

HONORABLE RONALD B. LEIGHTON

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UNITED STATES
WESTERN DISTRICT OF

CHRISTIAN DOSCHER,

Plaintiff,

v.

, in her individual capacity; and
COUNTY,

Defendants.

DEFENDANTS' REPLY IN SUPPORT OF
SUMMARY JUDGMENT AND
MOTION TO STRIKE

Note for Docket: April 19, 2013

I. REPLY IN SUPPORT OF SUMMARY JUDGMENT

The issue Plaintiff Christian Doscher raises in this case is simply whether the County Superior Court Clerk or County are liable to him for incorrect notations on a document he filed in his criminal case. He confirms the basis of his complaint: "I accuse [Ms] and County of adding the phrases 'microfilmed 1995,' 'corrected copy, felony non-deferred,' and 'date of conviction 1995' to the WSP version of the Order that was at issue in the 2009 County lawsuit, and then electronically filing it as part of my 1990 criminal case in TSCS's publicly accessible database." Dkt. 22-1 at 4:20-25; *see also* Dkt. 22 at 4:14-16 (the phrases "microfilmed 1995," "corrected copy, felony non-deferred," and "date of conviction :1995" are at issue in this case). The document at issue is filed in the court record at Dkt. 21-1 at 6.

Mr. Doscher's response to Defendants's motion for summary judgment fails to overcome the lack of any violation of a clearly established federal right to

1 establish a 42 U.S.C. § 1983 claim. Without any violation of a federal constitutional right or law as
 2 required by 42 U.S.C. § 1983, Plaintiff's claims should be dismissed.

3 **A. The Lack Of Service Of Process On Betty Gould Should Not Be Excused And She**
 4 **Should Be Dismissed From This Matter.**

5 Mr. Doscher acknowledges that _____ was never served the summons and complaint.
 6 He now argues that the lack of service is due to his excusable neglect. The facts do not support his
 7 assertion of excusable neglect. Doscher knew the service requirement and so stated in the Joint Status
 8 Report. Dkt. 12 at 4:6-10. He made no effort to serve Ms. _____, and he did not request service by
 9 the United States marshal.

10 Mr. Doscher claims he was unable to arrange for service even though he was able to effect
 11 personal service on numerous other defendants in law suits he filed during the same time frame. Mr.
 12 Doscher's evidence of serving process on six occasions since June 2012 is attached to the Second
 13 Declaration of _____ Exhibits A-F, attached hereto and incorporated herein by reference.
 14 Clearly Mr. Doscher had access to individuals to perform service on his behalf; he simply did not
 15 bother to serve Ms. _____. Pursuant to Fed. R. Civ. P. 4(m), the complaint against Ms. _____ should
 16 be dismissed.

17 **B. Taking The Facts In The Light Most Favorable To Mr. Doscher, No Federal**
 18 **Claim Is Established.**

19 Mr. Doscher seeks to defeat the Defendants' summary judgment motion by arguing the
 20 Defendants are liable under 42 U.S.C. § 1983 based on the "stigma-plus" test. Dkt. 22 at 9:4-5.
 21 Apparently, he is asserting a Fourteenth Amendment due process claim. Mr. Doscher's claims do not
 22 assert deprivation of a property or liberty interest sufficient to establish a due process violation upon
 23 which section 1983 liability may be premised.

24 Mr. Doscher argues that the document with notations he complains of was filed in the court
 25 record, making the document accessible to the public, which establishes 42 U.S.C. § 1983 liability
 under the "stigma-plus" test of *Humphries v. County of Los Angeles*, 554 F.3d 1170 (9th Cir. 2009).

1 The facts presented do not satisfy the “stigma-plus” test. The words in the notations may be in error,
2 but they are clearly not part of a court order and do not amount to a false felony conviction in 1995,
3 as Mr. Doscher argues.

