Iqbal, 556 U.S. at 678.

15 A pro se litigant is entitled to notice of the deficiencies in the complaint and an
16 opportunity to amend, unless the complaint's deficiencies could not be cured by amendment. See
17 Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987), superseded on other grounds by statute as
18 stated in Lopez v. Smith, 203 F.3d 1122 (9th Cir.2000)) (en banc).

II. THE COMPLAINT

20 The First Amended Complaint (“FAC”) is 123 pages long (including 41 pages of
21 exhibits), and contains allegations against numerous defendants, including the Superior Court of
22 California, the Trinity County Office of the District Attorney, several judges, the Trinity County
23 Office of the Sheriff, and California Highway Patrol. ECF No. 38; id. at 1-2. Plaintiff asserts
24 thirteen causes of action, including malicious prosecution pursuant to 42 U.S.C. § 1983, infliction
25 of emotional distress, conspiracy, assault and battery, violations of the Fair Employment and
26 Housing Act, and violations of the Americans with Disabilities Act. Id. at 49-79.
27

27 Plaintiff alleges that the action arises out of "retaliatory protectionism" amongst the many
28 named defendants. Id. at 2. Plaintiff is a "senior citizen" over the age of 40 with several graduate

1 degrees. Id. at 5. Plaintiff uses a wheelchair and has a hearing decision from an Administrative
2 Law Judge which determined a “power wheelchair” is medically necessary. Id. Plaintiff alleges
3 that she has been mistreated by the above defendants in a great many ways, all apparently related
4 to her activities in the Trinity County Superior Court. She claims that the judges and court
5 employees have harassed her, made it difficult for her to access the court and to file documents,
6 instigated charges being brought against her, and failed to accommodate her disabilities.

III. ANALYSIS

8 The court notes at the outset that the First Amended Complaint was filed two days late,
9 after previous lengthy delays. In the interests of justice, however, the court will overlook the late
10 filing. Having conducted a thorough review of the FAC, the undersigned concludes for the
11 reasons explained below that plaintiff has not stated any claim upon which relief can be granted.

12 The FAC does not cure any of the pleading errors addressed in detail by Judge Kellison's
13 initial Findings and Recommendations. See ECF No. 11. First, as Judge Kellison explained in
14 2016, plaintiff cannot bring multiple unrelated claims against unrelated defendants in the same
15 action. ECF No. 11 at 4. Under Rule 20(a)(2), a plaintiff may only sue multiple defendants in the
16 same action if at least one claim against each defendant arises out of the same "transaction,
17 occurrence, or series of transactions or occurrences" and there is a "question of law or fact
18 common to all defendants." As with the original complaint, plaintiff's FAC includes over thirty
19 defendants and alleges a series of disconnected and mostly unrelated facts. See ECF No. 38. The
20 allegations do not involve the same transaction or occurrence. This defect requires dismissal on
21 screening.

22 Second, Judge Kellison informed plaintiff that to state a claim under 42 U.S.C. § 1983, the
23 complaint must allege an actual connection or link between the actions of the named defendants
24 and the alleged deprivations of constitutional rights. ECF No. 11 at 4; see Monell v. Dep’t of
25 Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). Plaintiff was also
26 informed that supervisory personnel are generally not liable under § 1983 for the actions of their
27 employees. Id.; see, Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989) (holding that there is no
28 respondent superior liability under § 1983). Plaintiff has failed to correct these deficiencies. For

1 example, she sues defendant Bruce Haney asserting that he is responsible for the policy,
2 procedure, and conduct of his employees. ECF No. 38 at 10. Plaintiff's specific claims against
3 each defendant are difficult to decipher. Many of the alleged misdeeds of defendants appear
4 unrelated to plaintiff. For example, plaintiff alleges that at the request of defendant Judge
5 Edwards, defendant Gaul acted to prevent "public gossip and ridicule" against Judge Edwards by
6 removing a declaration from his wife from the public file in Judge Edwards' divorce case. Id. at
7 19. Plaintiff's FAC fails to connect the actions of specific defendants to actual deprivations of
8 her rights, as is required by §1983. This defect also requires dismissal on screening.

9 Finally, most of the named defendants are absolutely immune from suit. Plaintiff may not
10 maintain § 1983 claims against individual judges. See Stump v. Sparkman, 435 U.S. 349, 356-57
11 (1978). The County District Attorney's Office and its prosecutors are also immune from suit.
12 See Imbler v. Pachtman, 424 U.S. 409 (1976); Stevens v. Rifkin, 608 F. Supp. 710, 728 (N.D.
13 Cal. 1984). The Eleventh Amendment bars plaintiff's claims against the California Highway
14 Patrol and the superior court, which are state agencies. See Simmons v. Sacramento County
15 Super. Ct., 318 F.3d 1156, 1161 (9th Cir. 2003). Eleventh Amendment immunity also bars
16 plaintiff's damages claims against various state officials in their official capacities. See
17 Eaglesmith v. Ward, 73 F.3d 857, 859 (9th Cir. 1995). The court is obliged to dismiss actions
18 that seek monetary relief from defendants who are immune from such relief. 28 U.S.C. §
19 1915(e)(2). These claims cannot be cured by amendment.

20 Ordinarily, pro se plaintiffs are given the opportunity to amend a deficient complaint.
21 Noll, 809 F.2d at 144. In this case, plaintiff has already had the opportunity to amend. ECF No.
22 11. Following an unusual amount of delay, plaintiff submitted an FAC that failed to cure several
23 fundamental deficiencies of the original complaint. Large portions of the FAC are barred by
24 various immunities and cannot be cured by amendment. As to the putative claims that are not
25 absolutely barred, plaintiff has demonstrated her inability to follow the Rules of Civil Procedure
26 and the pleading standards explained by the court. In light of the circumstances of this case, it is
27 clear to the undersigned that further leave to amend would be futile and would unjustly delay the
28 ////

1 conclusion of this already seriously delayed case. Accordingly, the undersigned recommends
2 dismissal without further leave to amend.

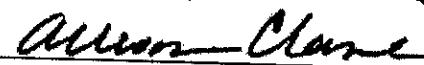
3 **IV. CONCLUSION**

4 In accordance with the above, IS HEREBY RECOMMENDED that the First Amended
5 Complaint should be DISMISSED with prejudice.

6 These findings and recommendations are submitted to the United States District Judge
7 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days
8 after being served with these findings and recommendations, plaintiff may file written objections
9 with the court. Such a document should be captioned "Objections to Magistrate Judge's Findings
10 and Recommendations." Plaintiff is advised that failure to file objections within the specified
11 time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153
12 (9th Cir. 1991).

13 **IT IS SO ORDERED.**

14 DATED: March 20, 2019

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16 ALLISON CLAIRE
17 UNITED STATES MAGISTRATE JUDGE

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

Plaintiff, pro se

FILED

MAY 28 2019

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

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

PATRICIA A. MCCOLLM

NO. 2:12-CV-01984-MCE-AC

Plaintiff,

OBJECTIONS TO MAGISTRATE
JUDGE'S FINDINGS
AND RECOMMENDATIONS [43] AND
TO ORDER RE EXTENSION OF TIME [48];
REQUEST TO VACATE REFERRAL
FOR GOOD CAUSE EXTRAORDINARY
CIRCUMSTANCES; REQUEST FOR
JUDICIAL NOTICE OF MEDICAL
EXHIBIT FILINGS UNDER SEAL.

[FRCP 72(b)(1-3); FRCP 73(b)(3);

vs.

REQUEST FOR HEARING

21 | TRINITY COUNTY

22 | et al.

