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IN PRO PER

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT COURT OF CALIFORNIA**

OLIVER B. MITCHELL III,
Plaintiff,

vs.

CARLA WOEHRLE, UNITED
STATES DISTRICT COURT,
CENTRAL DISTRICT OF
CALIFORNIA, INDIVIDUALLY;
ALKA SAGAR, UNITED STATES
DISTRICT COURT, CENTRAL
DISTRICT OF CALIFORNIA,
INDIVIDUALLY AND IN HER
OFFICIAL CAPACITY AS U.S.
MAGISTRATE JUDGE, CENTRAL
DISTRICT OF CALIFORNIA.
Defendant(s).

CASE NUMBER _____
**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

Plaintiff, Oliver B. Mitchell III, hereby states its complaint for declaratory and injunctive relief against the unconstitutional abuse of government power and ultra vires actions by defendants Magistrate Judge Carla Woehrle and Magistrate Judge Alka Sagar. The defendants have engaged in conduct that is prejudicial to the effective and expeditious administration of the business of the courts, undermines public confidence in the integrity and

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3 impartiality of the judiciary, and creates a strong appearance of impropriety. This complaint
4 arises from Judge Woehrle and Judge Sagars lack of due diligence and for selectively

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6 *The Judicial Conduct and Disability Act allows "[a]ny person alleging that a judge has engaged in*
7 *conduct prejudicial to the effective and expeditious administration of the business of the courts" to*
8 *file a complaint against the judge. See 28 U.S.C. 351(a). To implement that Act, as amended, the*
9 *Judicial Conference of the United States promulgated the Rules for Judicial-Conduct and Judicial-*
10 *Disability Proceedings. Rule 3(h) defines "cognizable misconduct" as including "conduct prejudicial*
11 *to the effective and expeditious administration of the business of the courts" and "conduct occurring*
12 *outside the performance of official duties if the conduct might have s prejudicial effect on the*
13 *administration of the business of the courts, including a substantial and widespread lowering of*
14 *public confidence in the courts among reasonable people."*

15 applying laws and rules of in forma pauperis.

16 Additionally, Judge Woehrle and Judge Sagar demonstrated extreme disrespect to the
17 Plaintiff by failing to observe "**the high standards of conduct**" required of federal judges by
18 failing to inappropriately apply the law.

19 Judge Sagars and Judge Woehrle orders and conduct violated 28 U.S.C. 351 and the
20 Code of Conduct for United States Judges.

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22 *Canon 2 of the Code of Conduct for United States Judges provides: "A judge Should Avoid*
23 *impropriety and the Appearance of impropriety in All Activities." The Commentary to Canon 24*
24 *states that "An appearance of impropriety occurs when reasonable minds, with knowledge of all the*
25 *relevant circumstances . . . would conclude that the judge's honesty, integrity, impartiality,*
26 *temperament, or fitness to serve as a judge is impaired. Public confidence in the judiciary is eroded*
27 *by irresponsible or improper conduct by judges." (Emphasis added.) Canon 3A provides that a*
28 *"judge should be patient, dignified, respectful, and courteous" all persons "with whom the judge*
deals in an official capacity." (Emphasis added.)

See Code of Conduct for United States Judges, Canon 1 ('. . . A judge should maintain and enforce
high standards of conduct and should personally observe those standards[.]").

The Judicial Conference's Commentary on Rule 3 states that the Cade of Conduct for United States
judges may be "informative" in determining whether a judge has engaged in conduct "prejudicial to
the effective expeditious administration of the business of the courts." The Code "is designed to
provide guidance to judges . . . ," and federal judicial discipline decisions have cited and relied on
the Canons. See, e.g., In re Complaint Judicial Misconduct (Paine), 664 F.3d j32, 335 (U.5. Judicial
Conference 201L) (stating that the Judicial Conference adopted the Code to "provide standards of

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3 *conduct for application in judicial-conduct and judicial disciplinary proceedings brought pursuant to*
4 *the Act.*

5 It is the responsibility of the Court to consider complaints of judicial misconduct filed
6 in accordance with the Judicial Conduct and Disability Act, 28 U.S.C. 351-364.

7 Canon 2 of the Code of Conduct for United States Judges provides that "a judge
8 should avoid impropriety and the appearance of impropriety in all activities." (Emphasis
9 added.) Canon 2A, is entitled "Respect for Law." It provides that "A judge should respect and
10 comply with the law and should act at all times in a manner that promotes public confidence
11 in the integrity and impartiality of the judiciary." (Emphasis added.) This rule is "critical the
12 judiciary's ability to decide cases efficiently and effectively would be severely impaired, and
13 public confidence in the courts would be undermined, if litigants had reason to suspect
14 judicial bias. In other words, to perform its high function in the best way "justice must satisfy
15 the appearance of justice."

16 *See Hon. Carl E. Stewart, Abuse of Power and Judicial Misconduct: A Reflection on Contemporary*
17 *Ethical Issues Facing Judges, 1 U. St. Thomas L.J. 464, 477 (Issue no. 1, 2003) ("A hallmark of the*
18 *judiciary has been its historical posture of neutrality and impartiality toward litigants and the*
disputes they bring to the courts for resolution).

19 Canon 3 of the Code of Conduct of United States Judges provides that "a judge should
20 perform the duties of the office fairly, impartially, and diligently." (Emphasis added.) Canon
21 3A (3) provides that "[a] judge should be patient, dignified, respectful, and courteous" to all
22 persons "with whom the judge deals in an official capacity." The Commentary to Canon 34
23 states that "[t]he duty to be respectful includes the responsibility to avoid comment or
24 behavior that could be interpreted as harassment, prejudice or bias."

25 The statements and conduct of Judge Sagar and Judge Woehrle, described below,
26 evince a dramatic and appalling lack of "fairness" and "impartiality."
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28 **JURISDICTION & VENUE**

This Court has subject matter jurisdiction under 28 U.S.C. 1331, 28 U.S.C. 2201 and 5

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3 U.S.C. 702. This Court also has jurisdiction as codified on relevant part as 5 U.S.C. 701-706,
4 under the federal Constitution and under 28 U.S.C. 1331, which allows for “nonstatutory”
5 review of ultra vires agency actions. The Court held:

6 [J]urisdiction to hear suits under the APA is conferred by 28 U.S.C. § 1331, which
7 provides district courts original jurisdiction of all civil actions arising under the laws of the
8 United States. Any APA, ultra vires, and constitutional claims, to the extent they can be
9 asserted [by Plaintiff] at this stage, first must be asserted and considered in a district court.
10 over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. §§ 701–706. The grounds for the
11 relief requested include the due process clause of the United States Constitution, 5 U.S.C. §§
12 701-706 (APA’s judicial review provisions), 28 U.S.C. § 1651 (the All Writs Act), 28 U.S.C. §
13 2201 (the Declaratory Judgment Act), and 28 U.S.C. § 2202 (further relief).

14 Venue is proper under 28 U.S.C. §1391(e).

15 **PARTIES**

16 Plaintiff, Oliver B. Mitchell III, is a resident of Los Angeles, California.

17 Defendant, Alka Sagar, is a U.S. Magistrate Judge with the Central District Court of
18 California.

19 Defendant, Carla Woherle, is a former U.S. Magistrate Judge with the Central District
20 Court of California.

21 **BACKGROUND**

22 On August 16,2013, the Plaintiff lodged a civil rights complaint pursuant to 42 U.S.C
23 1983 (non-prisoners) and was assigned Case No. CV-13-6030.

24 On September 26, 2013, the Court filed and accepted the Plaintiffs civil rights
25 complaint (non-prisoners) and was assigned Case No. CV-13-6030-ODW-CWx.

26 On September 17, 2013 the Court entered Order Re Leave to File Action Without
27 Prepayment of Filing Fee saying, “It is so ORDERED that the complaint may be filed without
28 prepayment of the filing fee.” [Docket No. 2]

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3 On September 26, 2013, the Plaintiff filed “Request for Court Appointed Attorney”
4 saying, “**Without adequate representation in order to defend my allegations and charges**
5 **at trial I feel that the statue of limitations may exhaust as I continue to find**
6 **representation on my own behalf.**” [Docket No. 5]

7 On October 1, 2013, the Court issued “Order Granting Request for Appointment of
8 Counsel” saying, “Plaintiff Oliver B. Mitchell III has requested appointment of counsel in this
9 matter. **But appointment of counsel under 28 U.S.C. § 1915(e)(1) is limited to cases**
10 **presenting exceptional circumstances.** To decide whether these exceptional circumstances
11 exist, a court must evaluate both “the likelihood of success on the merits [and] the ability of
12 the petitioner to articulate his claims pro se in light of the complexity of the legal issues
13 involved. **Mitchell’s Complaint** sets forth various causes of action and **seeks redress** for a
14 myriad of wrongs, including discrimination and retaliation by Defendants against him **as an**
15 **employee, patient, and whistleblower.** **Based on these allegations, the Court finds that**
16 **Mitchell has some likelihood of success on the merits.** But this likelihood is hampered by
17 his inability to clearly articulate his claims, as exemplified by his Complaint. Although the
18 legal issues in this case are not particularly complex, the **Court finds that he would be**
19 **better served with the assistance of counsel.** Thus, the Court will closely monitor the
20 propriety of this case and will either dismiss the case or remove the appointed attorney if the
21 Court finds that the allegation of poverty is untrue, the action is frivolous or malicious, or the
22 pleadings ultimately fail to state a claim on which relief may be granted. 28 U.S.C. 1915(e)
23 (2). Accordingly, Mitchell’s Request for Appointment of Counsel is GRANTED.”