4 The “stigma-plus” test applies to reputational harm only when a plaintiff suffers stigma from
5 governmental action plus alteration or extinguishment of "a right or status previously recognized by
6 state law." *Id.* at 1185 (citing *Paul v. Davis*, 424 U.S. 693, 711, 96 S. Ct. 1155, 47 L. Ed. 2d 405
7 (1976)). In the *Humphries* case relied upon by Mr. Doscher, Mr. and Mrs. Humphries were listed on
8 a state index of child abusers even though they were innocent of the charges. *Id.* at 1175. The
9 Humphries asserted that they were subjected to a “stigma-plus” due process violation by the stigma
10 of their names on the state child abuser registry, plus the consequences under state statutes of their
11 being placed on that registry. *Id.* at 1185.

12 Here, the stigma Mr. Doscher alleges is the existence of the notations referring to a felony
13 conviction, when he actually plead guilty to gross misdemeanor Possession of Stolen Property.
14 Unlike the *Humphries* case, there is no index, registry, or list identifying Mr. Doscher as a felon.
15 Instead, he claims the notation on a document indicating felony instead of gross misdemeanor
16 amounts to an unconstitutional stigma.

17 The *Humphries* court recognized a stigma when criminal behavior was imputed to an
18 individual where no such behavior was established. *Humphries* at 1186. Here, Doscher plead guilty
19 and was convicted for criminal behavior, but his conviction was for a gross misdemeanor rather than
20 a felony. The difference between a gross misdemeanor conviction and felony conviction can hardly
21 establish the level of stigma found in *Humphries* where innocent persons were determined to have
22 been unconstitutionally stigmatized by listing their names on a registry of sex abusers.

23 To establish the “plus” of the stigma-plus test, a state law right must be “distinctly altered or
24 extinguished.” *Id.* at 1186. For example, in *Humphries*, California state law required agencies to
25 consult the sexual abuser registry in making licensing decisions. *Id.* at 1191. The state laws mandated

1 that certain licenses not be granted without checking the registry, and made the registry available to
2 other agencies, including those performing pre-employment investigations. *Id.* at 1187-1188. The
3 Court stated, “Our decision is limited to those ‘stigma-plus’ situations where both the defamatory
4 statement and the tangible burden on a legal right are statutorily created.” *Id.* at 1189.

5 No such statutorily-created tangible burden exists with regard to Mr. Doscher’s claims. As
6 Mr. Doscher has no right or status recognized by state law that was altered, his claim does not satisfy
7 the “plus” requirement of the stigma-plus test.

8 Mr. Doscher asserts that in 2009 an employment application was rejected by an employer who
9 told him they found record of a felony conviction from 1995 in County Superior Court
10 documents. Dkt. 22-1 at 1:24 to 2:3. Thus, the “plus” Mr. Doscher asserts was the denial of
11 employment by a prospective employer, not by County.

12 Under the stigma-plus test, the “plus” must be a deprivation of liberty or property by the state
13 that directly affects the plaintiff’s rights. *Miller v. Cal. Dep’t of Soc. Servs.*, 355 F.3d 1172, 1178 (9th
14 Cir. 2004) (citing *Cooper v. Dupnik*, 924 F.2d 1520, 1533 (9th Cir. 1991)). The state defendants must
15 not only defame the plaintiff, but must do “something else as well” to establish stigma plus. *WMX*
16 *Techs. v. Miller*, 80 F.3d 1315, 1320 (9th Cir. 1996). “[T]he ‘stigma-plus’ test requires that the
17 defamation be accompanied by an injury directly caused by the Government, rather than an injury
18 caused by the act of some third party.” *Id.*

19 Mr. Doscher states that the prospective employer “found” the erroneous document. Unlike the
20 *Humphries* case, here no act of the Defendants required the information in the court records to be
21 provided to Mr. Doscher’s prospective employers. The third party employer denied Mr. Doscher
22 employment. This kind of third party act precludes a showing of the “plus” to defeat a stigma-plus
23 claim.