Defendants

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

27 Pursuant to Federal Rules of Civil Procedure 72(b), Local Rules 304, Plaintiff PATRICIA
28 A. MCCOLM (Plaintiff) does hereby respectfully **OBJECT**, in its entirety and each contention,

1 therein, to Magistrate Judge's FINDINGS AND RECOMMENDATIONS [43] (R&R) that
2 "without further leave to amend," that "*the First Amended Complaint be DISMISSED with*
3 *prejudice;*" entered on March 20, 2019 by Magistrate Judge Allison Claire (Magistrate Judge) on
4 grounds that the findings and recommendations are factually erroneous/misleading, lack specific
5 fact and citation in support, appear to be moot by prior action of the court and appear to be
6 against law and/or to be omission of fact and law to prejudice plaintiff; does **OBJECT** to Order
7 re insufficient accommodation of acute injury and permanent disability re extension of time [48];
8 does **object and move to vacate referral** pursuant to FRCP 73(b)(3) and 28 U.S.C. section
9 636(c)(4), for good cause/extraordinary circumstances, requests Judicial Notice of medical
10 exhibit filings under seal, with hearing requested:

11

12 **1. OBJECTION to Redundant References to Extensions of Time / Delay/Erroneous**
13 **Assertion of being Untimely. Appearance of Discriminatory Bias and Moot.**

14 The R&R&O makes multiple references to "*several extensions of time at the request of*
15 *plaintiff*" commenting on a prior recommendation for dismissal (for additional time required to
16 amend) as an alleged lack of prosecution; an issue re amended complaint, which was previously
17 addressed as having good cause by reason of medical necessity; and thus, any redundant repeated
18 inferences of unjustified delay thereby, is moot for all purposes and the mention thereof
19 questionable; in particular, by the Magistrate Judge making the suggestion that ADA
20 accommodations/extensions of time would "*unjustly delay the conclusion of this already*
21 *seriously delayed case.*" Recusal, not dismissal is proper thereby. The Magistrate Judge repeats
22 the biased discriminatory error in recommending that leave to amend be denied; because,
23 granting the first amendment followed "*an unusual amount of delay;*" without actually showing,
24 the good cause of medical necessity by plaintiff and the impossibility to proceed earlier by reason
25 of delay imposed by the court. . The innuendo/suggested basis for dismissal is not only factually
26 wrong, it is deeply hurtful for any person with disability who has brought a case seeking a
27 remedy / relief from bias and discrimination in a forum charged with protecting the civil rights of
28 persons with disability.

1 Remarkably, the Magistrate Judge makes no mention of the extraordinary amount of
2 delay occasioned by the court; e.g. eight months between Plaintiff filing the first amended
3 complaint and instant “screening.” The repetitive “screening” process by different judges makes
4 the process fundamentally redundant, unfair, onerous for a pro se plaintiff and unconscionably
5 painful and burdensome for a plaintiff with disability; in particular, where many issues were
6 resolved previously in plaintiff’s favor; but are resurrected by a different judge for a new round
7 of “got-cha.” If a judge does not have the judicial temperament and ethical patience to
8 accommodate the special needs of a pro se plaintiff with disability, then recusal is proper and the
9 remedy is appointment of counsel, not dismissal.

10

11 **2. OBJECTION to Magistrate Judge’s False Claim of Failure to Comply with Due**
12 **Date for Amended Complaint with Wrongful Inference Against Plaintiff re Delay.**

13 It appears that pro se plaintiff’s are NOT entitled to the same respect or careful review of
14 the facts and law in compliance with the same judicial ethics applied to standards for attorney
15 documents/pleadings. This is wrong as is the false assumptions of the Magistrate Judge and/or
16 her assistant, who just immediately assume the pro se plaintiff is wrong, rather than consider that
17 either the judge and/or her assistant may be wrong and that the pro se plaintiff may actually be
18 RIGHT! For example, on page 1 of the F&R, the Magistrate Judge alleges that: *“Plaintiff was*
19 *given 60 days to file an amended complaint (making it due May 28, 2018), with the warning that*
20 *no further extensions of time would be granted. Id. Plaintiff filed her first amended complaint on*
21 *May 30, 2018 (emphasis added).”*

22 THE FIRST LINE OF “III. ANALYSIS” states: *“The court notes at the outset that the*
23 *First Amended Complaint was filed two days late after previous lengthy delays. In the interest*
24 *of justice, however, the court will overlook the late filing* (emphasis added).” The Magistrate
25 Judge then “concludes” that plaintiff has “not stated any claim upon which relief can be
26 granted.” The wrongfully alleged “late filing” was clearly NOT overlooked. In fact, there is
27 clearly a tone of hostility and disgust by the Magistrate Judge throughout the R&R for a pro se
28 who is being accused of filing late and causing delay; which precipitates the erroneous

1 recommendation of dismissal with prejudice. There is no actual analysis, facts and law specific,
2 pertaining to any cause of action with showing that ANY such is without merit. The
3 recommended prejudice here, appears to be by reason of Magistrate Judge preconceived opinion
4 bias and error, not a lack of merit re claims.

5 IN FACT, IT IS THE MAGISTRATE JUDGE WHO IS
6 UNCONSCIONABLY WRONG RE LATE FILING/DELAY
7 AS IS HER HOSTILE BIASED APPROACH TO
8 REPETITIVE FALSE ASSUMPTIONS
9 REGARDING PRO SE PLAINTIFFS; if not also disabled plaintiffs
10 and/or this particular plaintiff, who must now show the court how
11 wrong was the Magistrate Judge ON THE FACTS: MAY 28, 2018 --- WAS A
12 HOLIDAY, MEMORIAL DAY! Thus, plaintiff could NOT file her Amended
13 Complaint on that date as the Magistrate alleges she should have done to be
14 timely. Further, the Magistrate Judge FAILS TO ACKNOWLEDGE that
15 under FRCP 6(d), plaintiff had an additional three days to file by reason of
16 the Order having been mailed! Thus, PLAINTIFF'S AMENDED
17 COMPLAINT WAS TIMELY FILED IN ACCORDANCE WITH
18 REQUIREMENTS OF LAW! Plaintiff deserves an apology for the
19 distress/pain and extra work the Magistrate Judge has caused by *her* error, not a
20 wrongful dismissal based on plaintiff having totally and complied with the rule of
21 law!

22

23 3. OBJECTION to Magistrate Judge's Assertion that Plaintiff has Not Stated Any
24 Claim Upon which Relief can be granted.

25

26 A. OBJECTION re Late Filing of Amended Complaint. As stated above, the
27 Magistrate Judge's assertion of late filing/delay is blatantly wrong. The remainder of the
28 assertions for alleged failure to state a claim upon which relief can be granted are equally wrong.

1 For the most part they are so vague, ambiguous and unspecific as to any alleged claim, as to be
2 legally insufficient for evaluation on any fact or law pertaining to each contention /
3 recommendation for dismissal with or without prejudice.
4

5 **B. OBJECTION re Vague and Ambiguous Erroneous Reliance on 2016**
6 **Alleged Pleading Errors by Magistrate Judge Ellison in ORIGINAL complaint [11] re**
7 **Mistaken 42 U.S.C. section 1983 claims in Disregard of Mandates under the ADA.** The
8 original complaint to which the alleged pleading errors refer, is clearly NOT the First Amended
9 Complaint; which in fact, cures what were previously questionably deemed to be "pleading
10 errors;" but which must be viewed in light of the fact that Magistrate Judge Kellison made
11 essentially the same errors that the Magistrate Judge is making in instant matter, by addressing
12 alleged errors solely under 42 U.S.C. section 1983 and NOT under the ADA or Fair Employment
13 and Housing Act. Thus, the 2016 Kellison F&R essentially do NOT APPLY to the Amended
14 Complaint here; in particular, in failing to recognize that under the ADA the alleged immunities
15 etc. do NOT apply. The Magistrate Judge engages in factual error ignoring most of the First
16 Amended Complaint and the nexus between the defendants and causes of action that arise out of
17 the agreement for conduct in concert to prejudice plaintiff in retaliation for her ADA objections
18 and civil rights complaints.

19 **T**he Magistrate Judge makes vague assertions of what Rule 20(a)(2) allegedly imparts; but
20 fails to identify any facts or authority in support related to the AMENDED complaint, just
21 repeating what was questionably and previously objected to being asserted in relationship to the
22 original complaint and then falsely concluding "a series of disconnected and mostly unrelated
23 facts" and that the "allegations do not involve the same transaction or occurrence" WITHOUT
24 ANY CITATION TO ANY SUCH ALLEGED FACT, TRANSACTION OR OCCURRENCE in
25 the First Amended Complaint. This is wildly wrong, which any careful reading of the First
26 Amended Complaint would clearly show.

27 The 2019 RULE 20(a)(2) IS NOT EVEN QUOTED or APPLIED PROPERLY! The
28 statute is a "Permissive Joinder of Parties" statute. As related to defendants in subjection (2),

1 such may be joined if: "(A) any right to relief is asserted against them jointly, severally, or in
2 the alternative with respect to or arising out of the same transaction, occurrence, or series
3 of transactions or occurrences; and (B) any question of law or fact common to all
4 defendants will arise in the action." The Magistrate Judge does NOT identify any claim or
5 defendant that does NOT comply with the permissive joinder statute. In that the statute specifies
6 that a SERIES of transactions or occurrences is viable, all are related in the First Amended
7 Complaint. The Magistrate Judge mistakenly asserts that since: "*The allegations do not involve*
8 *the same transaction or occurrence. This defect requires dismissal on screening.*" NOT SO!
9 The statute is clear that it does NOT have to be a single transaction or one that is the "same," as
10 the Magistrate Judge asserts, the right to relief can arise out of a series of transactions or
11 occurrences, as is properly set forth as all being related in the First Amended Complaint.
12

13 **C. OBJECTION to Failure to Cite Related Joinder Statutes Favorable to**

14 Plaintiff: Magistrate Judge also fails to mention Rule 20(b), which provides protective
15 measures: "The court may issue orders—including an order for separate trials—to protect a party
16 against embarrassment, delay, expense, or other prejudice that arises from including a person
17 against whom the party asserts no claim and who asserts no claim against the party."