24 [Docket No. 10]

25 On October 11, 2013, the Court issued “Order Vacating Appointment of Counsel”
26 saying, “Upon reconsideration, this case appears to be a 194 case and will be transferred to
27 the magistrate judge. Therefore, the Court VACATES the Order Granting Request for
28 Appointment of Counsel (ECF No. 10) and DENIES WITHOUT PREJUDICE Plaintiff

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3 Oliver B. Mitchell’s Request for Appointment of Counsel.” [Docket No. 11]

4 On November 7, 2013, the Court issued “Order Vacating Reference to Magistrate
5 Judge” saying, “Reference to the discovery Magistrate Judge is hereby vacated. The above
6 case is referred to a Magistrate Judge pursuant to General Order 05-07 for a Report and
7 Recommendation.” [Docket No. 12]

8 On December 12, 2013, Federal District Judge Otis D. Wright issued "Order Vacating
9 Reference to Magistrate Judge" saying "Reference to the discovery Magistrate Judge is
10 hereby vacated. The above case is referred to a Magistrate Judge pursuant to General Order
11 05-07 for a Report and Recommendation. [Docket No. 12]

12 While the Plaintiff respects the Courts opinion the Plaintiff disagrees with the order
13 vacating counsel. Most if not all 194 cases are denied the rights to withhold consent to have
14 their case heard by a U.S. District Judge. All 194 cases are denied a jury trial, a discovery
15 phase. Most if not all 194 cases are forced into mandatory alternative dispute resolution at
16 which time even more constitutional rights can be stripped away.

17 On December 17, 2013 the Court entered Civil Minutes (In Chambers) by Magistrate
18 Judge Carla Woehrle saying “this case has been referred to Magistrate Judge Carla Woehrle.
19 Following these requirements and all court rules will help avoid unnecessary delays in this
20 case.” [Docket no. 15]

21 On December 17, 2013, Magistrate Judge Carla Woehrle issued "Civil Minutes
22 General" saying "Because Plaintiff is seeking to proceed in forma pauperis his complaint is
23 subject to screening under 28 U.S.C. 1915(e) (2). If and when the court determines that the
24 complaint passes screening, the court will issue orders regarding marshal's service on its
25 motion." [Docket No. 16]

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27 On January 21, 2014 the Court issued “Memorandum and Order Dismissing
28 Complaint with Leave to Amend” saying “Plaintiff Oliver B. Mitchell, III opened this action
with a request to proceed without prepayment of the filing fee dated and filed August 16,

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3 2013. [Docket no. 1.] Leave to file was granted and Plaintiff's Complaint was filed
4 September 26, 2013. [Docket no. 3.] Plaintiff is appearing pro se and seeking to proceed in
5 forma pauperis, on a civil rights complaint under 42 U.S.C. § 1983. For reasons stated below,
6 the complaint is dismissed with leave to amend. **Complaints such as Plaintiff's are subject**
7 **to the court's sua sponte review under provisions of the Prison Litigation Reform Act of**
8 **1995 ("PLRA"), Pub. L. No. 104-134, 110 Stat. 1321 (1996).** The court shall dismiss such a
9 complaint, at any time, if the court finds that it (1) is frivolous or malicious, (2) fails to state a
10 claim on which relief may be granted, or (3) seeks monetary relief from a defendant immune
11 from such relief. "A claim is 'frivolous' when it is without 'basis in law or fact,' and
12 'malicious' when it is 'filed with the intention or desire to harm another.'" "Failure to state a
13 claim" has the same meaning on PLRA review that it has in review of a motion to dismiss
14 under Fed. R. Civ. P. 12(b)(6). Plaintiff makes lengthy but vague allegations that the VA and
15 VA employees have harassed him in numerous ways, violating his federal civil rights under
16 42 U.S.C. § 1983 and other statutes. He seeks monetary damages. Here, Plaintiff's § 1983
17 claims are asserted against a federal agency and three of its employees. However, a federal
18 agency and federal employees acting under color of federal law are not persons acting under
19 color of state law who may be sued under 42 U.S.C. § 1983. **Accordingly, all of Plaintiff's**
20 **1983 claims are subject to dismissal on PLRA screening.** Plaintiff has made allegations
21 about individual acts by Defendant Holliday, but his factual allegations, as they stand, do not
22 show that Defendant Holliday violated any of his constitutional rights. On the other hand,
23 **Plaintiff might be able successfully to amend his complaint, consistently with his factual**
24 **allegations, to state a Bivens claim against Defendant Holliday.** In light of the liberal
25 policy toward amendment of pro se pleadings, Plaintiff will be given leave to amend his
26 complaint to state a Bivens claim, for violation of a federal constitutional right, against
27 Defendant Holliday in an individual capacity only. If Plaintiff files an amended complaint, the
28 court will issue further orders as appropriate; if not, the magistrate judge will recommend that

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3 this action be dismissed, without prejudice, for failure to prosecute or to comply with court
4 orders, as well as for the reasons stated above.” [DOCKET No.24]

5 On March 12, 2014, the Plaintiff filed First Amended complaint. [Docket No.30]

6 On April 2, 2014, the Court issued “Civil Minutes-general” saying “Plaintiffs First
7 Amended complaint was filed on March 12, 2014. The Court will screen further orders as
8 appropriate. Plaintiff will be advised by mail of all further proceedings. Plaintiff is reminded
9 to inform the court of any change in his mailing address.” [Docket No. 32]

10 On April 14, 2014, the Plaintiff filed “Notice to the Court” saying “Complaints such as
11 plaintiffs are not subject to the Courts sua sponte review under provisions of the PLRA of
12 1995. The PLRA is a group of statutory provisions codified in scattered sections of Title 18,
13 28, and 42 of the United States Code designed to impose strict conditions on court filings by
14 incarcerated persons, especially those filing suit via in forma pauperis (poor person) status.”
15 [Docket No. 33]

16 On November 18, 2014, the Court issued “Memorandum and Order Dismissing First
17 Amended Complaint with Leave to Amend” saying “Plaintiffs First Amended Complaint
18 (“FAC”) was filed March 12, 2014 [Docket No. 30] and is dismissed with leave to amend for
19 reasons stated below. Complaints such as Plaintiff’s are subject to the court’s sua sponte
20 review under provisions of the Prison Litigation Reform Act of 1995 (“PLRA”), Pub. L. No.
21 104-134, 110 Stat. 1321 (1996). “A complaint is properly dismissed under Rule 12(b)(6)
22 unless it contains enough facts to state a claim to relief that is plausible on its face. . . . Well-
23 pleaded factual allegations are taken as true, but conclusory statements or bare assertions are
24 discounted.” Plaintiff, a former employee of the VA Medical Center, includes sixty-five pages
25 of unclear and confusing factual allegations recounting his troublesome history with the VA,
26 much of which appears to have little connection with the defendants named above or the legal
27 claims listed below. Plaintiff lists eighteen “counts,” not clearly connected with either the
28 claims in the caption or the factual allegations laid out in the preceding portion of the

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3 amended complaint. **These counts amount to either claims under the civil rights statutes**
4 **codified at 42 U.S.C. §§ 1981 et seq.; claims under Title VII of the Civil Rights Act of**
5 **1964, 42 U.S.C. §§ 2000e et seq.; claims asserted under federal criminal statutes; and**
6 **claims under state law.** To state a federal civil rights claim under 42 U.S.C. § 1983, a
7 plaintiff must plead: (1) that a defendant acted under color of state law; and (2) that the
8 defendant caused the plaintiff to be deprived of a right secured by the federal constitution or
9 laws. Accordingly, all of Plaintiff’s § 1983 claims are subject to dismissal on PLRA screening
10 and **cannot be successfully amended** to state claims under § 1983. **Most of Plaintiff’s**
11 **remaining claims appear to be barred either by** lack of jurisdiction (e.g. to bring claims
12 based on **federal criminal statutes**) or by the doctrine of **federal sovereign immunity** (such
13 as a claim under the Rehabilitation Act). **It is not clear what, if any, cognizable claims**
14 **Plaintiff could state on amendment;** however, in light of the liberal policy on amending pro
15 se pleadings, he will be given leave to amend his complaint one more time. He may not assert
16 damages claims barred by federal sovereign immunity...”

17 [Docket No. 36]

18 On December 11, 2014, the Plaintiff filed “Request for Appointment of Counsel.”

19 [Docket No. 37]

20 On December 15, 2014, the Court filed “Minutes In Chambers” saying “Plaintiff’s
21 request for appointment of counsel (docket no. 37, filed December 11, 2014) is DENIED
22 WITHOUT PREJUDICE for the reasons stated in the minute order (docket no. 16, filed
23 December 17, 2013) denying without prejudice Plaintiff’s request for reconsideration for
24 appointment of counsel (docket no. 13, filed December 10, 2013).” [Docket No. 39]

25 On December 22, 2014, the Plaintiff filed Second Amended complaint.

26 [Docket No. 40]

27 On January 6, 2015, the Court issued "Civil Minutes-General" saying "Plaintiffs
28 Second Amended Complaint ("SAC") was filed on December 22, 2014. [Docket No. 40]. In

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3 the SAC, Plaintiff asserts a claim for violation of Title VII of the Civil Rights Act of 1964, as
4 amended, 42 U.S.C. 2000e et seq., against the Secretary of the United States Department of
5 Veterans Affairs. The court ORDERS as follows in light of the SAC: 1. By filing the SAC
6 Plaintiff has effectively dismissed the previously named Defendants not named in the SAC:
7 the United States Department of Veterans Affairs, Donna Beiter, and Lisa K. Holliday. The
8 clerk shall correct the docket to show that this action has been terminated with respect to
9 those Defendants. 2. Under Fed. R. Civ. P. Rule 25(d), Robert A. McDonald, the current
10 Secretary of Veterans Affairs, is substituted as a Defendant in place of former Secretary Eric
11 K. Shinseki. 3. Plaintiff is granted leave to proceed in forma pauperis. 4. By separate order,
12 the court will direct the United States Marshal to serve the summons and complaint on
13 Secretary McDonald in his official capacity only." [Docket No. 41]

14 On January 29, 2015, the Plaintiff filed "Request for reconsideration of Court
15 Appointed Counsel." [Docket No. 43]

16 On February 3, 2015, the Court filed "Minute Orders In Chambers" saying "Plaintiff's
17 request for reconsideration of court appointed attorney 43 is DENIED WITHOUT
18 PREJUDICE for the reasons stated in the minute order (Doc. 39 , filed 12/15/2014) denying
19 without prejudice Plaintiff's request for appointment of counsel 37 and in the minute order
20 (Doc. 16 , filed 12/17/2013) denying without prejudice Plaintiff's request for reconsideration
21 for appointment of counsel 13." [Docket No. 44]

22 On March 23, 2015, the Defendants filed "Notice of Motion and Motion to Dismiss for
23 Failure to State a Claim." [Docket No. 47]