24 Neither County nor Ms. committed any act that interfered with Mr. Doscher’s
25 constitutional rights. Instead, Mr. Doscher’s claim amounts to an assertion of reputational harm that

1 does not meet the threshold to establish a due process violation. *Paul v. Davis*, 424 U.S. 693, 711-
2 712, 96 S. Ct. 1155 (1976). Thus, Doscher's allegations are reduced to common law defamation
3 which is not a constitutional liberty interest. *Humphries* at 1190.

4 **C. Doscher Has Not Shown An Official Policy, Practice Or Custom To Support**
5 **Liability Of Thurston County.**

6 Municipalities and other local government units may not be held liable under 42 U.S.C. §
7 1983 for the acts of an agent or employee. *Monell v. Dept. of Soc. Serv. of City of N.Y.*, 436 U.S.
8 658, 663 n. 7, 98 S. Ct. 2018, 2021, 2036, 56 L.Ed.2d 611 (1978). A county will not incur liability
9 absent a showing of official policy, practice or custom. *See Pembaur v. City of Cincinnati*, 475 U.S.
10 469, 478, 106 S. Ct. 1292, 89 L.Ed.2d 452 (1986). Where an allegation stems from an isolated
11 incident of allegedly unconstitutional activity unattributable to established municipal policy, no civil
12 liability will attach to the county. *Oklahoma City v. Tuttle*, 471 U.S. 808, 824-825, 105 S. Ct. 2427,
13 85 L.Ed.2d 791 (1985).

14 Doscher seems to imply that a policy, practice, or custom is established by the his allegation
15 that Ms. stated she "created" the notations referring to a felony. Dkt 22 at 10:2-23. Mr.
16 Doscher fails to discern any official policy, custom, or practice to establish liability on the part of
17 County.

18 **D. The Court Should Decline To Exercise Jurisdiction Over Plaintiff's State Law**
19 **Claims.**

20 This case presents no federal claims which confer subject matter jurisdiction on this Court.
21 Lacking jurisdiction of any federal claim, there is no basis for the exercise of supplemental
22 jurisdiction of any state law claim. Therefore, it is appropriate for this Court to dismiss all of
23 Plaintiff's claims.

24 **E. Facts in Dispute**

25 In the event the Court does not dismiss all claims, Defendants vehemently dispute many of
Mr. Doscher's factual allegations presented in his response to summary judgment. Despite the

1 disagreement, the facts should be considered in the light most favorable to Mr. Doscher for the
 2 purpose of deciding the present summary judgment motion.

3 Christian Doscher's assertion of the "tendency of a public access computer to print a
 4 different version of the document than what appears on the computer screen" is incorrect and based
 5 on either his lack of understanding of the documents or an attempt to mislead the Court. Second
 6 Declaration of Betty at ¶2. His assertion that the computers printed different versions of the
 7 docket is false. *Id.* at ¶2.

8 Mr. Doscher now alleges Ms. personally handed him a copy of the document he calls a
 9 "falsified order" in "late 2012 when [he] went to inquire with her about it at " and states, "she
 10 told me at that time that she added that language to the existing Order after the result of an audit
 11 sparked by the 2009 County lawsuit." Mr. Doscher also asserts that " mentioned that I
 12 was a 'convicted felon' during this conversation." Dkt. 22-1 at 3:14-20. Mr. Doscher is clearly
 13 fabricating the conversation. Ms. denies all these assertions. *Id.* at ¶4. Ms. did not
 14 discuss the document with Mr. Doscher, never did an audit "sparked by the 2009 County law
 15 suit," and never stated Mr. Doscher is a convicted felon. *Id.* at ¶4. In fact, the only interaction Ms.
 16 has had with Mr. Doscher was in 2011 when he accompanied the person who served Mr.
 17 Doscher's state court law suit on Ms. *Id.* at ¶4.