18 Importantly, the Magistrate Judge also FAILS TO MENTION RULE 18 RE JOINDER OF
19 CLAIMS, which allows: "(a)...as independent or alternative claims, as many claims as it has
20 against an opposing party." Subsection (b) re "Joinder of Contingent Claims," states: "A party
21 may join two claims even though one of them is contingent on the disposition of the other; but
22 the court may grant relief only in accordance with the parties' relative substantive rights..."
23 Further, under Rule 21-Misjoinder and Nonjoinder of Parties: "Misjoinder of parties is not a
24 ground for dismissing an action..."
25

26 **D. OBJECTION re Erroneous Reliance on Kellison 42 U.S.C. 1983 and where**
27 **ADA in contravention of Magistrate Judge's Assertions.**

28 Since the Magistrate Judge wrongfully alleges the FAC does not state "ANY claim upon

1 *which relief can be granted* (emphasis added),” and questionably relies solely on an alleged 42
2 U.S.C. section 1983 claim, plaintiff brings to the court’s attention that there is an undisputed
3 viable “one claim,” a cause of action under 42 U.S.C. 1983, that **does relate to all of the**
4 **defendants**, such as to avoid a dismissal, which is pursuant to the holding in *Zilch v Long* 34
5 F3d 359 (6th Cir. 1994), that “**Retaliation for exercise of First Amendment Rights is itself a**
6 **violation of the First Amendment.**” Accordingly, the retaliatory false charges brought against
7 plaintiff by defendants acting in concert with restrictions placed on her right of access to court
8 services as stated in the First Amended Complaint does state a claim / causes of action under 42
9 U.S.C. section 1983 as First and Fourteenth Amendment, constitutional violations. Thus, as
10 asserted by the Magistrate Judge, the alleged “one claim” requirement against each defendant
11 and/or where there is an actual “connection or link between the actions of the named defendants
12 and the alleged deprivations of constitutional rights” has been met. **Accordingly, there is no**
13 **screening defect under Rule 20(a)(2) which requires dismissal.**

14

15 **E. OBJECTION to Failure of Magistrate Judge to Acknowledge that State**
16 **Actors / Supervisory Personnel potentially Liable Under ADA.** The Magistrate Judge
17 questionably relies on outdated 2016 erroneous comment by Judge Kellison in stating that
18 plaintiff failed to correct an alleged deficiency after being informed by Judge Kellison in 2016
19 that “supervisory personnel are generally not liable under section 1983 for the actions of their
20 employees.” **This is wrong, in that the Magistrate Judge appears NOT to have actually read**
21 **the FAC where under the ADA claims, State actors are potentially liable under the ADA, as**
22 **SET FORTH IN THE FIRST AMENDED COMPLAINT.** Accordingly, defendant Bruce
23 Haney is properly sued as an employee Marshall of the Trinity County Court for directing the
24 conduct set forth in the FAC. (Note: Trinity County is one of the few Counties in the State that
25 has NOT transferred the court bailiff and other services to the Trinity County Office of the
26 Sheriff.)

27

28 **F. OBJECTION re Magistrate Error in false assumption that: “Many of the**
alleged misdeeds of defendants appear unrelated to plaintiff.” There is nothing that is

1 "difficult to decipher" about the claims against defendants in the FAC; a comment in the F&R
2 which appears to be just another unfounded attempt by a biased Magistrate Judge to "bootstrap"
3 prior erroneous comment about the *original* complaint to the FAC, without a diligent reading of
4 the entire FAC; a reading that would clearly show that all the wrongs alleged are related to the
5 plaintiff. Plaintiff **OBJECTS** to the factious tone and comment of the Magistrate Judge in
6 characterization of the facts in the FAC, constituting KNOWING violation of plaintiff's civil
7 rights, as "misdeeds" and then as an example, comments on one small part attributed to
8 defendant Edwards asking defendant Gaul to prevent "public gossip and ridicule" against Judge
9 Edwards by "removing a declaration from his wife from the public file in a Judge Edwards'
10 divorce case." Immediately following these incomplete misleading comments, the Magistrate
11 errs in making the false assumption that: "Plaintiff's FAC fails to connect the actions of specific
12 defendants to actual deprivation of her rights, as is required by section 1983. This defect also
13 requires dismissal on screening." Wrong. The alleged defect does not relate to any facts or
14 authority set forth in the causes of action. The comment re Judge Edwards/Gaul are taken from
15 the identification of the defendants list. THE ENTIRE PAGE 18-20 is incorporated herein by
16 reference, which shows remarkable editing to give a false impression by the Magistrate Judge
17 and remarkable failure to give the full facts and circumstances of the nexus between the
18 defendants and causes of action being set forth later in the separately stated causes of action.

19 The FAC does connect the actions of defendants to deprivation of constitutional rights.
20 As set forth above, a 1983 violation is found under *Zilich* by reason of retaliatory conduct in
21 violation of constitutional rights, such as filing false criminal charges; charges which were
22 orchestrated by defendant Edwards in concert with Judge Gaul, acting in excess of jurisdiction,
23 in an attempt to "hide" the fact that the divorce papers identified person(s) with whom, Judge
24 Edwards was accused by his wife of having an affair. Since the reputation of Judge Edwards for
25 being questionably involved with court clerks was a matter of public reputation and comment;
26 and which on information and belief, contributed to Judicial Council acting to admonish said
27 judge and eventually acting to prevent his serving as a judge in the future, does not change the
28 fact that acts by judges in excess of all jurisdiction are NOT protected from liability; in

1 particular, for knowing violations of constitutional rights. The FAC clearly shows that the
2 Magistrate Judge alleged defect under section 1983 is wrong and more wrong because the FAC is
3 viable on the facts under the ADA where there is no relief from liability for State actors.

4 Just because a Magistrate Judge may not like the idea of handling a case in which a judge
5 and court clerks are involved in deprivation of a citizen's civil rights; such is not cause to create
6 questionable defects, being alleged to "require dismissal on screening." That is a basis for
7 recusal and/or extraordinary circumstance to vacate the referral, not for dismissal of claims by the
8 victim of such unethical defendant court employee abuse.

9 Plaintiff has made the correct allegations in the complaint that judicial immunity does not
10 apply not only because of the ADA; but because the allegations show that the judge acted in
11 "clear absence of all jurisdiction." Thus, a dismissal is not appropriate of such a judicial officer.
12

13 **G. State Actors not Immune from suit under the ADA.** Whether or not the
14 Magistrate Judge has acted intentionally in an effort to avoid handing this action through
15 wrongful allegations in support of a dismissal under 42 U.S.C. section 1983 and the Eleventh
16 Amendment, claiming "*most of the named defendants are absolutely immune from suit;*" there is
17 no effort to distinguish any defendant that are not immune from suit; in particular, where there is
18 no question that immunity/Eleventh Amendment does not apply to State actors such as the
19 defendants in instant case, who are NOT immune from liability under the ADA. And, what
20 about those defendants who knowingly violated plaintiff's constitutional rights? It is
21 questionable, that the Magistrate Judge does not address the liability issue under the ADA, which
22 clearly negates the contention that: "*The court is obliged to dismiss actions that seek monetary*
23 *relief from defendants who are immune from such relief. 28 U.S.C. section 1915(e)(2). These*
24 *claims cannot be cured by amendment.*" The court is NOT obliged to dismiss or deny
25 amendment.

26
27 **4. OBJECTION, NO BASIS IN FACT OR LAW FOR FAILURE TO GRANT**
28 **AMENDMENT.**

1 **A. OBJECTION** in that the Magistrate Judge does not actually specify any actual defect
2 by fact or law in any cause of action that requires amendment or dismissal. In fact, most facts
3 related to the causes of action are not even mentioned; which gives the strong appearance that the
4 FAC was not actually read in its entirety. Even where the Magistrate Judge would tend to find
5 claims that are not barred; without statement of fact or law in support, she appears to exercise
6 personal bias to prejudice plaintiff by a false and unaccommodating contention that: "*plaintiff*
7 *has demonstrated her inability to follow the Rules of Civil Procedure and pleading standards*
8 *explained by the court.*"

9 **B. OBJECTION** that any perceived "inability" of plaintiff is not willful; but medically
10 induced. JUDICIAL NOTICE is hereby requested of Medical Exhibits requested to be filed
11 under seal in this matter. Clearly, the Magistrate Judge does NOT want to handle a case where
12 a person with disability requires accommodation by additional time or otherwise and/or that she
13 cannot be fair and impartial as to this particular plaintiff. In any event these are grounds for
14 recusal and/or appointment of counsel, not dismissal and/or failure to provide for amendment.