24 On March 24, 2015, the Court filed "Minutes in Chambers" saying "Defendant's
25 motion to dismiss was filed on March 23, 2015 and noticed for hearing on April 28, 2015
26 (incorrectly docketed as noticed for hearing on March 28, 2015). [Docket no. 47.] IT IS
27 ORDERED AS FOLLOWS: 1. The noticed hearing date is ORDERED OFF-CALENDAR. 2.
28 Plaintiffs opposition, or notice of non-opposition, to the motion shall be served and filed on or

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3 before April 14, 2015. 3. Defendants' reply, if any, shall be served and filed within fourteen
4 (14) days of the filing of Plaintiff's opposition 47." [Docket No. 48]

5 On April 1, 2015, the Plaintiff filed "Memorandum in Opposition to Motion to
6 Dismiss" saying "The Supreme Court has explained that a complaint need only "give the
7 defendant fair notice of what the plaintiffs claim is and the grounds upon which it rests. Off
8 calendar refers to a court order to take a lawsuit, petition, or motion off the list of pending
9 proceedings. **The Plaintiff at this time nor in the past has agreed or stipulated to such**
10 **conference. It is noted that the Court has acted outside its inherent authority by acting**
11 **on part of the Plaintiff.**" [Docket No. 49]

12 On April 6, 2015, the Court filed "Minute Order in Chambers" saying "Defendant's
13 motion to dismiss was filed on March 23, 2015 (docket no. 47). Plaintiff's opposition was
14 filed on April 1, 2015 (docket no. 49). By the terms of the minute order filed March 24, 2015
15 (docket no. 48), Defendant's reply shall be served and filed on or before April 15, 2015.
16 Plaintiff is advised that the March 24, 2015 minute order only took the noticed hearing date
17 off calendar. It did not take either the motion to dismiss or this action as a whole off the list of
18 pending proceedings. The court assures Plaintiff that both the motion to dismiss and this
19 action as a whole remain pending. The parties will be notified by mail or e-mail of all further
20 proceedings." [Docket No. 50]

21 On April 6, 2015, the Plaintiff filed "Memorandum in Opposition to Motion to Dismiss
22 Pursuant to Local Rule 7-3" saying "The Plaintiff finds that defendants counsel failed to
23 comply with Local Rule 7-3. The Defendants made no real attempt to confer before filing
24 their motion." [Docket No. 51]

25 On April 15, 2015, the Defendants filed "Reply brief in Support of Motion to Dismiss
26 Case" saying "Plaintiff should be compelled to make a more definite statement."
27 [Docket No. 52]

28 On April 23, 2015, the Court filed "Minute Order in Chambers" saying "Briefing

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3 appears to be complete, and the motion has been taken under submission without oral
4 argument. The court will review the motion as soon as possible, and the parties will be
5 notified by mail or e-mail of all further proceedings 47 49 52.” [Docket No. 53]

6 On November 24, 2015, the Court filed “Memorandum and Order Dismissing Second
7 Amended Complaint with Leave to Amend” saying “Complaints such as Plaintiff’s are
8 subject to the court’s sua sponte review under provisions of the Prison Litigation Reform Act
9 of 1995 (“PLRA”), Pub. L. No. 104-134, 110 Stat. 1321 (1996). See 28 U.S.C. § 1915A(a).
10 The SAC Fails to Comply with the Federal Rules of Civil Procedure. The pleading standard
11 of Federal Rule of Civil Procedure 8(a)(2) requires a “short and plain statement of the claim
12 showing that the pleader is entitled to relief.” Plaintiff’s SAC does not contain a “short and
13 plain statement of the claim showing that [plaintiff] is entitled to relief.” Fed. R. Civ. P. 8(a)
14 (2). Instead, the SAC **contains over 120 factual allegations** arranged in a lengthy narrative
15 of incidents that occurred while Plaintiff was an employee for the Medical Care Group at the
16 VA Medical Center in Los Angeles, an agency of the Department of Veterans Affairs.
17 Plaintiff’s allegations fail to identify each individual claim and the incidents giving rise to
18 each claim. The SAC lumps all of Plaintiff’s factual allegations together in chronological
19 order regardless of their relation to a particular claim. The Court is not required to sort
20 through Plaintiff’s allegations in search of a viable claim. Plaintiff’s failure to plainly and
21 succinctly provide the defendant with fair notice of the bases for his allegations violates Rule
22 8. “[A] pro se litigant is not excused from knowing the most basic pleading requirements. As
23 a threshold matter, Title VII has exhaustion requirements that must be met prior to filing a
24 court action. 42 U.S.C. 2000e16(c). **A federal employee must first initiate contact with an
25 EEO counselor within 45 days of the date of the alleged discrimination or adverse
26 action.** Plaintiff alleges that he was discriminated against based on his race (African
27 American), color (Black), sex (male), and sexual orientation. **Discrimination on the basis of
28 sexual orientation alone is not actionable under Title VII.** See *Rene v. MGM Grand Hotel*

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3 *Inc., 305 F.3d 1061, 1068 (9th Cir. 2002)* (“We would hold that an employee’s sexual
4 orientation is irrelevant for purposes of Title VII.) Plaintiff also alleges reprisal and retaliation
5 for prior EEO activity. (SAC ¶ 9.) Title VII makes it unlawful to discriminate against an
6 employee who files a complaint. In order to establish a prima facie case of retaliation under
7 Title VII, a plaintiff must demonstrate (a) “that [he] engaged in protected activity;” (b) “that
8 [he] suffered a materially adverse action that would deter a reasonable employee from making
9 a charge of employment discrimination;” and (3) “that there is a causal connection between
10 the protected activity and the adverse action.” Because the SAC fails to allege facts that
11 would support a causal connection between Plaintiff’s protected activity and the adverse
12 employment action, the retaliation claim should be dismissed with leave to amend. If Plaintiff
13 files an amended complaint, the court will issue further orders as appropriate; if not, the
14 magistrate judge will recommend that this action be dismissed, without prejudice, for failure
15 to prosecute or to comply with court orders, as well as for the reasons stated above.” [Docket
16 No. 54]

17 On April 14, 2016, the Court issued "Notice of Reassignment of Case Due to
18 Unavailability of Judicial Officer" saying "The Magistrate Judge to whom the above-entitled
19 case was previously assigned is no longer available. YOU ARE HEREBY NOTIFIED that,
20 pursuant to directive of the Chief U. S. District Judge/Magistrate Judge and in accordance
21 with the rules of this Court, the above-entitled case has been returned to the Clerk for direct
22 reassignment. Accordingly, this case has been reassigned to: Hon. Alka Sagar, Magistrate
23 Judge for: all proceedings in accordance with General Order 05-07. Please substitute the
24 initials of the newly assigned Magistrate Judge so that the new case number will read: CV13-
25 06030 ODW (AS). This is very important because documents are routed by the initials.
26 [Docket No. 58]

27 On May 31, 2016, the Court issued "Civil- Minutes General" saying "On December
28 22, 2014, Plaintiff Oliver B. Mitchell III ("Plaintiff") filed a pro se Second Amended

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3 Complaint ("SAC") asserting a claim for violation of Title VII of the Civil Rights Act of
4 1964, as amended, 42 U.S.C. 2000e et. Seq., against the Secretary of the United States
5 Department of Veteran's Affairs. (Docket No. 40). On March 23,2015, Defendant filed a
6 motion to dismiss the SAC for failure to state a claim, or in the alternative, for a more definite
7 statement. (Docket No. 47). On November 24,2015, the Court issued an Order dismissing the
8 SAC with leave to amend. (Docket No. 54). The Court's Order set forth the deficiencies with
9 Plaintiff s SAC and directed Plaintiff to file a Third Amended Complaint no later than thirty
10 (30) days from the Court's Order or December 28, 2016. Id. at 10. On December 28, 2015,
11 Plaintiff filed a Notice and Request for an Extension of Time, seeking an extension of time,
12 "to and including January 25, 2016, within which to file a 'Third Amended Complaint' and
13 respond to the Court's Memorandum and Order dismissing the Second Amended Complaint
14 (SAC) with leave to amend." (Docket No. 55). On January 4, 2016, the Court issued an Order
15 granting Plaintiffs request and ordering Plaintiff to file a Third Amended Complaint by
16 January 25, 2016. (Docket No. 57). On April 14, 2016, the case was assigned to this Court
17 and a Notice of Assignment was mailed to Plaintiff at the address listed on the Complaint.
18 (Docket Entry No. 58). To date, Plaintiff has failed to file a Third Amend Complaint or
19 communicate with the Court in any way. Accordingly, Plaintiff is ORDERED TO SHOW
20 CAUSE, in writing, no later than Monday, June 20, 2016, why this action should not be
21 dismissed with prejudice for failure to prosecute and failure to obey a court order. This Order
22 will be discharged upon the filing of a Third Amended Complaint that cures the deficiencies
23 in the last pleading, or upon the filing of a declaration under penalty of perjury stating why
24 Plaintiff is unable to file a Third Amended Complaint. If Plaintiff no longer wishes to pursue
25 this action, he may request a voluntary dismissal pursuant to Federal Rule of Civil Procedure
26 41(a). A notice of dismissal form is attached for Plaintiffs convenience. Plaintiff is warned
27 that a failure to timely respond to this Order will result in a recommendation that this action
28 be dismissed with prejudice under Federal Rule of Civil Procedure 41(b) for failure to

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3 prosecute and obey court orders." [Docket No. 60]

4 On June 7, 2016, the Court issued "Minute Order in Chambers" saying "Plaintiff in the
5 above-entitled civil rights action is apparently no longer located at his address of record. On
6 May 31, 2016 the Order to Show Cause Re: Lack of Prosecution (Docket Entry No. 60) was
7 returned to the Clerk of the Court as undeliverable. The Court reminds Plaintiff that he is
8 obligated to keep the Court informed of his current address and telephone number, pursuant
9 to Local Civil Rule 41-6. Plaintiff is ORDERED to notify this Court of his current address
10 and telephone number within ten days of the date of this Order. Plaintiff is expressly
11 cautioned that if he fails to respond to this Order, the Court will recommend that this action
12 be dismissed with prejudice under Federal Rule of Civil Procedure 41(b), for Plaintiff's
13 failure to prosecute. [Docket No. 62]