18 Mr. Doscher's assertion that Ms. told him that she added the language "date of
 19 conviction 1995" and "felony non-deferred" is false and clearly self-serving in an attempt to defeat
 20 summary judgment. *Id.* at ¶4. Nevertheless, even if the Court takes Mr. Doscher's statements at face
 21 value for the purpose of this summary judgment motion, the accusation that Ms. personally
 22 added the notations to the document does not give the added words the force of a court order and the
 23 allegation is insufficient to establish Ms.'s liability to Mr. Doscher. Further, if Ms. had
 24 stated Mr. Doscher is a convicted felon, such a statement is insufficient to establish a section 1983
 25 cause of action.

E. Estoppel Does Not Apply To Issues Of Law

Doscher argues that the Ms. [redacted] should be estopped from denying liability because her liability was admitted on the County’s web site. Mr. Doscher’s argument fails because the doctrine of equitable estoppel is inapplicable where the representations he claims to have relied upon were representations as to questions of law, not questions of fact. *Chemical Bank v. [redacted] Pub. Power Supply Sys.*, 102 [redacted] d 524 (1984). Both parties can determine the law and have knowledge of the underlying facts, so estoppel cannot lie. *Id.* The issue of whether the court clerk is liable for the acts Doscher complains of is clearly a question of law. Therefore, the doctrine of equitable estoppel does not apply.

F. Defendants Responses to Plaintiff’s Discovery Requests

Mr. Doscher presents a confusing argument about Defendants’ responses to his discovery requests. He seeks to bar the use of the Superior Court documents filed in Doscher’s criminal case to support this summary judgment motion, stating the documents must no longer exist. *See* Dkt. 22 at 2:2 to 3:3. He argues that because the County answered his discovery request for copies of all documents disseminated to the [redacted] State Patrol stating that such documents no longer exist, the court records of Mr. Doscher’s conviction in case No. 88-1-00706-7, must not exist. This argument appears to be irrelevant to the issues raised on summary judgment, however, in an abundance of caution, Defendants have supplemented discovery to provide clarification that, although documents showing what was disseminated to the [redacted] o longer exist, the Superior Court records do exist and were previously produced to Mr. Doscher. 2nd Declaration of [redacted] at ¶5, Ex. G.

II. MOTION TO STRIKE

Mr. Doscher makes numerous objectionable statements, including hearsay, misleading statements, and irrelevant, prejudicial and hearsay evidence in his affidavit in response to Defendants’ summary judgment motion. Defendants request, pursuant to Local Rule 7(g), that the

1 evidence presented by Plaintiff in his Affidavit (Dkt. 22-1) be stricken as follows, along with all
 2 corresponding statements in Plaintiff's response memorandum (Dkt 22):

3 Dkt 22-1 at 1:11-13, the statement that the document was an order entered by
 4 County Superior Court in 1990 should be stricken, as Plaintiff lacks personal knowledge to make this
 5 statement, presents opinion by a lay witness, and it is irrelevant and not supported by the evidence.
 6 Fed. R. Evid. 402, 403, 602 and 702.

7 Dkt 22-1 at 1:25 to 2:1, the statement "stating that they had found ir County
 8 Superior Court records a felony conviction from 1995" should be stricken as hearsay under Fed. R.
 9 Evid. 802.

10 Dkt. 22-1 at 2, ¶6 is irrelevant, misleading and is hearsay and should be stricken under Fed. R.
 11 Evid. 402, 403 and 802.

12 Dkt. 22-1 at 2, ¶8 is irrelevant, misleading, prejudicial and presents an opinion by lay witness
 13 and should be stricken under Fed. R. Evid. 402, 403, and 701

14 Dkt 22-1 at 3, ¶10 is prejudicial and should be stricken under Fed. R. Evid. 403.

15 Dkt. 22-1 at 3, ¶11 is prejudicial, misleading and should be stricken under Fed. R. Evid. 403.

16 Dkt. 22-1 at 4:12-14, statement, "I did not check for further falsified versions of this Order
 17 every day of 2009, so I do not know when exactly County created the latest
 18 falsified form containing the above described phrases" is prejudicial, speculation, misleading and
 19 should be stricken under Fed. R. Evid. 402 and 403.