15 The Magistrate Judge simply alleges that plaintiff has "already had an opportunity to
16 amend" and that even with the "unusual amount of delay" the FAC contained several alleged
17 "deficiencies" found in the original complaint and that because "Large portions of the FAC are
18 barred by various immunities and cannot be cured by amendment" that "further leave to amend
19 would be futile and would unjustly delay the conclusion of this already seriously delayed case.
20 Accordingly, the undersigned recommends dismissal without further leave to amend." This is
21 merely a vague and ambiguous unsupported statement as set forth above and is clearly wrong on
22 the facts of this case.

23 The Magistrate Judge is clearly NOT willing to afford accommodation of plaintiff's
24 substantial permanent limitations of disability or even an acute seriously debilitating injury; and
25 thus, should not be acting in this case. These are extraordinary circumstances in support of
26 withdrawal of referral of this and any Magistrate Judge who cannot be fair and impartial to pro se
27 plaintiffs with disability and/or this particular pro se plaintiff with disability.
28

C. OBJECTION to Denial of Leave to Amend where there is good cause to grant leave to amend and upon application, to appoint counsel to ensure that this case with meritorious claims/causes can proceed in such fashion as to have a fair opportunity with able-bodied plaintiffs to achieve a favorable result. FRCP 15(a) expressly states leave to amend "shall be freely given when justice so requires." *Allen v City of Beverly Hills* (9th Cir. 1990) 911 F2d 367, 373. Justice so requires where any alleged delay/defect is based on disability as in instant case; in particular, where Magistrate Judges have failed to grant the time recommended by plaintiff's physicians and/or plaintiff based on knowledge of her special needs.

D. OBJECTION Abuse of Discretion re Failure to Grant Leave to Amend.

In forma pauperis complaints are liberally granted leave to amend. In instant case, the Magistrate Judge is silent regarding actual specifics supported by fact and law that leave to amend is “futile” or would “unjustly delay.” What this says is that the Magistrate Judge considers accommodation of disability to be “unjust;” and thus, does not want to accommodate plaintiff’s disabilities requiring additional time. Simply wanting to avoid delay is not cause to dismiss; in particular, **WITH PREJUDICE!** There is a failure to provide any justifying reasons that leave to amend is warranted. Thus, the Court’s silence may be deemed an “*outright refusal*;” having the same result, an abuse of discretion. *Foman v Davis* (1962) 371 US 178, 182. In that the Court clearly has not identified any fact or cause that needs amendment; the complaint should proceed as filed and/or with leave to amend and/or appointment of counsel *sua sponte* and/or upon renewed application.

5. OBJECTION TO DISMISSAL AND DISMISSAL WITH PREJUDICE. There

24 is no justification or reasons stated for the recommendation for dismissal or dismissal "with
25 *prejudice*." If "delay" is the cause, then that is based on bias against persons with disability who
26 need accommodations to achieve a result fair and equal to able-bodied persons. The alleged
27 delay in instant case was well justified and so found by the court in granting leave to amend by
28 reason of medical circumstances. There has been no finding that there are NOT facts in the FAC

1 that could not possibly support a cause of action and/or cure any objected to alleged "deficiency."
2 There is no finding that the entire action is either "frivolous" or otherwise meets any cause for
3 dismissal; in particular, with prejudice.

4 Rule 15 does NOT limit leave to amend to one chance to amend to state a claim upon
5 which relief may be granted before a dismissal of the action with prejudice is issued. A second
6 chance is required. Here there is nothing specific that alleges that ANY cause of action does not
7 state a claim. The so-called "circumstances of this case," are objected to as vague and
8 ambiguous harboring discriminatory bias and hostility toward this plaintiff with disability and/or
9 this particular plaintiff with disability from extrajudicial sources. There is no basis in fact or law
10 for an allegation that the case does not state a cause of action under Rule 15. Dismissal is only if
11 it lacks an arguable basis in either law or in fact; in other words, dismissal is only appropriate for
12 a claim based on an indisputable meritless legal theory. *Fogel v Pierson, CA10 (Colo) 2006, 435*
13 *F3d 1252*. Whether a complaint states a claim upon which relief can be granted, for purposes of
14 the in forma pauperis statute, is determined by the familiar standard for a motion to dismiss for
15 failure to state a claim and thus, the alleged facts are presumed true and the complaint should be
16 dismissed only when it is CLEAR THAT NO RELIEF COULD BE GRANTED UNDER ANY
17 SET OF FACTS THAT COULD BE PROVED CONSISTENT WITH THE ALLEGATIONS.
18 *Jones v Link, E.D.Va 2007, 493 F.Supp2d 765.*

19 The initiating right to sue letter in instant case arising out of a failure to hire based on age,
20 where the offending judge is reputed to have just hired his "girlfriend" without a valid search as
21 required for State employees. There is no contention that there is any defect in that cause of
22 action; or any other cause in the complaint, for that matter.

23 It is a sad day for the court that a dismissal is based on descriptions attributed to judges in
24 the FAC defendant list and an apparent refusal to afford a person with disability his/her day in
25 court to redress grievances re denial of constitutional rights by reason of not wanting to afford
26 accommodation of disability to a plaintiff.

27
28 **6. OBJECTION TO ORDER DENYING 30 DAY EXTENSION RE OBJECTIONS.**

1 On April 26, 2019, plaintiff suffered a serious laceration injury that has not yet healed. It
2 continues to produce fever, be sharply painful, swollen, with such drainage as to substantially
3 wet everything in contact therewith. The lack of continuation of antibiotics has caused other
4 medical conditions affecting ability to concentrate and accomplish timely written work in such a
5 fashion as to have a chance at a favorable result equally with able-bodied attorneys. In spite of
6 these continuing limitations and necessity to address other postponed medical and other
7 appointments, the Magistrate Judge refused to provide the necessary 30 day extension of time for
8 these objections to be timely filed with the court. Cutting the time requested in half to 15 days is
9 a pattern and practice of the court that is potentially prejudicial as it requires additional requests
10 for time that would not have been necessary if the original time anticipated by plaintiff and/or her
11 doctors had been granted. Thereby, the number of extensions is increased, giving a false
12 impression of delay and is fundamentally prejudicial in cutting short the time in which a party
13 with disability can function effectively. And, if an additional extension for the time originally
14 asked is denied as no more to be given, then there is clear inherent prejudice being arbitrarily
15 imposed against medical necessity. Generally, plaintiff can only function reasonably in the few
16 morning hours; where NOT affected by acute injury. And where affected by acute injury, such
17 has clearly NOT been accommodated. Thus, the court should not expect the same time to be
18 applied toward any written project that able-bodied persons/attorneys could work thereon.

19 Accordingly, if there is anything further the court requires to avoid prejudice in this
20 matter by reason of any expectation for these objections, the court is respectfully requested to
21 provide opportunity to supplement same.

22
23 **7. OBJECTION that General Considerations re Dismissal Not Warranted in**
24 **Instant Case:**

25 In considering a dismissal of a complaint, courts must assume all general allegations
26 "embrace whatever specific facts might be necessary to support them." [*Peloza v Capistrano*
27 *Unified School Dist.* (9th Cir. 1994) 37 F3d 517, 521 (emphasis added)] The approach of the
28 court should be to apply this mandate throughout it's analysis. Certainly, deprivation of civil

1 rights and acts in concert to deprive plaintiff thereof are actionable under 42 U.S.C. 1983, ADA
2 and other statutes as actually stated in the complaint.

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

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

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

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

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

25 There is not cause for dismissal in this action.
26

27 8. Cause for recusal by the Magistrate Judge under the Court's Code of Ethics and a
28 showing of extraordinary circumstances to vacate the referral and to reject the

1 recommendations.

2 There appears to be no question that the Magistrate Judge cannot be fair and impartial
3 where this disabled plaintiff is concerned; in particular, where there appears to have been no
4 consideration of the documentation in support of good cause for extensions of time, there is no
5 consideration of fact or law on the merits of the claims/causes in the FAC.

6 Clearly, the questionable approach by the Magistrate Judge in this action with omission
7 of operative fact and law to deny substantial procedural and substantive rights to this Plaintiff is
8 too harsh, evasive and discriminatory, to withstand scrutiny, showing that the referral should be
9 vacated and recommendations rejected.