14 On June 23, 2016, the Plaintiff filed with the Court "NOTICE of Change of address
15 changing plaintiff's address." [Docket No. 64]

16 On June 30, 2016, the Court issued "Order to Show Cause" saying, "On May 31, 2016,
17 the Court issued an Order to Show Cause (Docket Entry No. 60) and ordered plaintiff to
18 respond to later than June 20, 2016, why this action should not be dismissed with prejudice
19 for failure to prosecute and failure to obey a Court order. On June 7, 2016 the Court ordered
20 that plaintiff notify the Court of his current address (Docket Entry No. 62). On June 23, 2016,
21 plaintiff filed a Notice of Change of Address (Docket Entry No. 64). Accordingly, Plaintiff is
22 ORDERED TO SHOW CAUSE, within fourteen (14) days of the date of this Order, why this
23 action should not be dismissed with prejudice for failure to prosecute and failure to obey a
24 court order. This Order will be discharged upon the filing of a Third Amended Complaint that
25 cures the deficiencies in the last pleading, or upon the filing of a declaration under penalty of
26 perjury stating why Plaintiff is unable to file a Third Amended Complaint. A copy of the May
27 31, 2016 minute order is attached." [Docket No. 66]

28 On October 31, 2016, the Court issued "NOTICE TO PARTIES by District Judge Otis

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3 D. Wright” saying “Effective November 7, 2016, Judge Wright will be located at the 1st
4 Street Courthouse, COURTROOM 5D on the 5th floor, located at 350 W. 1st Street, Los
5 Angeles, California 90012. All Court appearances shall be made in Courtroom 5D of the 1st
6 Street Courthouse, and all mandatory chambers copies shall be hand delivered to the judge's
7 mailbox outside the Clerk's Office on the 4th floor of the 1st Street Courthouse. The location
8 for filing civil documents in paper format exempted from electronic filing and for viewing
9 case files and other records services remains at the United States Courthouse, 312 North
10 Spring Street, Room G-8, Los Angeles, California 90012. The location for filing criminal
11 documents in paper format exempted from electronic filing remains at Edward R. Roybal
12 Federal Building and U.S. Courthouse, 255 East Temple Street, Room 178, Los Angeles,
13 California 90012. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY.
14 (rrp) TEXT ONLY ENTRY.” [Docket No. 67]

15 On December 16, 2016, the Plaintiff filed “RE: Order to Show Good Cause.” [Docket
16 No. 68-1]

17 On December 20, 2016, the Court RECEIVED and RETURNED and issued “NOTICE
18 OF DOCUMENT DISCREPANCIES” saying “Response to Order to Show Cause exceeds 25
19 pages. No response shall exceed 25 pages in length absent advance leave of Court for good
20 cause shown. (See L.R. 11-6). By Magistrate Judge Alka Sagar, ORDERING Response to
21 Order to Show Cause submitted by Plaintiff Oliver B Mitchell, III received on December 6,
22 2016 is not to be filed but instead REJECTED. Denial based on: Response to Order to Show
23 Cause exceeds 25 pages. (See document for complete details).” [Docket No. 68]

24 On December 28, 2016, the Court issued “Order to Show Cause” saying “Plaintiff has
25 failed to timely file a Third Amended Complaint, IT IS HEREBY ORDERED THAT Plaintiff
26 shall, by no later than January 18, 2017, show cause in writing why this action should not be
27 dismissed with prejudice for failure to prosecute and failure to obey a court order.” [Docket
28 No. 69]

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3 On January 4, 2017, the Plaintiff filed “REQUEST for Leave to Exceed Page Limit”
4 saying “In a separate notice to the Court, the Plaintiff will submit a "Notice of Stipulated
5 Protection Order" against the Defendants for any further harassment, targeting, testing,
6 experimentation and research by the Defendants.” [Docket No. 70]

7 On January 4, 2017, the Plaintiff filed “Certificate pursuant to Local Rule 7-3.”
8 [Docket No. 72]

9 On January 5, 2017, the Court issued “Minutes in Chambers” saying “ORDER
10 DENYING REQUEST FOR LEAVE TO EXCEED PAGE LIMIT 70 by Magistrate Judge
11 Alka Sagar. The Court's December 28, 2016 Order - directing Plaintiff to file a Third
12 Amended or submit a declaration under penalty of perjury, explaining why he is unable to do
13 so, by no later than January 18, 2017 - remains in effect.” [Docket No. 73]

14 On January 13, 2017, the Plaintiff filed “Declaration Under Penalty of Perjury” and
15 “Exhibits in Support of Declaration” saying “The risk of future injury is sufficient to invoke
16 the imminent danger exception. [Docket No. 74, 75]

17 On February 9, 2017, the Plaintiff filed and the Court RECEIVED BUT DID NOT
18 FILE “Stipulated Protective Order” saying “The list of negative consequences to
19 whistleblowing seem endless; broken promises to fix the problem, disillusionment, isolation,
20 humiliation, loss of job, questioning of the whistleblowers mental health, vindictive tactics,
21 assassination of character, assassination of person(s), and difficult court proceedings... An
22 injunction is necessary to permit the orderly disposition of this case, to safeguard the safety of
23 the Plaintiff, and to avoid the duplication, inefficacy, and risk of inconsistent decisions on the
24 Plaintiffs constitutional issues. Absent injunctive relief the Plaintiff will continue to
25 experience emotional stress, human suffering, physical pain and mental anguish... The court
26 may, for good cause, issue an order to protect a party or person from annoyance,
27 embarrassment, oppression, or undue burden or expense.” [Docket No. 77-1]
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On February 10, 2017, the Court issued “Notice of Discrepancy and Order” saying

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3 “By Magistrate Judge Alka Sagar, ORDERING Stipulated Protective Order, Declaration and
4 Proof of Service submitted by Plaintiff Oliver B Mitchell, III received on 02/09/17 is not to
5 be filed but instead REJECTED. Denial based on: Failure to comply with material provisions
6 of the sample protective order on the Court's Procedures and Schedules. Not signed by
7 defense counsel.” [Docket No. 77]

8 On February 15, 2017, the Plaintiff emailed the Defendants saying “Jason, last week I
9 mailed you a copy of a stipulated protection order. Can you advise me if whether or not you
10 agree and have signed the order? I received notice from the Court that she wants a signed
11 order before I file.” [Docket 82-1]

12 On February 15, 2017, the Defendants emailed the Plaintiff saying “Mr. Mitchell,
13 Thank you for your email. Defendant does not agree with the stipulated protective order and
14 therefore will not sign it. Sincerely, Jason K. Axe, Assistant U.S. Attorney.” [Docket 82-1]

15 On February 27, 2017, the Plaintiff filed “MOTION for Substitution of Party Under
16 FRCP 25(d)” saying “When a public officer is a party to an action in an official capacity and
17 during his pendency dies, resigns or otherwise ceases to hold office, the action.” [Docket No.
18 78]

19 On March 1, 2017, the Court issued “Minutes in Chambers” saying “by Magistrate
20 Judge Alka Sagar. Plaintiff's motion 78 is granted.” [Docket No. 80]

21 On March 17, 2017, the Court issued “FINAL ORDER TO SHOW CAUSE” saying
22 “Since Plaintiff has failed to timely file a Third Amended Complaint, IT IS HEREBY
23 ORDERED THAT Plaintiff shall, by no later than April 17, 2017, show cause in writing why
24 this action should not be dismissed with prejudice for failure to prosecute and failure to obey
25 a court order.” [Docket No. 81]

26 On March 20, 2017, the Plaintiff filed “RE: Notice of Document Discrepancies”
27 saying “The Plaintiff asserts that the "Stipulated Protective Order" does in fact comply with
28 the material provisions as indicated on Magistrate Judge Sagar's profile page located at <http://>

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3 caacd.uscourts.gov/honorable-alka-sagar. In FACT, the Stipulated Protective Order "contains a
4 combination of information sufficient to establish this case to which the document relates."
5 The document was considered timely and the Court should have made a determination based
6 on the merits." [Docket No. 82]

7 On March 31, 2017, the Plaintiff filed "Notice to the Court" and "Exhibits in Support"
8 saying "A matter of life and death." [Docket No. 84, 85]

9 On April 6, 2017, the Plaintiff filed "RESPONSE to Final Order to Show Cause"
10 saying "When on August 16, 2013, the Plaintiff lodged his Civil Rights complaint **he did so**
11 **as an individual and not a representative of the veteran's community**. This complaint
12 seeks to redress various causes of action to include discrimination and retaliation and non-
13 consensual research by Defendants **against Mitchell as an employee, patient and**
14 **whistleblower only**. This complaint pursues claims on behalf of Mitchell **FIRST**, and while
15 evidence may show harms against other veterans, **Mitchell does not pursue claims on**
16 **behalf of other veterans that have been or may have been harmed by the Defendants**.
17 The False Claims Act, sometimes referred to as the FCA, was enacted in 1863, and was
18 amended most recently in 1986. The FCA contains an ancient legal device called the "qui
19 tam" provision which is shorthand for the Latin phrase "he who brings a case on behalf of our
20 lord the King, as well as for himself." The False Claims Act allows a private individual with
21 knowledge of past or present fraud on the federal government to sue on the government's
22 behalf to recover compensatory damages, civil penalties, and triple damages. The FCA has
23 become an important tool for uncovering fraud and abuse of government programs. The FCA
24 compensates the private whistleblower, known as the relator, if his or her efforts are
25 successful in helping the government recover fraudulently obtained government funds."
26 [Docket No. 87]

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28 On April 13, 2017, the Plaintiff filed "Notice of and Request for Extension of Time"
saying "While the Court notes that the "legal issues in this case are not particularly complex"

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3 the Plaintiff reminds the Court that the Plaintiff is not a lawyer nor a skilled professional
4 within the legal community and as such has had to navigate the federal court system on his
5 own. The Court found that the Plaintiff "would be better served with the assistance of
6 counsel" but that assistance was rescinded. As such, it is the Plaintiffs opinion that the Court
7 itself, since October 11, 2013, has made this case so complex in so that no pro se counsel or
8 experienced law firm could successfully navigate this district court. [Docket No. 89]