20 Dkt. 22-1 at 4:16-19, statement " in 2012 at personally handed me said Order" is
 21 prejudicial and misleading and should be stricken under Fed. R. Evid. 403.

22 Dkt. 22-1 at 5, ¶14 is prejudicial, misleading, presents legal conclusions and opinion by a lay
 23 witness and should be stricken under Fed. R. Evid. 403 and 701.

24 Dkt. 22-1 at 5, ¶15 is prejudicial, misleading and should be stricken under Fed. R. Evid. 403.
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1 Dkt. 22-1 at 5:18 to 11:5, ¶16 is irrelevant, prejudicial, misleading, contains facts unsupported
 2 by the evidence, and contains hearsay and should be stricken under Fed. R. Evid. 402, 403 and 802.

3 Dkt. 22-1 at 11:6 to 12:9, ¶17 is irrelevant, prejudicial, and hearsay and should be stricken
 4 under Fed. R. Evid. 402, 403 and 802.

5 Dkt. 22-1 at 12, ¶18 is prejudicial and should be stricken under Fed. R. Evid. 403.

6 Dkt. 22-1 at 12:18-20, strike statement “Defendants admitted destroying the original paper
 7 Order but refused to answer Doscher’s request for what date such destruction occurred.” The
 8 statement is prejudicial, misleading, contains facts unsupported by the evidence, and should be
 9 stricken under Fed. R. Evid. 403.

10 Dkt. 22-2 at 4, Exhibit C is irrelevant and is hearsay and should be stricken under Fed. R.
 11 Evid. 402 and 802.

12 Dkt. 22-2 at 5, Exhibit D is irrelevant and is hearsay and should be stricken under Fed. R.
 13 Evid. 402 and 802.

14 Dkt. 22-2 at 7, Exhibit F is irrelevant and is hearsay and should be stricken under Fed. R.
 15 Evid. 402 and 802.

16 Dkt. 22-2 at 8, Exhibit G is irrelevant and is hearsay and should be stricken under Fed. R.
 17 Evid. 402 and 802.

18 Dkt. 22-2 at 9, Exhibit H is irrelevant and is hearsay and should be stricken under Fed. R.
 19 Evid. 402 and 802.

20 Dkt. 22-2 at 10, Exhibit I is hearsay and should be stricken under Fed. R. Evid. 802.

21 Dkt. 22-2 at 11, Exhibit J is irrelevant and should be stricken under Fed. R. Evid. 402.

22 Dkt. 22-2 at 13, Exhibit L is irrelevant and should be stricken under Fed. R. Evid. 402.

23 **III. CONCLUSION**

24 I should be dismissed from this matter because she was never served the summons
 25 and complaint. Mr. Doscher is not entitled to relief against either 1 County or

1 under 42 U.S.C. § 1983. Furthermore, Plaintiff's state law claims should be dismissed because the
2 complaint fails to adequately assert these claims and, without any basis for a federal claim, the
3 requirements of 28 U.S.C. § 1367 are not satisfied for the exercise of supplemental jurisdiction.

4 I am entitled to summary judgment as a matter of law.

5 DATED this 19th day of April, 2013.

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7 EY

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10 _____
A #24319
attorney

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15 I hereby certify that on date listed below, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

16 **Plaintiff Pro Se**
Christian Doscher
skeptcdude@hotmail.com

17 I certify (or declare) under penalty of perjury under the laws of the State of Washington and 28 U.S.C. § 1746 that the foregoing is true and correct.
18 Olympia, Washington.

19 Date: 04/19/13

20 Signature: /s/ Linda Olsen

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