10

11 **REQUEST FOR JUDICIAL NOTICE OF MEDICAL EXHIBITS UNDER SEAL**

12 Plaintiff requests judicial notice of the medical exhibits submitted herewith for filing
13 under seal; in particular, because of the objected to position taken by the Magistrate Judge,
14 alleging that plaintiff's inability to comply with court rules is a ground for dismissal with
15 prejudice; where any such perception is objected to as error; in that any alleged inability to
16 comply is clearly not willful or intended per exhibits submitted.

17

18 **Conclusion**

19 For the reasons outlined above, and as required by 28 U.S.C. section 636(b)(1)(C) and
20 Rule 72.3(b) of the Rules of this Court, Plaintiff objects to the Magistrate Judge's Findings and
21 Recommendations.

22 The Court should decline to adopt the F&R. Instead, it should grant leave to amend and
23 either sua sponte and/or upon application, appoint counsel to assist plaintiff in meeting the
24 Court's requirements.

25 Dated: May 25, 2019

26 Respectfully submitted,

27 
28 Patricia A. McColm
Plaintiff

1 **REQUEST FOR HEARING/APPEARANCE BY TELEPHONE**
2

3 In further support of good cause in support of objections, oral argument is respectfully
4 requested by telephone.

5 Your kind consideration is appreciated.

6
7 Dated: May 25, 2019
8
9

10 
11 PATRICIA A. MCCOLM
12 Plaintiff

13 **DECLARATION**
14

15 PATRICIA A. MCCOLM declares:

- 16 1. I am the plaintiff in the above entitled action.
- 17 2. The statements herein are my personal knowledge and if called as a witness could and
18 would testify competently thereto.
- 19 3. The facts stated in the above notice and motion are true and correct to the best of my
20 knowledge and if on information and belief, believe such to be true and correct.
- 21 4. Judicial Notice is respectfully requested of separately submitted for filing under seal,
22 medical exhibits in support of the objections.
- 23 5. Your declarant is a qualified person with disability under the American's With
24 Disability Act with limitations of disability that impact ability to act competently within time
25 limitations by reason of the diagnosis making it impossible to know at any particular time,
26 whether or not, sufficient cognitive and physical function will be available to function effectively
27 to achieve any written project in such fashion as to have a fair opportunity to achieve a favorable
28 result. The diagnosis is one that was belatedly identified in 2016 as a ground of negative impact
on inability to meet time limitations in this action. It is progressive M.S., worsening over time.
- 29 6. Rather than be prejudiced thereby, the unpredictable limitations support application for
30 appointment of counsel in this meritorious ADA failure to hire and retaliation case. But for the
31 substantial impact of the acute injury of April 26, 2019, a proper motion for appointment of
32 counsel would have been prepared for filing with these objections. Accordingly, either sua

1 sponte appointment and/or leave to file such motion hereafter is appreciated.

2 7. It is respectfully requested that Judicial Notice be taken of the declarations in prior
3 motions for time extension; as incorporated herein by reference (See 2:12-cv-1984), because it is
4 not physically possible to repeat herein the extraordinary circumstances and medical detriment
5 that have existed, preventing ability to competently use the prior time to complete the written
6 requirements in this matter; emergency circumstances, constituting conditions of impossibility
7 and good cause of excusable neglect for not adopting a dismissal with prejudice in this action.

8 8. If there is any aspect of these objections that needs augmentation for a favorable result
9 to deny the recommendations, then leave to supplement under your direction is appreciated; as
10 yes, I've been forced to pull from other documents some language and authority which is relevant
11 here; in light of the scope of my acute injury, which is such that daily blood clot shots and near
12 daily emergency room care with 2+ hour I-V antibiotic treatments have been required; in addition
13 to four "horse size" antibiotic tablets two time per day have been required; as well as, pain
14 medications, and two or more daily dressing changes. The deep six inch wound with its
15 continuous huge swelling, is draining so profusely that it runs into my shoes without regard to
16 massive bandages and towel wraps and bed change needed daily and bloody liquid running onto
17 the floor sitting at the computer; thus, trying in good faith to meet Your Honor's expectations.

18 8. In that my anticipated time needed for these objections was cut in half and I really
19 don't feel well with a fever; it is hoped that this important case objections can be mailed for
20 timely arrival at the court to meet the filing deadline so I don't have to suffer the drive to
21 Sacramento to protect rights set forth in this important case.

22 9. Your kind consideration is appreciated.

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

25 Dated: May 25, 2019

26
27
28
PATRICIA A. McCOLM
Plaintiff

1 PATRICIA A. MCCOLM
2 PO Box 113
3 Lewiston, CA 96052
4 (415) 333-8000
5 Fax by Appointment
6 Plaintiff, in pro se
7
8

FILED

APR 03 2020

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

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

13
14 PATRICIA A. MCCOLM NO. 2:12-CV-01984-MCE-AC
15
16 Plaintiff,
17 vs.
18 TRINITY COUNTY et al.
19
20 Defendants.
21

NOTICE OF APPEAL TO THE
UNITED STATES COURT OF
APPEAL, NINTH CIRCUIT; WITH
REQUEST FOR APPOINTMENT
OF COUNSEL, PERMISSION & APPEAL.

22 Notice is hereby given that PATRICIA A. MCCOLM, the plaintiff in the above named
23 case, **PROCEEDING IN FORMA PAUPERIS GRANTED IN THE DISTRICT COURT**;
24 hereby appeals to the United States Court of Appeal for the Ninth Circuit requesting appointment
25 of counsel for good cause re limitations of disability to assist with both the process for
26 permission to proceed on appeal and the appeal from:

1) The **JUDGMENT IN A CIVIL CASE** (ECF 54) entered in this action on the 15th
2 day of October 2019; [The misleading "form" Judgment erroneously states: "This action came
3 to trial or hearing before the Court. The issues have been tried or heard and a decision has been
4 rendered." There was neither a trial nor hearing. The Judgement further states that: "IT IS
5 ORDERED AND ADJUDGED THAT JUDGMENT IS HEREBY ENTERED IN
6 ACCORDANCE WITH THE COURT'S ORDER FILED ON 4/16/2019."] A true and correct
7 copy of the Judgement being appealed in this case is attached hereto as **EXHIBIT 1.**

2) The **ORDER** (ECF No. 53) entered in this action on the 15th day of October, 2019;
3 stating: "1. The findings and recommendations are ADOPTED; stating that: "2. **The First**
4 **Amended Complaint is DISMISSED with prejudice for FAILURE TO STATE A CLAIM**
5 (emphasis added); and 3. The Clerk of the Court is directed to close the case." [No issue on the
6 merits of the case was adjudicated.] A true and correct copy of the ORDER entered 10/15/19
7 being appealed in this case is attached hereto as **EXHIBIT 2.**

3) The magistrate judge's **FINDINGS AND RECOMMENDATIONS** (ECF 43) entered
4 in this action on the 20th day of March, 2019 [recommending that this action be "dismissed
5 with prejudice" without regard to the facts or merits of any cause therein or right to sue letter
6 from CDFEH.] A true and correct copy of the **FINDINGS AND RECOMMENDATIONS** being
7 appealed in this case is attached hereto as **EXHIBIT 3** with (ECF 49) **OBJECTIONS TO**
8 **MAGISTRATE JUDGE'S FINDINGS AND RECOMMENDATIONS** et al appended thereto
9 as **EXHIBIT 3A** ; therein requesting **JUDICIAL NOTICE OF MEDICAL EXHIBITS**
10 **UNDER SEAL** (ECF 51-52).

4) The magistrate judge's **ORDER** (ECF 56) entered in this action on the 14th day of
5 November 2019, TO **DISREGARD ALL PLAINTIFF FILINGS**; including (ECF 55) Plaintiff's
6

1 timely properly filed MOTION TO ALTER OR AMEND ORDER OF DISMISSAL AND FOR
2 RELIEF FROM JUDGEMENT under FRCP 59(e) and 60(b); identified on the docket as a
3 "Motion to Amend." A true and correct copy of the ORDER to DISREGARD, is attached hereto
4 as **EXHIBIT 4 with letter Objection and Motion to Strike (ECF 59)** appended thereto as
5 **EXHIBIT (4A)**.

6
7 5) The magistrate judge's **ORDER and FINDINGS AND RECOMMENDATIONS**
8 (ECF 58) entered November 22, 2019 recommending "Motion to Amend be denied;" a true and
9 correct copy of which is attached hereto as **EXHIBIT 5 with MOTION TO ALTER OR**
10 **AMEND ORDER OF DISMISSAL AND FOR RELIEF FROM JUDGMENT**
11 **DISMISSING ACTION et al (ECF 55)** entered November 12, 2019 appended thereto as
12 **EXHIBIT 5(A)**.