9 On April 17, 2017, the Court issued "Minute Order RE: Request for Extension of
10 Time" saying "Plaintiffs request is GRANTED. Plaintiff shall file his Third Amended
11 Complaint or Respond to The Courts Order to Show Cause, no later than May 17, 2017. No
12 further extensions will be granted absent extraordinary circumstances." [Docket No. 91]

13 On April 27, 2017, the Plaintiff filed "Notice to the Court" and "Exhibits in Support"
14 saying "On Wednesday, April 26, 2017, I, Oliver B. Mitchell III, Plaintiff in this action
15 "withdrew consent to any further human subject research" by the defendants. In light of a
16 recent discovery confirming the non-consensual research, the Plaintiff sent a letter to the
17 appropriate individuals notifying them of withdrawal of consent." [Docket No. 92, 93]

18 On May 9, 2017, the Plaintiff filed "Notice to the Court" and "Exhibits in Support"
19 saying "Despite the Courts approval of the Plaintiffs extension of time, the Plaintiff finds it
20 necessary to re-address issues of "imminent danger." Despite the Courts attempt to prosecute
21 this case under the PLRA. The Plaintiff submits that the Court itself has violated the PLRA.
22 At the time of filing the Plaintiff clearly and concisely demonstrated "imminent danger of
23 serious physical injury." Under the PLRA the Court is to assess the threats at the time of filing
24 suit or when the prisoner or non-prisoner makes an in forma pauperis application in the
25 district court or on appeal. Any credible allegation of imminent danger of serious physical
26 injury meets the statutory requirement, however, in this instance the Court has all but
27 dismissed the allegations as incredible or insubstantial. [Docket No. 95]
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On May 15, 2017, the Plaintiff filed "REQUEST for Additional Extension of Time"

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3 saying "This Court is cognizant of the seriousness of the issues in this litigation. The Plaintiff
4 seek Rule 30(b)(6) deposition testimony from the Department of Veterans Affairs (VA) on
5 three topic areas. The Plaintiff seek Rule 30(b)(6) testimony and documents from the
6 Department of Veterans Affairs (VA) concerning the health effects. The Plaintiff has a facial
7 bias claim against the Defendants and allege that the Defendants involvement in testing
8 programs makes the Defendants an inherently biased decision-maker. Accordingly, the
9 Plaintiff allege that evidence of any involvement in the testing programs sponsored by other
10 Defendants, may demonstrate bias in adjudication of this complaint. Accordingly, the Plaintiff
11 sought a protective order in which both this Court and the Department of Justice denied
12 without further cause." [Docket No. 98]

13 On May 17, 2017, the Court issued "Order RE: Request for Additional Extension of
14 Time" saying "Plaintiff has not established cause for the request. The Court has not
15 authorized Plaintiff to conduct any discovery. Plaintiff must file a Third Amended Complaint
16 that cures the deficiencies in the second amended complaint no later than May 24, 2017. No
17 further extensions will be granted. THERE IS NO PDF DOCUMENT ASSOCIATED WITH
18 THIS ENTRY. (afe) TEXT ONLY ENTRY (Entered: 05/17/2017)." [Docket No. 100]

19 On May 19, 2017, the Plaintiff filed "Request for Reassignment to a U.S. District
20 Judge" saying "On September 26, 2013, this case was assigned to District Judge Otis D.
21 Wright II and the assigned Magistrate Judge of Carla Woehrle. Pursuant to General Order OS-
22 07 of the United States District Court for the Central District of California, Magistrate Judge
23 Carla Woehrle had been designated to hear discovery related motions. (Docket No. 3-1) On
24 November 7, 2013, District Judge Wright vacated reference to the Magistrate Judge saying
25 "Reference to the discovery Magistrate Judge is hereby vacated. The above case is referred to
26 a Magistrate Judge pursuant to General Order OS-07 for a Report and Recommendation.
27 Pursuant to the above order, this case has been reassigned to Magistrate Judge Carla Woehrle
28 for a Report and Recommendation. (Docket No.12) On April 14, 2016, the Deputy Clerk for

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3 the Central District Court in California reassigned this case "due to the unavailability of a
4 judicial officer." The Plaintiff's case had been reassigned to Magistrate Judge Alka Saar for all
5 proceedings in accordance with General Order OS-07. (Docket No. 58) In accordance with 28
6 U.S.C. § 636(c) and FRCP 73, a Magistrate Judge is available to preside over all aspects of a
7 case, including the jurisdictional authority to: 1. Schedule, hear, and decide all dispositive and
8 non-dispositive matters; 2. Schedule, hear, and decide all interlocutory matters; 3. Conduct
9 jury or non-jury trials; 4. Enter final orders and judgment; and 5. Decide all post-trial
10 motions. However, a Magistrate Judge's exercise of this jurisdiction is permitted only if all
11 parties who have appeared voluntarily consent. After this case was filed, the Clerk of the
12 Court failed to send the appropriate notice and consent form as provided by the General
13 Order. The consent form was to afford each party an initial opportunity to consent to having a
14 Magistrate Judge assume complete jurisdiction over this case, including trial and entry of
15 judgment. At that time, each party had an obligation whether to consent to or decline
16 Magistrate Judge jurisdiction as soon as possible. There are no notations on the docket
17 reflecting that either the Plaintiff or the Defendants consented to proceed before a Magistrate
18 Judge, nor that the Court ever received a form consenting to the jurisdiction of a Magistrate
19 Judge. A Magistrate Judge can only proceed under 28 U.S.C. § 636(c) when all parties
20 consent. Per the Courts General Order OS-07, Page 9, Item 4 states "If a District Judge
21 vacates reference to a Magistrate Judge for discovery and instead refers the matter to a
22 Magistrate Judge for a report and recommendation, the case shall be randomly assigned to a
23 "new" Magistrate Judge for the report and recommendation if no discovery matters were
24 heard by the discovery Magistrate Judge. In this instance, when on November 7, 2013,
25 District Judge Wright vacated reference to Magistrate Judge Carla Woehrle and reassigned to
26 Magistrate Judge Carla Woehrle for a Report and Recommendation, the Court itself
27 committed fraud upon the Court by failing to "randomly assign this case to a new Magistrate
28 Judge." In this instance, when on April 14, 2016, the Deputy Clerk failed to reference whether

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3 Magistrate Judge Alka Sagar would conduct discovery or Report and Recommendation in
4 accordance with General Order OS-07, the Court itself committed fraud upon the Court by
5 failing to gain consent to proceed before a Magistrate Judge. WHEREFORE, in accordance
6 with provisions of 28 U.S.C. § 636(c)(4) and Fed. R. Civ. P. 73(b), and the Central District
7 Court of California General Order No. OS-07, the undersigned party to this case requests that
8 the reference of the case to the Magistrate Judge be VACATED and the case reassigned to a
9 District Judge.” [Docket No. 101]

10 On May 19, 2017, the Plaintiff filed “Request for Reconsideration of Court Appointed
11 Attorney” saying “The Plaintiff is requesting Appointment of Counsel under 42 U.S.C. 2000
12 e-d (f) (I), which provides for mandatory appointment of counsel for claims of employment
13 discrimination under Title VII of the Civil Rights Act of 1964 and Title 1 of the Americans
14 with Disabilities Act.” [Docket No. 103]

15 On June 13, 2017, the Court entered on the Court’s docket saying “STRICKEN PER
16 DOCKET ENTRY NO. 107. NOTICE to the Court filed by plaintiff Oliver B Mitchell, III.
17 (afe) Modified on 6/15/2017 (afe). (Entered: 06/15/2017).” [Docket No. 105]

18 On June 13, 2017, the Court entered on the Court’s docket saying “STRICKEN PER
19 DOCKET ENTRY NO. 107. <https://ecf.cacd.uscourts.gov/doc1/031126036712> PROOF OF
20 SERVICE filed by plaintiff Oliver B Mitchell, III, re Notice 105 served on June 12, 2017.
21 (afe) Modified on 6/15/2017 (afe). (Entered: 06/15/2017).” [Docket No. 106]

22 On June 15, 2017, the Court issued “ORDER” saying “The documents listed below
23 were improperly filed for the following reasons: Plaintiff has failed to file his Third Amended
24 Complaint that was due by no later than May 24, 2017. (See Docket Entry No. 100).;
25 therefore, the following documents shall be stricken from the record and shall not be
26 considered by the Court: Notice to the Court 105 and Proof of Service 106.” [Docket No.
27 107]
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On June 19, 2017, the Court issued “Minutes in Chambers Order RE: Request for the

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3 reconsideration of court appointed attorney” saying “Plaintiff's second Request for
4 Appointment of Counsel 109 <https://ecf.cacd.uscourts.gov/doc1/031126194503> is DENIED
5 WITHOUT PREJUDICE.” [Docket No 108]

6 On July 6, 2017, the Plaintiff filed “REQUEST for the Reconsideration of Court
7 Appointed Counsel” saying “The United States has neither confirmed nor denied the FACTS
8 as alleged within this complaint. Rather the allegations continue to be the focus of substantial
9 attention by Congress, the Executive Branch, the Department of Defense ("DoD"), the Media.
10 The Plaintiff construes the Courts "continued" response in violation of 28 U.S.C. 2401 (a)
11 which says "Like all statutes of limitations serves in part to protect the United States and the
12 courts "from having to deal with cases in which the search for truth may be seriously
13 impaired by the loss of evidence, whether by death or disappearance of witnesses, fading
14 memories, disappearance of documents, or otherwise." United States v. Kubrick, 444 U.S.
15 111, 117 (1979). The Plaintiff further contends that this Court is in direct violation of
16 Congress decision to waive sovereign immunity. Compliance with the statute —which reflects
17 Congress decision to waive sovereign immunity only if suit is brought within a particular
18 time period — is a condition of federal court jurisdiction and must be strictly observed.”
19 [Docket No. 109]

20 On July 10, 2017, the Court issued “Minutes in Chambers Order: RE: Request for the
21 reconsideration of court appointed attorney” saying “Plaintiff's second Request for
22 Appointment of Counsel 109 is DENIED WITHOUT PREJUDICE.” [Docket No. 111]

23 On July 14, 2017, the Court entered on the Court’s docket saying, “STRICKEN PER
24 DOCKET ENTRY NO. 114 NOTICE OF MOTION AND MOTION for Leave to Amend
25 Complaint and Add Defendants filed by plaintiff Oliver B Mitchell, III.” [Docket No. 112]

