

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

JOHN HUTCHENS,

Plaintiff,

No. CIV S-10-232 FCD KJM PS

vs.

UNITED STATES OF AMERICA,

ORDER AND

Defendant.

FINDINGS AND RECOMMENDATIONS

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In this action, plaintiff is proceeding in propria persona. Plaintiff, who requests leave to proceed in forma pauperis, has filed a document that appears to be an attempt to file a motion to intervene in a pending case, United States of America v. Iron Mountain Mines, Inc., (E. D. Cal), Case No. 2:91-CV-0768 JAM JFM. In that case, Judge Mendez issued an order forbidding John Hutchens from filing any more documents in the case unless he was represented by an attorney. See Docket no. 1275, filed January 5, 2009. In the present action, there appears to be no independent basis for federal jurisdiction with respect to plaintiff's claims. The clear gravamen of plaintiff's complaint is intervention in the Iron Mountain Mines action. It appears plaintiff opened a new civil action simply to avoid the prohibition of Judge Mendez's order.

Accordingly, IT IS HEREBY ORDERED that plaintiff's request to proceed in forma pauperis is denied.

1 IT IS RECOMMENDED that this action be dismissed and the case closed.

2 These findings and recommendations are submitted to the United States District
3 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
4 fourteen days after being served with these findings and recommendations, any party may file
5 written objections with the court and serve a copy on all parties. Such a document should be
6 captioned "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the
7 objections shall be served and filed within seven days after service of the objections. The parties
8 are advised that failure to file objections within the specified time may waive the right to appeal
9 the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

10 DATED: February 12, 2010.

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U.S. MAGISTRATE JUDGE