13
14 6) The **ORDER** entered February 5, 2020 "ADOPTING in FULL 58 Findings and
15 Recommendations. DENYING Motion to amend, which is construed as a motion for relief from
16 judgment;" a true and correct copy of which is attached hereto as **EXHIBIT 6**.

17
18 Denial re Appointment of Counsel

19
20 7) The second **ORDER** (ECF 20) denying appointment of counsel was entered
21 September 22, 2016; a true and correct copy of which, is attached hereto as **EXHIBIT 7 with**
22 **Application for Appointment of Counsel for Good Cause (ECF 19)** entered September 14,
23 2016 appended thereto as **EXHIBIT 7A**.

24
25 8) The first **ORDER** (ECF 6) denying appointment of counsel and denying request for
26 STAY of proceedings in contravention of good cause; was entered March 27, 2014, a true and

1 correct copy of which is attached hereto as **EXHIBIT 8** with application (ECF 4) entered March
2 27, 2013 appended thereto as **EXHIBIT 8A**.

3

4 9) Prejudicial Limitations re Accommodation of Disability re Requests for Extension of
5 Time and Appointment of Counsel; **JUDICIAL NOTICE REQUESTED OF MEDICAL**
6 **GOOD CAUSE FILED UNDER SEAL** (ECF 52, 31-34, 23, 21,16). Medically verified time
7 needed to accommodate limitations of disability in order to accomplish any written project
8 required by the court in such fashion as to have a fair opportunity with able bodied persons to
9 achieve a favorable result, was arbitrarily shortened; thereby, denying accommodation and
10 inflicting prejudice from inability to meet the limited time imposed and/or inflicting prejudice
11 from need to seek additional time in a good faith effort to meet the expectations of the court;
12 where the deficits of disability negatively impacted achieving such a result without appointment
13 of counsel. Thus, it appears that limitations of disability is the standard upon which leave to
14 amend and denial of access to the Court is based, absent appointment of counsel.

15

16 Copies of the Judgement and Orders being appealed are attached as Exhibits 1-8 hereto
17 and where not attached, included by request for JUDICIAL NOTICE.

18

19 Plaintiff has not previously appealed the judgement and orders stated above or raised the
20 issues pertaining thereto in a prior appeal or petition. THIS NOTICE OF APPEAL IS BEING
21 FILED SUBJECT TO A NEAR 20 YEAR OLD PRE-FILING ORDER IN 01-80189; which
22 Order is being respectfully requested vacated in a separate application; to be submitted hereafter
23 when time and disability limitations allow; with showing of good cause to vacate by passage of
24 time and discovery of the previously undiagnosed medical conditions which precipitated the
25 older ineffective filings; filings, which were a good faith effort, designed to overcome the
26 targeted “stigma,” the false and defamatory media comment (“fake news”) plaintiff suffered as a

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1 person with disability; against which, defense was medically prejudiced. Regrettably, medical
2 limitations inflicted futile filings; a good faith effort, plaintiff hoped would save home and
3 reputation; such relief, essentially prevented by medical impossibility from cognitive/physical
4 decline re undiagnosed Hashimoto's Disease, which ultimately inflicted black-outs nearing
5 myxedema coma.

6 There are years of medical and financial detriment/bankruptcy filings, trying to overcome
7 prejudice from disability arising from the missed diagnosis. Plaintiff has neither been able to
8 fully recover from on-going effects of Hashimoto's Disease or even begin to recover from the
9 overwhelming continuing prejudicial effects from the false and defamatory media comment and
10 "stigma," that appear to wrongfully govern decisions made by others pertaining to plaintiff, in all
11 walks of life; decisions based on false assumptions from some 20 years ago; which has been
12 denied a remedy by reason of medical impossibility; and which appear to have influenced the
13 outcome in this case.

14 Now, this June 74 year old, coping with age related decline; as well as, refusal to heal
15 serious leg laceration injury; has yet another debilitating disability from a second auto-immune
16 disorder, belatedly diagnosed Multiple Sclerosis; which, more likely than not, was also *not*
17 diagnosed in the 1990s and which from progressive cognitive decline, continues to threaten
18 ability to accomplish daily activities of life; as well as, court expectations; in particular, where
19 sufficient time is not afforded for a good faith effort to overcome pain, confusion, lack of
20 concentration/focus, memory loss of instant recall, words and much past learning, inability to be
21 organized and focus being verbose and unable to "edit" effectively; all indicative of the
22 progressive disease with declining cognitive and physical functioning; with inability to cope with
23 the "shut-down" distress at being the subject of targeted abuse and deprivation of civil rights as
24 occurred in the action at hand.

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26 **JUDICIAL NOTICE is respectfully requested of verification of medical conditions /**
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1 limitations of disability and recommendation for appointment of counsel: as set forth by
2 plaintiff's physicians under seal in 2:12-CV-01984; in particular, medical statement of
3 Michelle L. Apperson, M.D., PhD dated August 23, 2018, in this action showing that plaintiff's
4 failings are not "willful;" but attendant to medical problems. Please read the entire document
5 giving sufficient showing to vacate dismissal and appoint counsel.

6

7 The case at hand, filed in 2012 and delayed by retaliatory false charges by court clerks,
8 was misused re false pretenses to obtain a dismissal in a subsequent/supplemental action showing
9 continuing retaliation by specified defendants and new defendants in 2:18-CV-02092 (19-16660)
10 arising from different facts and later dates re incidents targeting Plaintiff in 2017. In that case,
11 without notice and an opportunity to defend, onerous conditions/restrictions were newly imposed
12 by a court clerk letter dated **June 20, 2017.** on plaintiff's use of court services and presence in the
13 public County building; in particular, a manifestly unjust and prejudicial retaliatory 15 minutes
14 time limitation imposed under unfounded threat of being "put in cuffs" and "taken to jail" by
15 court employee Marshals for nothing more than sitting quietly in a wheelchair in the public area
16 in front of court services windows in excess of the arbitrary 15 minute limitation. Thus, the fear
17 from threats and limited time of access to the court has essentially chilled plaintiff's
18 Constitutional right of access to the court, preventing her from seeking Court services for about a
19 year; resulting from the knowing constitutional violation by court employees, a painful manifest
20 injustice. Thus, the 2:18-cv-02092 action as allegedly "duplicative" and dismissed because
21 instant case should have been amended, is not only wrong on the time and facts as well as the
22 law; the denial of permission to appeal where not even a first amendment is provided, is also
23 wrong and gives the strong impression that pro se and disability bias is used to deny access to the
24 court; if not also used, is the 20 year old "stigma," also arising from failure of medical diagnosis
25 and disability accommodation.

26 Absent permission to appeal and determination of this case in the District Court; the
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1 prejudicial knowing denial of constitutional and civil rights by court employees, more likely than
2 not, will continue; in violation of constitutional protections and statutory rights of persons with
3 disability. For this plaintiff, with both cases being dismissed, a COMPLETE DENIAL OF
4 CONSTITUTIONAL RIGHT OF ACCESS TO THE COURT TO RESOLVE GRIEVANCES;
5 merely, by reason of misunderstood and/or not accommodated limitations of disability causing
6 dismissal with prejudice and/or by reason of bias from "stigma" related to this plaintiff with
7 disability.

8 **COURT EMPLOYEES ARE NOT IMMUNE FROM LIABILITY FOR KNOWING**
9 **VIOLATIONS OF A PERSON'S CONSTITUTIONAL RIGHTS** as occurred in this case.
10 **COUNTY AND STATE ENTITIES INCLUDING COURTS ARE NOT IMMUNE FROM**
11 **LIABILITY FOR VIOLATIONS OF THE ADA AS OCCURRED IN THIS CASE.** Thus, to
12 dismiss this case with prejudice for alleged failure to state a cause of action is just plain wrong! It
13 gives the strong appearance that either the magistrate judge is biased and unable to provide a fair
14 and impartial evaluation of the action and/or that the District Court is trying to keep disabled
15 plaintiffs out of court without regard to the merit of *any* cause of action.

16 The hard working legal assistant(s) need to actually **READ THE FIRST AMENDED**
17 **COMPLAINT** in relation to attorney practice manuals it tracks meeting the elements for each
18 cause of action; as well as, the majority pages of **FACT** supporting the causes of action; where
19 defendants acted in concert per retaliatory agreement to prejudice plaintiff! An unaccessible
20 bathroom and other court facilities is actionable as is retaliation for accessibility complaints.
21 Retaliatory criminal charges for objecting to denial of access and accommodation is actionable;
22 and even a violation of U.S.C section 1983; where the citation thereof, was apparently
23 disregarded by the magistrate judge. The hiring of a judge's girlfriend in a court clerk position -
24 without the required search - instead of a more qualified person of age; such as plaintiff, is
25 actionable. The District Court's sole reliance on 1983 is wrong. And as the magistrate judge
26 said, all filings from this plaintiff are to be "disregarded," is **really** wrong. The First Amended
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1 Complaint fully states at least one cause of action and should not have been dismissed with
2 prejudice.