26 On July 14, 2017, the Court entered on the Court’s docket saying, “STRICKEN PER
27 DOCKET ENTRY NO. 114 PROOF OF SERVICE filed by plaintiff Oliver B Mitchell, III, re
28 NOTICE OF MOTION AND MOTION for Leave to Amend Complaint 112 served on

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3 07/13/17.” [Docket No. 113]

4 On July 18, 2017, the Court issued “ORDER STRIKING FILED DOCUMENTS
5 FROM THE RECORD by Magistrate Judge Alka Sagar” saying, “IT IS HEREBY
6 ORDERED that the documents shall be stricken from the record and shall not be considered
7 by the Court. Plaintiff failed to file his Third Amended Complaint, which was due by no later
8 than May 24, 2017. (See Docket Entry No. 100); therefore, the following documents shall be
9 stricken from the record and shall not be considered by the Court: MOTION for Leave to
10 Amend Complaint 112 and Proof of Service 113. [Docket No. 114]

11 On July 26, 2017, the Court issued “Notice of Filing of Magistrate Judge’s Report and
12 Recommendation” saying “Failure to object within the time limit specified shall be deemed a
13 consent to any proposed findings of fact. Upon receipt of Objections and any Response
14 thereto, or upon expiration of the time for filing Objections or a Response, the case will be
15 submitted to the District Judge for disposition. Following entry of Judgment and/or Order, all
16 motions or other matters in the case will be considered and determined by the District Judge.
17 The Report and Recommendation of a Magistrate Judge is not a Final Appealable Order. A
18 Notice of Appeal pursuant to Federal Rules of Appellate Procedure 4(a)(1) should not be filed
19 until entry of a Judgment and/or Order by the District Judge.” [Docket No. 115]

20 On July 26, 2017, the Court issued “Report and Recommendation of United States
21 Magistrate Judge, re Civil Rights Complaint 40” saying, “Pursuant to Federal Rule of Civil
22 Procedure 41(b), the district court may dismiss an action for failure to comply with any order
23 of the court... “[A] District Court has the power to dismiss a claim of a plaintiff with
24 prejudice [pursuant to Fed. R. Civ. P. 41(b)] for failure to comply with an order of the court.
25 Moreover, “[a]ll federal courts are vested with inherent powers enabling them . . . to ensure
26 obedience to their orders. District courts have the inherent power to control their dockets and,
27 [i]n the exercise of that power they may impose sanctions including, where appropriate, . . .
28 dismissal of a case. These powers are **‘governed not by rule or statute but by the control**

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3 necessarily vested in courts to manage their own affairs **so as to achieve the orderly and**
4 **expeditious disposition of cases.** The Five Factors Support Dismissal; The Public's Interest
5 In Expeditious Resolution Of Litigation, The Court's Need To Manage Its Docket, **The Risk**
6 **Of Prejudice To Defendants,** Public Policy Favoring Disposition On The Merits,
7 Availability Of Less Drastic Alternatives. Dismissal of This Action Under Rule 41(b) Is
8 Appropriate As discussed supra, four of the Rule 41(b) dismissal factors strongly weigh in
9 favor of dismissal, whereas only one factor (at best) slightly weighs against dismissal. "While
10 the **public policy** favoring disposition of cases on their merits **weighs against [dismissal]**
11 that single factor is not enough to **preclude** imposition of this sanction when the other four
12 factors weigh in its **favor.** It is recommended that the Court issue an Order (1) accepting and
13 adopting this Report and Recommendation; and (2) directing that Judgment be entered
14 dismissing this action with prejudice." [Docket No. 116]

15 On July 31, 2017, the Plaintiff filed with the Court "Motion to Disqualify Magistrate
16 Judge Alka Sagar and Memorandum of Law in Support Thereof" saying "Plaintiff, Oliver B.
17 Mitchell III, hereby moves that Magistrate Judge Alka Sagar, pursuant to 28 U.S.C. 144 and
18 28 U.S.C. 455, to immediately disqualify herself from all further proceedings in this manner.
19 Magistrate Judge Sagar's **exercise of the jurisdiction** is only permitted if **all parties**
20 **involved have voluntarily consented.** A Magistrate Judge can only proceed under 28 U.S.C.
21 636(c) when all parties consent. The Court has simply denied Mr. Mitchell's pleadings and
22 files without discovery or holding a trial. Rather, the Court continues to **violate its own rules**
23 while giving the appearance of bias. Despite the Plaintiffs best efforts to prosecute this case,
24 the Court continues to issue orders both **ambiguous and ultra vires.** In fact, the Court has
25 **denied** the Plaintiff an opportunity to develop the "probably would have made a difference"
26 standard. **This Court has abused its ability to dismiss actions based on bias and**
27 **prejudice.** What happens when a U.S. Judge bias taints a case? Corrupt justice. **Judicial**
28 **misconduct can cost defeated litigants their home, business, custody, health and**

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3 **freedom**. While federal district judges, appointed pursuant to Article III of the United States
4 Constitution, are protected with life tenure and undiminishable salary, thereby enhancing
5 judicial independence, federal magistrate judges, appointed pursuant to Article I, have no
6 such protection. **Is this judicial discrimination?** 28 U.S.C. 144 and 28 U.S.C. 455 **expressly**
7 **protects litigants from judges who violate constitutional rights. From being**
8 **discriminated against** or treated differently by reason of **race**, religion, national origin,
9 gender, **sexual orientation** or preference, and political opinion. In this instant action, the
10 Plaintiff has been denied the opportunity to a meaningful hearing or to even be heard. The
11 Plaintiff asserts that **deprivation of constitutional protection or court action** for the
12 purpose of intimidating him from exercising his opinion via Court orders **is acting ultra-**
13 **vires**. [Docket No. 117]

14 On July 31, 2017, the Court issued “REFERRAL OF MOTION to Disqualify
15 Magistrate Judge Alka Sagar” saying “Pursuant to GO 16-05 and Local Rule 72-5 NOTICE
16 OF MOTION AND MOTION to Disqualify Magistrate Judge Alka Sagar 117 is referred to
17 Judge Otis D. Wright, II for determination.” [Docket No. 119]

18 On August 1, 2017, the Court issued “Order denying without prejudice Motion to
19 Disqualify Judge” saying “On July 31, 2017 Plaintiff Mitchell filed a motion to disqualify
20 Magistrate Judge Alka Sagar pursuant to 28 U.S.C. 144 and 455. In that motion, plaintiff cites
21 the Judicial Conduct and Disability Act, Rules for Judicial Conduct Disability Proceedings;
22 Code of Conduct for United States Judges; and at least one law journal article. In addition, the
23 motion cites liberally from the docket, for what purpose, the Court is unable to fathom. What
24 is not contained within the motion is a clear, concise statement of what it is that supports the
25 contention that Judge Sager is biased against Plaintiff. The Court should not be required to
26 scour the record, combing through a **multitude of facts**, some or most of which have no
27 relevance to the issue of disqualification, in search of the factual basis for this motion. Simply
28 citing the standards by which judges must comport themselves without facts that Judge Sagar

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3 has fallen short of that standard is meaningless. The motion is **DENIED**, without prejudice.
4 Plaintiff may resubmit the motion on or before September 1, 2017. Plaintiff is cautioned that
5 the motion will be measured by the standard of Federal Rules of Civil Procedure Rule 8(a)(2).
6 Plaintiff may assume that the Court is familiar with 28 U.S.C. 144 and 455. Consequently,
7 there is no need for another lengthy recitation of the various codes of conduct. **The Court's**
8 **focus will be on an assessment as to whether specific conduct on the part of Judge Sagar**
9 **gives rise to a reasonable perception that recusal is required.** PLAINTIFF IS FURTHER
10 ADVISED, that should there be no resubmission of the motion by September 1, 2017 the
11 DENIAL of the motion will be converted to a DENIAL with prejudice. [Docket No. 120]

12 On August 8, 2017, the Plaintiff filed "Motion for Extension of Time for Plaintiff to
13 file Objections to U.S. Magistrate Judges Report and Recommendation." [Docket No. 121]

14 On August 9, 2017, the Court issued "Minutes in Chambers" saying "Plaintiff filed a
15 Motion for Extension of Time to file his Objections (Docket Entry No. 121). The Court grants
16 Plaintiff's motion. Plaintiff's Objections to the R&R shall be due no later than September 14,
17 2017." [Docket No. 123]

18 On August 28, 2017, the Plaintiff filed "Request for Judicial Notice" saying, "Pursuant
19 to Federal Rule of Evidence 201, the Plaintiff, Oliver B. Mitchell III, hereby, respectfully
20 request this Court to take judicial notice of a California State Bar complaint attached as
21 Exhibit 1 to this motion. This motion is relevant, non-argumentative, nor-mischaracterizes the
22 docket or foundation of this case. The attached record consists of relevant and factual claims
23 whose authenticity may not be questioned and may be judicially noticed. Rule 201 Rules of
24 Evidence provides that a court may take judicial notice of adjudicative facts that "are capable
25 of accurate and ready determine by resort to sources whose accuracy cannot be reasonably
26 questioned." See People v. Clark, 406Ill.App.3d 622, 632 (2"dDist. 2010). Rule 201
27 additionally provides, "Judicial notice may be taken at any stage of the proceeding" and "[a]
28 court shall take judicial notice if requested by a party and supplied with the necessary

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3 information." The State Bar complaint contains 112 factual allegations and evidentiary
4 documents, several of which are `public documents already maintained by the Central District
5 Court of California since the year 2006. The Plaintiff respectfully request that this Court take
6 judicial notice of the documents comprising Exhibit 1 hereto, for purposes of considering the
7 admissions of Attorney Schwartz, Holliday and Gross so that the record is made to conform
8 to the truth." [Docket No. 124]

