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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RICHARD L. CAIN,)	NO. CV 11-5390-DMG (E)
)	
Plaintiff,)	
)	
v.)	REPORT AND RECOMMENDATION OF
)	
CITY OF VENTURA, et al.,)	UNITED STATES MAGISTRATE JUDGE
)	
Defendants.)	
)	
)	

This Report and Recommendation is submitted to the Honorable Dolly M. Gee, United States District Judge, pursuant to 28 U.S.C. section 636 and General Order 05-07 of the United States District Court for the Central District of California.

PROCEEDINGS

On June 15, 2011, Plaintiff lodged a proposed civil rights Complaint and a request to proceed in forma pauperis. In the proposed Complaint, Plaintiff alleged, inter alia, that Defendants (in asserted conspiracy with the "Ventura County Federal Schools Credit Union")

1 subjected Plaintiff to: (1) daily surveillance by military jets and
2 helicopters (including a "Black Hawk" helicopter) and by law
3 enforcement vehicles and aircraft; and (2) purported torture by means
4 of bioelectromagnetic devices and microwaves emitted from satellites.
5 On June 29, 2011, the Court (Chief District Judge Audrey B. Collins)
6 issued an Order denying Plaintiff's request to proceed in forma
7 pauperis on the grounds that Plaintiff's claims were legally and/or
8 factually patently frivolous and that the Court lacked jurisdiction.
9 See Cain v. City of Ventura, et al., CV 11-5049-UA(E). On the same
10 date, Plaintiff paid the filing fee and filed the present Complaint.
11 The present Complaint is substantially similar to the previously
12 lodged proposed Complaint. Plaintiff again alleges that Defendants,
13 in conspiracy with each other and the "Ventura County Federal Schools
14 Credit Union" subjected Plaintiff to: (1) surveillance by military and
15 law enforcement jets and helicopters (including a black "stealth type"
16 helicopter); and (2) torture by means of bioelectromagnetic devices
17 directed at Plaintiff.

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19 Typically, claims such as those alleged by Plaintiff have been
20 asserted by indigent plaintiffs, and have suffered swift dismissal as
21 "frivolous" under the federal in forma pauperis statute, 28 U.S.C.
22 section 1915(e)(2)(B)(1) or its predecessor, 28 U.S.C. section
23 1915(d).¹ See e.g., McGinnis v. Freudenthal, 2011 WL 2312094 (10th
24 Cir. June 10, 2011) (upholding dismissal of frivolous complaint

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27 ¹ Section 1915(d) was amended and renumbered by the
28 Prison Litigation Reform Act of 1995 (Pub. L. No. 104-134, 110
Stat. 1321, effective April 26, 1996).

1 alleging plaintiff was subjected to electromagnetic torture); Ezike v.
2 Na. R.R. Passenger Corp., 2009 WL 247838 (7th Cir. Feb. 3, 2009)
3 (remanding for dismissal of complaint alleging that plaintiff was the
4 victim of a conspiracy involving various employers, the teamsters,
5 people of Indian descent, AMTRAK police and armed secret agents);
6 Mendes v. United States, 88 Fed. Cl. 759 (Fed. Cl.), app. dism'd, 375
7 Fed. App'x 4 (Fed. Cir. 2009) (upholding dismissal of frivolous
8 complaint alleging that "zealot, fanatical women" employed by the FBI
9 and CIA used "laser beam technology" against plaintiff); Athans v.
10 Starbucks Coffee Co., 2007 WL 1673883 (D. Ariz. June 11, 2007)
11 (dismissing as frivolous complaint which alleged, inter alia, that
12 Starbucks joined law enforcement agencies and other commercial
13 establishments to administer a chemical to plaintiff to prevent him
14 from stalking); Foggy v. United States Gov't, 2007 WL 1667394 (D.
15 Idaho June 5, 2007) (plaintiff alleged the government used satellite
16 to put "Hollywood voices" in her head to instruct her to molest and
17 kill her son); Hairston v. Cheney, 2004 WL 1368795 (N.D. Ill. June 16,
18 2004) (dismissing as frivolous a complaint alleging that defendants
19 inserted a camera into the plaintiff and conducted cosmic and weight
20 gain experiments on her); Jones v. North Atlantic Treaty Org., 1998 WL
21 136511 (E.D. Pa., Mar. 23, 1998) (two NATO member states allegedly
22 "picked" plaintiff's head, publicly aired his thoughts and mumblings,
23 and caused him to be besieged by older women); McCorkle v. Ameritech,
24 1993 WL 524703 (N.D. Ill. Dec. 13, 1993) (United States Navy and
25 plaintiff's employer allegedly harassed plaintiff by means of
26 hypnosis, placement of electronic receivers into plaintiff's sinuses,
27 head, pelvis and rectum, placement of equipment in plaintiff's home to
28 induce sleep deprivation, and use of shock discipline); Carrasco v.