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4 **THIS COURTS NEEDS TO ENSURE THAT EFFECTS OF ILLNESS AND**
5 **PERMANENT DISABILITY DO NOT BECOME THE MEASURE OF DENYING**
6 **ACCESS TO THE COURT AND DUE PROCESS IN THIS COUNTRY; as occurred for**
7 **plaintiff in this action. Plaintiff's physicians have stated that the inability to meet court**
8 **time and other expectations is not willful; but a problem related to her medical condition**
9 **and that counsel should be appointed (See Medical Statements under Seal; in particular,**
10 **Dr. Apperson 8/23/18). The failure to appoint counsel, is also NOT a reason to dismiss an**
11 **action with prejudice.**

12

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

15

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

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18 **ABUSE OF DISCRETION / ERROR OF LAW: DENIAL OF LEAVE TO AMEND AND**
19 **DISMISSAL WITH PREJUDICE BASED ON UNFOUNDED FACTS/AUTHORITY RE**
20 **"FAILURE TO STATE A CLAIM" UNDER 28 U.S.C. SECTION 1915;**
21 **CONSTITUTIONAL VIOLATION / DENIAL OF ACCESS TO COURT / MANIFEST**
22 **INJUSTICE RE APPEARANCE OF DISCRIMINATORY BIAS AGAINST PRO SE**
23 **PLAINTIFFS WITH DISABILITY AND/OR VEXATIOUS LITIGANT "STIGMA" IN**
24 **CASE WITH MERITORIOUS FACTS/CAUSE(S) OF ACTION; AND, DENIAL OF**
25 **MOTION TO APPOINTMENT COUNSEL.**

1 The **FIRST AMENDED COMPLAINT (FAC)** (ECF 38) filed May 13, 2018 in this
2 substantial in forma pauperis ADA/civil rights action was denied leave to amend and
3 **DISMISSED WITH PREJUDICE** (ECF 53) and Judgment (ECF 54) entered thereon October
4 15, 2019 for "**FAILURE TO STATE A CLAIM;**" at the screening stage under 28 U.S.C. 1915;
5 in what appears to be abuse of discretion and error of law through prejudicial disregard of
6 authority under said statute and in contravention of approximately 140 pages of FACTS
7 supported by 19 pages of documentary evidence; **INCORPORATED INTO THE COMPLAINT**
8 as authorized by law, regarding each defendant relating directly to each of the 14 causes of action
9 set forth in the FAC upon which the action is based; which clearly show that the facts stated
10 constitute good cause to amend and constitute at least *one* cause of action that would work
11 against a dismissal of the action; in particular, "with prejudice."

12 The facts with exhibits and each cause of action identifies with particularity the
13 defendant(s) to which each applies. The facts and causes show acts by defendants in
14 concert/agreement to knowingly violate plaintiff's constitutional and civil rights in retaliation for
15 plaintiff's protected conduct; in particular, the noticed right to sue letter issued by the California
16 Department of Fair Employment and Housing.

17 A full and complete reading of the FAC tends to indicate that the magistrate judge
18 findings and recommendations are not based on actual fact and authority; but appear to be based
19 on ire related to plaintiff's request to vacate the referral (The District Judge failed to rule on the
20 request to vacate the referral.) and/or discriminatory bias against pro se plaintiffs with disability
21 and/or vexatious litigant "stigma" from over 20 years ago, related to this particular plaintiff with
22 an apparent agenda designed to keep said class of persons and/or plaintiff out of the District
23 Court; as would tend to be indicated by an apparent failure to actually read the entire complaint
24 and/or misconstruing "cherry-picked" sentences attributed to only one cause of action, Section
25 1983, to questionably precipitate the dismissal. Even the causes under 1983 are not correctly
26 identified on the facts and grounds upon which the statute is applied. Remarkably, the magistrate
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1 judge makes reference to Section 1983 comments regarding the original complaint, which are not
2 applicable to the FAC; in particular, as the FAC clearly shows the reference is to only to Section
3 1983 for the "linkage" argument without regard to the fact that the comments were essentially
4 erroneous in other parts by reason of failure to apply the law under the ADA. Thus, even the one
5 claim out of which each defendant arises is satisfied; in particular, as related to "series of
6 transactions or occurrences" and there is an ADA retaliation and constitutional "question of law
7 or fact common to all defendants."

8 As set forth in the FAC under Jurisdiction on page 4, the FAC states: Plaintiff brings this
9 action under the American's with Disability Act, 42 U.S.C. sections 12101, 12203
10 RETALIATION et seq. as amended ("ADA") for discrimination based upon disability, failure to
11 accommodate, failure to protect, and retaliation; Section 504 of the Rehabilitation Act of 1973,
12 as amended; 42 U.S.C. section 1985 (CONSPIRACY deprivation of civil rights); 42 U.S.C.
13 1986; 29 U.S. C. 626(c)(1) [Age Discrimination in Employment Act of 1967 et seq.]; 42 U.S.C.
14 section 12133 which incorporates the provisions of 29 U.S.C. section 794a, for violation of Title
15 II of the ADA; 42 U.S.C. 1983, Constitutional violations under the First, Fourteenth, Eighth
16 Amendments DENIAL OF DUE PROCESS, EQUAL PROTECTION, ACCESS TO THE
17 COURT; and violations of the California State Constitution, Civil Code sections 51, 51.7, 52.1,
18 52.3, 54 et seq., Government Code Section 12940(h) et seq. California State claims for
19 defamation/slander/misrepresentation, false arrest/imprisonment, assault and battery, intentional
20 and negligent infliction of emotional distress, negligence, invasion of privacy, violation of State
21 and Federal Public Records Acts; Intentional Interference with Economic
22 Advantage/Relationships and Conspiracy regarding all above stated causes.

23 Essentially, NONE of the above causes were actually subject to analysis by the magistrate
24 judge on the facts and authority related thereto and even the Section 1983 causes are not stated
25 correctly by the Magistrate Judge on the actual facts and causes to which the statute applies; as a
26 full reading of the FAC would show and raise a viable issue for adjudication. (See pages 60-64
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1 re Fourth Cause of Action re Conspiracy to Interfere with Rights with specified Constitutional
2 Violations and pages 76-78 re Twelfth Cause of Action re malicious prosecution (retaliatory
3 arrest/false charges & Fourth Amendment violations).

4 In instant appeal, the constitutional violations running to the merits of the civil rights
5 complaint in this case, are not in issue; the District Court having made no factual/legal
6 determination on the merits of any claim therein. No specific defendant was identified or
7 stricken on ground of immunity. Under the ADA and related statutes, the claim of immunity as
8 alleged by the Magistrate Judge under Section 1983 does NOT apply. They are arguably liable
9 under the facts of this case. No specific cause was identified or stricken as lacking merit. Based
10 on attorney practice manuals and authorities expressing requirements re fact and law, plaintiff is
11 informed and believes that the facts and law support each of the claims stated. And if there is a
12 defect, that notice thereof from the Court with leave to amend should have been granted.

13 The denial of leave to amend and dismissal with prejudice appears to be more likely
14 based on bias and/or limitations of disability; than any alleged "failure to state a claim." Thus,
15 appointment of counsel would appear to have been appropriate throughout the process of the case
16 to avoid a dismissal.

17 Although no specific finding was made that any cause or the entire complaint was
18 "frivolous," a dismissal with prejudice gives that erroneous impression; which should not have
19 issued in instant case.

20 Before a District Court may dismiss an *informa pauperis* complaint with prejudice, the
21 District Court must find that the plaintiff has engaged in "conscious or intentional acts or
22 omissions." *Harris v Cuyler*, C.A.3 (Pa.) 1981, 664 F2d 388. There are no such findings in
23 instant case.

24 Pro se complaints must be liberally construed and can be dismissed only if face of
25 complaint shows insuperable bar to relief. *Holt v Caspari*, C.A.8 (Mo.) 1992, 961 F2d 1370.

26 Under Section 1915 a complaint should not be dismissed for failure to state a claim
27

1 unless it appears beyond doubt that the plaintiff could prove no set of facts in support of his/her
2 claim which would entitle him/her to relief. *Montana v Commissioner Court*, C.A. 5(Tex) 1981,
3 659 F2d 19.

4 An *informa pauperis* complaint can only be dismissed where there is indisputable
5 meritless legal theory or on clear baseless factual contentions. *McClelland v Turner*, W.D. Pa.
6 1991, 765 F.Supp 251.