9 On September 14, 2017, the Plaintiff filed "Request for extension of time." [Docket
10 No. 126]

11 On September 14, 2017, the Plaintiff filed "Request for Judicial Notice" saying,
12 "Pursuant to Federal Rule of Evidence 201, the Plaintiff, Oliver B. Mitchell III, hereby,
13 respectfully request this Court to take judicial notice of medical records obtained from the
14 Defendants attached as exhibits to this motion. This motion is relevant, non-argumentative,
15 nor-mischaracterizes the docket or foundation of this case. The attached records consist of
16 relevant and factual claims whose authenticity may not be questioned and may be judicially
17 noticed. Rule 201 Rules of Evidence provides that a court may take judicial notice of
18 adjudicative facts that "are capable of accurate and ready determine by resort to sources
19 whose accuracy cannot be reasonably questioned." See People v. Clark, 406Ill.App.3d 622,
20 632 (2nd Dist. 201 D). Rule 201 additionally provides, "Judicial notice may be taken at any
21 stage of the proceeding" and "[a] court shall take judicial notice if requested by a party and
22 supplied with the necessary information." The Plaintiff in this case stands as a "human test
23 subject" who the Defendants carried out illegal experiments without the knowledge, consent,
24 or informed consent of the Plaintiff. The Plaintiff submits to the Court medical records... The
25 Plaintiff submits to the Court medical records obtained from the Long Beach VA Medical
26 Center and the West Los Angeles VA Medical Center via the Social Security Administration.
27 Exhibit 1 of the attached exhibits list 135 pages of medical records from the Long Beach VA
28 Medical Center that highlight violations of medical ethics, and induced illnesses for the

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3 purpose of biological, chemical and **genetic research**. The Plaintiff submits to the Court
4 medical records obtained from the West Los Angeles VA Medical Center via the Social
5 Security Administration. Exhibit 2 of the attached exhibits list 157 pages of medical records
6 from the West Los Angeles VA Medical Center that highlight **violations of** medical ethics,
7 and induced illnesses for the purpose of biological, chemical and **genetic research**. Here the
8 Plaintiff highlights how the Defendants violated Mitchell's rights with respect to genetic
9 testing for research purposes. The dark side of medicine can include **false, misleading** and
10 **outright lies within an individual's medical records for the purpose of conducting illegal**
11 **and experimental research**. As evinced within the pleadings and files within the court to
12 include this motion, the Defendants **have provided false and misleading statements**, i.e.,
13 the **Plaintiff is in fact homosexual with a domestic partner** and not "**living with a**
14 **girlfriend**." The Plaintiff having worked for the U.S. Department of Homeland Security, in
15 fact, was assigned and stationed to the Los Angeles International Airport and [n]ot the federal
16 building. **The Plaintiff has never been told by the "church" that he and his "girlfriend"**
17 **"need to fight to stay in current job and, not let them drive him out."** The Plaintiff has
18 never been led out by police for being racially discriminated by from another. On more than
19 one occasion, this Court has denied the Plaintiff his constitutional rights from being
20 discriminated against or treated differently by reason of race, religion, national origin, gender,
21 sexual orientation or preference, and political opinion. On more than one occasion this Court
22 has denied the Plaintiff a Stipulated Protection Order from the steady intrusions by the
23 Defendants to bring forth a sick and insidious plan "destroy" the Plaintiff while the
24 Defendants **protect** and **save their own lives** with the **blood, cells, and tissue** that were
25 obtained under "false" pretenses. When on May 17, 2017, the Court issued Order "RE:
26 Request..." saying "Plaintiff has not established cause for this request. "The Court has not
27 authorized Plaintiff to conduct any discovery," the Court itself became a party to this suit as
28 the Court itself entertained the idea of the Defendants to engage the Plaintiff in "race based"

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3 **medical research.** Given the allegations contained, the Plaintiff continues to assert that the
4 Defendants engaged in a "**conspiracy to commit murder**" for the purpose of **genetic and**
5 **genomic research**, which is punishable under law. The Plaintiff in this case, is in fact,
6 African American, with both parents also being African American. When the medical
7 evidence is viewed in its entirety, it is both clear and convincing to the actions of the
8 Defendants and their reasons why." [Docket No. 128]

9 On September 18, 2017, the Court issued "Minutes in Chambers" saying, "On
10 September 14, 2017, Plaintiff filed a second Request for Extension of Time to file his
11 Objections (Docket Entry No. 126). The Court grants Plaintiff's request. Plaintiff's Objections
12 to the R&R shall be due no later than September 29, 2017. No further extensions will be
13 granted absent extraordinary circumstances." [Docket No. 130]

14 On September 29, 2017, the Plaintiff filed "Objections to Magistrate Judge Report and
15 Recommendation" saying, "Pursuant to Rule 72(b) of the Federal Rules of Civil Procedure,
16 the Plaintiff, by and through its undersigned counsel, respectfully submits this response to the
17 Magistrate Judge Report and Recommendation. Here, the Plaintiff argues that the Court
18 should not adopt the Magistrate's Report and Recommendation and the Plaintiff files his
19 response commensurate in length and complexity with any such objections. The lengthy and
20 detailed facts of this case have been fully set out in the Plaintiffs files and pleadings and,
21 therefore, are only briefly summarized herein. The Plaintiff objects to the Magistrate Judge
22 Report and Recommendation in its ENTIRETY. In context the constitutionality of magistrate
23 judges' powers has been challenged in their jurisdiction in civil cases. The Supreme Court has
24 never addressed the issue of whether parties consenting to allow a magistrate judge to hear a
25 civil action deprives Article III judges of the essential attributes of judicial power. Section
26 636(c) of the Magistrates Act allows magistrate judges to "conduct any and all proceedings in
27 a jury or nonjury civil matter and order the entry of judgment in the case," provided that the
28 parties consent to the magistrate judge's authority. The Plaintiff has fully complied with the

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3 Courts orders. It has been the Court itself which has issued and acted ultra vires. Given the
4 allegations contained, from deprivation of civil rights, to imminent danger, to conspiracy to
5 commit murder, to biological, radiological, chemical and genetic research, in which the Court
6 must presume to be true and which hopefully should be undisputed, as well as the totality of
7 the facts, it would appear that dismissal of this action would conclude that bias exists in this
8 case. The Plaintiff has demonstrated a clear violation of his constitutional rights and the
9 ensuing chilling effect by the defendants. This Constitutional argument must be heard by the
10 district court because it is a Constitutional argument and cannot be heard at an administrative
11 level. The administrative rules and procedures do not apply when the constitutionality of the
12 federal agency's regulations come into question. When on March 24, 2009, the Plaintiff filed
13 a whistleblower complaint with the defendants alleging the "destruction of documents, the
14 manipulation of wait times and the unreported deaths of local area veterans," the Defendants
15 responded with a level of retaliation that could only equal terror and terrorism. The
16 Magistrate Judge made a sua sponte judgement based on bias and orders issued ultra vires.
17 The sua sponte denial of Plaintiffs' due process rights and the gutting of their c has proven to
18 be too harsh of a sanction for the motion and supporting evidence submitted. The Magistrate
19 Judge recommended a dispositive motion on the lack of discovery by the parties without
20 notice of hearing or due process as is required." [Docket No. 131]

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22 On October 13, 2017, the Court issued "Order Accepting Findings, Conclusions, and
23 Recommendations of United States Magistrate Judge" saying, "Pursuant to 28 U.S.C. section
24 636, the Court has reviewed the Complaint, all of the records herein, and the Report and
25 Recommendation of United States Magistrate Judge. After having made a de novo
26 determination of the portions of the Report and Recommendation to which Objections were
27 directed, **the Court finds that Plaintiff's Objections to the Report and Recommendation**
28 **are without merit and do not cause the Court to reconsider its decision to accept the**
Magistrate Judge's conclusions and recommendations. Accordingly, the Court accepts the

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3 findings, conclusions and recommendations of the Magistrate Judge. IT IS ORDERED that
4 Judgment shall be entered dismissing this action with prejudice.” [Docket No. 133]

5 On October 13, 2017, the issued “Judgment” saying, “Pursuant to the Court’s Order
6 Accepting Findings, Conclusions and Recommendations of United States Magistrate Judge,
7 IT IS ADJUDGED that the above-captioned action is dismissed with prejudice.” [Docket No.
8 134]

9 On October 30, 2017, the Plaintiff filed “Motion and Affidavit for Leave to Appeal In
10 Forma Pauperis.” [Docket No. 135]

11 On October 30, 2017, the Plaintiff filed “Notice of Appeal” to the Ninth Circuit saying,
12 “NOTICE IS HEREBY GIVEN that OLIVER B. MITCHELL III hereby appeals to the
13 United States Court of Appeals for the Ninth Circuit.” [Docket No. 136]

14 On November 1, 2017, the Ninth Circuit Court of Appeals issued “Notice of case
15 number assigned and briefing schedule.” [Docket No. 138]

16 On November 1, 2017, the Ninth Circuit Court of Appeals filed “Notice of Appeal”
17 saying, “This matter is referred to the district court for the limited purpose of determining
18 whether in forma pauperis status should continue for this appeal or whether the appeal is
19 frivolous or taken in bad faith. If the district court elects to revoke in forma pauperis status,
20 the district court is requested to notify this court and the parties of such determination within
21 21 days of the date of this referral. If the district court does not revoke in forma pauperis
22 status, such status will continue automatically for this appeal pursuant to Fed. R. App. P.
23 24(a).” [Docket No. 139]

24 On November 6, 2017, the Court issued “Order DENYING Motion for Leave to
25 Appeal In Forma Pauperis” saying, “The court has considered the motion and the motion is
26 DENIED. The Court certifies that the proposed appeal is not taken in good faith under 28
27 U.S.C. 1915(a) and is frivolous, without merit and does not present a substantial question
28 within the meaning of 28 U.S.C. 753(f).” [Docket No. 140]

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3 On May 16, 2018, the Ninth Circuit Court of Appeals issued “Order” saying, “The
4 district court certified that this appeal is not taken in good faith and revoked appellant’s in
5 forma pauperis status. See 28 U.S.C. § 1915(a). On November 21, 2017, the court ordered
6 appellant to explain in writing why this appeal should not be dismissed as frivolous. See 28
7 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or
8 malicious). Upon a review of the record and response to the order to show cause, we conclude
9 this appeal is frivolous. We therefore deny appellant’s motion to proceed in forma pauperis
10 (Docket Entry No. 6) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).
11 All other pending motions are denied as moot.” [Docket No. 143]

12 On July 9, 2018, the Ninth Circuit Court of Appeals issued “Mandate” saying, “The
13 judgment of this Court, entered May 16, 2018, takes effect this date. This constitutes the
14 formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate
15 Procedure.” [Docket No. 144]

16 **ARGUMENT**

17 Congress enacted the Prison Litigation Reform Act of 1995 (PLRA), 110 Stat. 1321
18 71, as amended, 42 U.S.C. 1997e et seq., in 1996 in the wake of a sharp rise in prisoner
19 litigation in the federal court system. The PLRA changed various provisions of the United
20 States Code that address civil rights complaints and in forma pauperis proceedings.
21 However, substantial case law has demonstrated that the PLRA was designed by Congress to
22 make it harder for prisoners, indigents and poor people to have equal access to the federal
23 courts.

