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

KEVIN DUNIGAN,

Plaintiff,

No. CIV S-10-2992 JAM KJM P

vs.

UNITED STATES OF AMERICA, et al., FINDINGS AND RECOMMENDATIONS

Defendants.

\_\_\_\_\_ /

Plaintiff, a state prisoner proceeding pro se, has filed a civil rights action pursuant to 42 U.S.C. § 1983, together with a request to proceed in forma pauperis.

A court may deny leave to proceed in forma pauperis if it appears from the face of the proposed complaint that the action is frivolous. Minetti v. Port of Seattle, 152 F.3d 1113 (9th Cir. 1998). In determining whether an action is frivolous, the court may “pierce the veil of the complaint’s factual allegations and dismiss those claims whose factual contentions are clearly baseless.” Neitzke v. Williams, 490 U.S. 319, 327 (1989). Such allegations include those “describing fantastic or delusional scenarios, claims with which federal district judges are all too familiar.” Neitzke, 490 U.S. at 328; see also Denton v. Hernandez, 504 U.S. 25, 33 (1992) (finding of frivolousness appropriate when allegations are irrational or wholly incredible).

1 Plaintiff alleges that several businesses and President Obama are engaging in  
2 “homosexual harassment” through their advertisements and a subliminal messaging system.  
3 These claims are frivolous.

4 Attached to the complaint in this matter is an amended complaint in Civ. No. 10-  
5 2294 GEB KJM P. However the court has dismissed a first amended complaint in that case and  
6 given plaintiff strict guidelines to follow for his second amended complaint. The document filed  
7 in this case, therefore, will be disregarded.

8 IT IS HEREBY RECOMMENDED that this action be dismissed as frivolous.

9 These findings and recommendations are submitted to the United States District  
10 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-  
11 one days after being served with these findings and recommendations, any party may file written  
12 objections with the court and serve a copy on all parties. Such a document should be captioned  
13 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections  
14 shall be served and filed within fourteen days after service of the objections. The parties are  
15 advised that failure to file objections within the specified time may waive the right to appeal the  
16 District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

17 DATED: December 9, 2010.

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20 U.S. MAGISTRATE JUDGE