7 *Nietzke*, 490 U.S. 319 advises that a section 1915 dismissal is only proper if the legal
8 theory or the factual contentions lack an arguable basis indicating that the purpose of the *informa*
9 *pauperis* statute is to ensure equality of consideration for all litigants. Plaintiff in instant case has
10 not been provided with equal consideration for all litigants; having been treated differently by
11 reason of her limitations of disability and "stigma."

12 The general provisions of law under Section 1915 were not afforded to plaintiff. As
13 stated in plaintiff's motion under 59e/60b, which was NOT addressed properly as under 59e, the
14 following was argued:

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

23 A dismissal with prejudice deprives plaintiff of her constitutional right to seek redress
24 from the court, which appears to be a biased Magistrate Judges' intention, not based on fact or
25 law; but improper preconceived opinion, based on extrajudicial sources and/or hostile bias and
26 stigma against persons in plaintiff's protected class; and thus, a constitutional violation.

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Were there anything the Court believed was in some way improper, then notice of intent to strike some specific part is available and/or to amend. However, nothing has been specified that would give notice of any defect subject to being stricken.

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

Court's are in good faith, generally believed to protect citizens from harm, not give the "green light" to further biased retaliatory abuse and prejudicial harm through "dismissal" of citizen pleas for help; in order to allow the offenders to proceed with the intended abuse and destruction intended toward one who had the courage to "stand up" to the discrimination, false and defamatory representations/media comment, infliction of physical harm and emotional distress, saying "no more!" PLEASE!

Error re Application of “Frivolous” to Dismiss:

As stated above, although 28 U.S.C. section 1915 provides for dismissal of an action that is “frivolous,” a district court may deem an in forma pauperis complaint “frivolous” only if it lacks an arguable basis in either law or in fact; in other words, dismissal is only appropriate for a claim based on an indisputable merit-less legal theory and the frivolousness determination cannot serve as a fact finding process for the resolution of disputed facts. *Fogle v Pierson*, CA10 (Colo.) 2006, 435 F3d 1252, *Milligan v Archuleta*, CA10(Colo.) 2011, 659 F3d 1294. Accordingly, where as in instant case, the Magistrate Judge findings do not present analysis of any fact/law per cause, adopting the recommendation of dismissal is error and an apparent abuse of discretion.

1 Cornell Law School presents on line its Wex Legal Dictionary in which it defines
2 "frivolous:" *In the legal context, a lawsuit, motion, or appeal that lacks any basis and is intended*
3 *to harass, delay or embarrass the opposition... Judges are reluctant to find an action frivolous,*
4 *based on the desire not to discourage people from using the courts to resolve disputes.* It is
5 hoped this Court agrees and does not abide discrimination/retaliation implicating persons with
6 disability as "frivolous." Fairness, impartiality, due process and equal protection should apply to
7 all "persons" as the Constitution mandates.

8

9 **Error re Rendition by Magistrate Judge of Prior Complaint and Amended Complaints.**

10 As stated above, Judicial Notice is hereby requested of each OBJECTION raised to the
11 false and misleading representations of issues regarding Plaintiff's prior complaints therein. The
12 Magistrate Judge appears not to have read the Objections and ignored the medical good cause
13 NOT to make the findings alleged. No ruling on request for judicial notice issues.

14

15 **Error/Abuse of Discretion Not to Appoint Counsel or Mention Good Cause Medical**
16 **Limitations; e.g. exceptional circumstances.**

17 **Sua Sponte Appointment of Counsel for good cause.** Plaintiff has requested
18 appointment of counsel in this action with good cause appearing; yet, no such issued. Sua sponte
19 appointment is available under the circumstances in this case and plaintiff's limitations.

20 The Magistrate Judge appears to have essentially ignored the analysis for appointment of
21 counsel sua sponte and/or upon renewal of prior requests. If an attorney has leave to file a
22 second amended complaint, it is an abuse of discretion to also not give a pro se Plaintiff the right
23 to so amend in the same case! In fact, it is unusual that a second amended complaint is not
24 granted. THERE IS NOT EVEN THE MENTION OF THE MEDICAL VERIFICATION IN
25 SUPPORT OF LEAVE TO AMEND OR APPOINT COUNSEL, OR EVEN TO AVOID A
26 DISMISSAL FOR MEDICAL CAUSE IN CONTRAVENTION OF THE ALLEGATIONS

1 MADE FOR DISMISSAL! The medical circumstances in this case are exceptional
2 circumstances for appointment of counsel, not for the frustration of the Court; so a dismissal
3 must follow, where no such is even mentioned as having been filed. WHERE IT APPEARS
4 THAT THE MEDICAL EVIDENCE FILED UNDER SEAL WAS NOT CONSIDERED BY
5 THE MAGISTRATE JUDGE, ADOPTING THE FINDINGS IS FUNDAMENTALLY
6 WRONG, ERROR AND A POSSIBLE INADVERTENT ABUSE OF DISCRETION.

7 Where there is no analysis of the case on the merits of each cause, there is no recognition
8 of good cause not to dismiss by medical impossibility. Any one of the medical conditions or the
9 nexus between permanent progressive disability limitations and difficulties and ability to perform
10 timely within the requirements of the Court; should receive accommodation, NOT dismissal. If
11 this is confusion, then that too is evidence of the limitations of disability; for which, no Plaintiff
12 should be punished by denial of access to the court to redress serious grievances as set forth in
13 this action. No defendant should "get away with" their misconduct because of Plaintiff's
14 medical detriment. Appointment of counsel to resolve any discomfort of the Court is appropriate
15 and is renewed here."

16 An issue is the question of whether appointment of counsel should have and should
17 issue in this action.

18
19 By reason of limited time to mail this appeal for receipt on or before April 6, 2020,
20 plaintiff must incorporate by reference here the issues raised in her motion under 59e/60b;
21 in particular, because there appears to be an error of law in the magistrate order granting
22 additional time to appeal to April 10, 2020; where the statute limits the time to 30 days
23 being April 6, 2020. Thus, there is the appearance of questionable intent to potentially
24 prejudice plaintiff with denial of an appeal should she rely to her detriment on said minute
25 order February 28, 2020 (ECF 62) by filing after April 6, 2020. If the later date is viable,
26 then additional points will be raised hereafter.

1 **Plaintiff has stated a claim sufficient to warrant consideration on appeal for**
2 **reversal of the dismissal with prejudice, grant of leave to amend and appointment of**
3 **counsel.**

4 *[A PRINTER ERROR OCCURRED CAUSING INABILITY TO EDIT IN TIME*
5 *PRIOR TO MAILING.]*

6

7 This case presents the Ninth Circuit with an opportunity to tell its lower courts that
8 persons deemed “vexatious litigants” and persons with disabilities, are still entitled to due
9 process, constitutional protections and the rights and benefits provided under the laws of the
10 United States and its State courts.

11 It is the right to proceed in forma pauperis on a proper showing pursuant to 28 U.S.C.
12 section 1915, that this court is urged to protect against pre-determined opinion bias of “frivolous”
13 attributed to pro se complaints filed by persons with disability and from the inherent “stigma”
14 attributed to such parties, precipitating unwarranted dismissals. It appears that instant action met
15 the wrongful guillotine of bias and hostile opinion pertaining to plaintiff, rather than any issue of
16 fact or law.

17

18 **THIS COURTS NEEDS TO ENSURE THAT EFFECTS OF ILLNESS AND**
19 **LIMITATIONS OF DISABILITY DO NOT BECOME THE MEASURE OF DENYING**
20 **ACCESS TO THE COURT AND DUE PROCESS IN THIS COUNTRY; as occurred for**
21 **plaintiff in this action. Plaintiff's physicians have stated that the inability to meet court**
22 **time and other expectations is not willful; but a problem related to her medical condition**
23 **and that counsel should be appointed (See Medical Statements under Seal; in particular,**
24 **Dr. Apperson 8/23/18). The failure to appoint counsel, is also NOT a reason to dismiss an**
25 **action with prejudice. For all the harm plaintiff has suffered trying to “stand up for justice” in**
26 **exercise of civil rights under the law, a denial of review would be a painful manifest injustice;**

1 essentially saying, such abuse is warranted not only for plaintiff; but all similarly situated
2 plaintiffs with disability.

3 Assistance by appointment of counsel for both the process of permission here and appeal
4 is respectfully requested. The motion with statement is attached.

5 Your kind consideration is appreciated.

6 Plaintiff respectfully submits: **The issues in this appeal are substantial and warrant**
7 **further review and appointment of counsel.**

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9 Dated: April 2, 2020

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PATRICIA A. MCCOLM
Plaintiff and Appellant, pro se