24 Despite the Courts attempt to prosecute this case under the PLRA. The Plaintiff
25 submits that the Court itself has violated the PLRA. At the time of filing the Plaintiff clearly
26 and concisely demonstrated "imminent danger of serious physical injury." Under the PLRA
27 the Court is to assess the threats at the time of filing suit or when the prisoner or non-prisoner
28 makes an in forma pauperis application in the district court or on appeal. Any credible

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3 allegation of imminent danger of serious physical injury meets the statutory requirement,
4 however, in this instance the Court has all but dismissed the allegations as incredible or
5 insubstantial. The risk of future injury is sufficient to invoke the imminent danger exception.
6 As evinced in the Plaintiffs initial and subsequent amended complaints, the Plaintiff
7 raised several claims of "imminent danger."

8 The Plaintiffs disclosures demonstrate violations of law, rule, or regulation,
9 gross mismanagement, gross waste of funds, abuse of authority, and substantial and specific
10 dangers to public health or safety. Despite the inherent authority in the federal statues, the
11 Defendants continue to violate the law in order to hide and conceal the fact that the true VA
12 whistleblower is both African American, gay, and a human research subject.

13 When the record is viewed in its entirety, it is clear and convincing that the Defendants
14 in its entirety engaged in acts so deplorable that the acts themselves became a crime.
15 Targeting, testing, experimentation, extrajudicial murder, attempted murder, and aggravated
16 assault; are in essence further violations of the law.

17 Voluntariness refers to the subject's right to freely exercise his/her decision making
18 without being subjected to external pressure such as coercion, manipulation, or undue
19 influence. In this instant action the Defendants failed to obtain the consent of the Plaintiff and
20 rather subjected the Plaintiff to "external pressure such as coercion, manipulation and undue
21 influence" for being a whistleblower.

22 This case embodies the principle that "to perform its high function in the best way
23 **justice must satisfy the appearance of justice**" by establishing an "objective standard
24 designed to promote public confidence in the impartiality of the judicial process." Despite the
25 seriousness and critical internal issues, this judiciary sits en banc, as there exist unusual
26 circumstances where both for the Plaintiff and Judges sake and for the **appearance of justice**
27 and public interest, this Court **should have granted** the Plaintiffs "**Stipulated Protective**
28 **Order.**"

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3 The standard texts on the Federal Rules of Civil Procedure stress the historical
4 background underlying all the rules concerning parties, and also the interrelationship between
5 the various rules.

6 On April 14, 2016, due to the unavailability of a judicial officer, the Deputy Clerk for
7 the Central District Court in California reassigned this case to Magistrate Judge Alka Sagar.
8 See Docket Entry No. 58. However, Magistrate Judge Sagar's exercise of the jurisdiction is
9 only permitted if all parties involved have voluntarily consented. After this case was filed,
10 the Clerk of the Court failed to send the appropriate notice and consent form as provided by
11 the General Order. The consent form was to afford each party an initial opportunity to
12 consent to having a Magistrate Judge assume complete jurisdiction over this case, including
13 trial and entry of judgment. At that time, each party had an obligation whether to consent to
14 or decline Magistrate Judge jurisdiction as soon as possible.

15 The Court has simply denied Mr. Mitchell's pleadings and files without discovery
16 or holding a trial. Given the allegations contained in which the Court must presume to be true
17 and which hopefully should be undisputed, as well as the totality of the facts, it would appear
18 that a reasonable person would conclude that bias exists in this case and, therefore, the Court
19 must recuse itself.

20 Federal courts are courts of limited jurisdiction that may exercise only those powers
21 authorized by the Constitution and statute. Without jurisdiction the court cannot proceed at all
22 in any cause. Jurisdiction is [the] power to declare the law, and when it ceases to exist, the
23 only function remaining to the court is that of announcing the fact and dismissing the cause.
24 In a suit where the United States or one of its agencies is a defendant, a waiver of sovereign
25 immunity is a prerequisite to subject matter jurisdiction.

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27 **The Plaintiffs complaint seeks a determination that the defendants acted ultra**
28 **vires and that the Court acted blindly in accepting orders ultra vires.** Had the Court
performed a judicial review the Defendants would not have been favored. **Sovereign**

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3 **immunity does not bar a suit challenging the actions of a federal officer who has acted in**
4 **excess of his legal authority.**

5 The ultra vires exception to sovereign immunity, as articulated by the Supreme Court
6 in Larson, provides that “where the officer’s powers are limited by statute, his actions beyond
7 those limitations are considered individual and not sovereign actions.” Such actions are “ultra
8 vires his authority and therefore may be made the object of specific relief.” To invoke this
9 exception, a plaintiff must “do more than simply allege that the actions of the officer are
10 illegal or unauthorized.” The complaint must allege facts sufficient to establish that the officer
11 was acting “without any authority whatever,” or without any “colorable basis for the exercise
12 of authority.” Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 101 n.11 (1984).

13 The Magistrate's order's under Rule 60(b) were not final orders, but rather, were
14 interlocutory ones. The Plaintiff argues that the Magistrate’s orders are appealable for two
15 reasons: (1) their orders were not in their power to make i.e., it was ultra vires and (2) the
16 District Court has failed to review the Plaintiff's objections to the Magistrate Judge's orders.
17 The Plaintiff finds that the Magistrate Judge's actions were ultra vires and that the District
18 Court was derelict. Acting fairly in balancing its function the Court must be the first test of
19 good government. **Mistreatment of the Plaintiff by the Court is the consequence of**
20 **misconduct of government.** Otherwise its action is ultra vires and governmental trespass
21 contrary to law.

22 It is well established that the Plaintiff has pleaded consistent facts demonstrating
23 irreparable harm.

24 Accordingly, the Plaintiff, concludes that, in the best interest, and appearance, of fair
25 and impartial administration of justice, this Court should re-instate the Plaintiffs complaint
26 and issue a "Stipulated Protection Order" and GRANT the order to protect the Plaintiff from
27 the Defendants conspiracy to commit murder simply to hide and conceal non-consensual
28 research and because Mr. Mitchell is a black and gay whistleblower.

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3 **CAUSES OF ACTION**

4 **COUNT I**

5 (For Violation of the APA)

6 The Plaintiff repeats and realleges paragraphs 1 - 120.

7 The Defendants actions against the Plaintiff are arbitrary, capricious, and abuses of
8 discretion and power, in excess of statutory authority and short of statutory right, and contrary
9 to law and constitutional right, in violation of 5 U.S.C. 706.

10 **COUNT II**

11 (For Ultra Vires Agency Action)

12 The Plaintiff repeats and realleges paragraphs 1 - 120.

13 This Court has jurisdiction to adjudicate the Plaintiffs nonstatutory ultra vires and
14 constitutional claims. Thus, the Defendants ultra vires actions are ripe for judicial review now
15 regardless of the reviewability of Plaintiffs APA claims.

16 The Courts actions against the Plaintiff exceed the power given to it in Section 5 and
17 are thus ultra vires.

18 Judicial review of this claim is available because the Defendant’s ultra vires actions
19 exceed the authority conferred on it by Congress and the United States Constitution.

20 **COUNT III**

21 (For Fair Notice Due Process Violations)

22 The Plaintiff repeats and realleges paragraphs 1 - 120.

23 This Court has jurisdiction over the Plaintiffs fair-notice due process claim now.

24 The Fifth Amendment to the United States Constitution states that “[n]o person shall
25 be . . . deprived of life, liberty, or property, without due process of law.” U.S. Const. amend.
26 V.
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28 **COUNT IV**

(Facial, Structural Due Process Violations)

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The Plaintiff repeats and realleges paragraphs 1 - 120.

The substantial private interests affected by the Defendants actions, the high risk of erroneous deprivation of the Plaintiffs property interests, and the high value of additional procedural safeguards outweigh the Courts de minimis interest in the existing procedures. Therefore, the Plaintiff has not been provided the procedural safeguards that he is constitutionally entitled to have.

Due process minimally requires a fair trial in a fair tribunal and “this applies to administrative agencies which adjudicate as well as to courts.

The Defendants intentional violations of the Plaintiffs due process rights has caused the Plaintiff in actual damages, harmed his reputation, caused him to lose good will and business opportunities, and brought him to the brink of ruin.

COUNT V

(For Retaliation Against Plaintiff for Protected First Amendment Speech)

The Plaintiff repeats and realleges paragraphs 1 - 120.

The First Amendment to the United States Constitution guarantees the Plaintiff freedom of speech.

Mr. Mitchell’s agency administrative complaints, court complaints, subsequent blog/webpage, and his speeches and statements about the Defendants actions are political speech and speech about matters of public concern and thus protected by the First Amendment.

On information and belief, the Defendants actions against the Plaintiff were retaliation for protected speech by Mr. Mitchell.

On information and belief, the Defendants conduct herein was precisely intended and designed, at least in part, to punish the Plaintiff and chill government criticism by the Plaintiff targeted by the government.

PRAYER FOR RELIEF

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WHEREFORE, Plaintiff respectfully request that this Court enter a judgment for Plaintiff and award the following relief:

- a. That the Court enter a declaratory judgment that (1) the Defendants acted ultra vires;
- b. That the Defendants violated the Plaintiffs due process rights by failing to provide constitutionally;
- c. That the Defendants violated the Plaintiffs due process rights by unconstitutionally combining legislative, prosecutorial, investigative, and adjudicatory functions;
- d. That the Court award the Plaintiff his fees and litigation costs; under such applicable law;
- e. Injunctive relief in the form of reinstatement of the Plaintiffs complaint;
- f. Such other and further relief as this Court deems just and proper.

Respectfully submitted this 15th day of May 2020.

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