1 U.S. Gov't Justice Dep't Strike Force, 792 F. Supp. 603 (N.D. Ill.
2 1992) (government allegedly surgically placed monitoring device in
3 plaintiff's brain to record his dreams for law enforcement agencies
4 and made him an experiment for sex therapy); Chambers v. Couturier,
5 1990 WL 121510 (E.D. Pa. Aug. 13, 1990) (physician and CIA allegedly
6 conspired to commit murder by inducing plaintiff to hang himself
7 through a telepathic wave process and adulterated medication);
8 Chambers v. Webster, 1990 WL 81339 (E.D. Pa. June 5, 1990) (officials
9 of CIA, Secret Service, Justice Department, Nuclear Regulatory
10 Commission and state prison system allegedly conspired to harass
11 plaintiff by means of electroshock therapy, telekineses, voice
12 synthesizers, hypnotism, mental telepathy, and cybernetics; CIA
13 allegedly was concerned about plaintiff's knowledge of the deaths of
14 celebrities such as Elvis Presley, Judy Garland, and Greta Garbo);
15 Shibuya v. George Washington Univ., 1987 WL 14638 (D.D.C. Aug. 25,
16 1987) (university employees allegedly monitored plaintiff and exposed
17 her thoughts to the public by use of microwaves and lasers, used
18 drugs, microwaves, lasers or hypnosis to induce artificial noises and
19 smells in plaintiff, and retarded plaintiff's ability to take New York
20 and District of Columbia bar examinations).

21
22 Plaintiff presently is not in forma pauperis, such status
23 previously having been denied to him. However, a federal court lacks
24 subject matter jurisdiction to consider claims that are "so
25 insubstantial, implausible, foreclosed by prior decisions of this
26 Court, or otherwise completely devoid of merit as not to involve a
27 federal controversy." Steel Co. v. Citizens for a Better Environment,
28 523 U.S. 83, 89 (1998) (citations and internal quotations omitted);

1 | Hagans v. Lavine, 415 U.S. 528, 537 (1974) (court lacks subject matter
2 | jurisdiction over claims that are "essentially fictitious," "obviously
3 | frivolous" or "obviously without merit"); Franklin v. Murphy, 745 F.2d
4 | 1221, 1227 n.6 (9th Cir. 1984) (court may dismiss frivolous paid
5 | complaint for lack of subject matter jurisdiction). Plaintiff's
6 | frivolous and fanciful allegations do not confer subject matter
7 | jurisdiction on this Court. See Bivolarevic v. U.S. CIA, 2010 WL
8 | 890147 (N.D. Cal. Mar. 8, 2010) (court lacked jurisdiction over claims
9 | that CIA subjected plaintiff to "voice to skull technology" as a "mind
10 | control weapon"); Norton v. Amador County Detention Facility, 2009 WL
11 | 3824755 (E.D. Cal. Nov. 16, 2009) (claims that inmate was subjected to
12 | "electromagnetic-electrical wave lengths - electrical fluctuations and
13 | constant currents from the Neon lights" frivolous); Strode v. Dep't of
14 | Defense, 2004 WL 1572655 (W.D.N.Y. June 2, 2004) (dismissing paid
15 | complaint which alleged that government agents transmitted
16 | "electomagnetic extremely low frequency radio energy from master
17 | satellites" on their bodies); O'Brien v. United States Dep't of
18 | Justice, 927 F. Supp. 382 (D. Ariz. 1995), aff'd, 76 F.3d 387 (9th
19 | Cir. 1996) (unpublished disposition) (plaintiff alleged that various
20 | defendants including the United States Department of Justice, Ted
21 | Kennedy, Andy Williams, Johnny Mathis, Janet Reno, Neil Diamond, Nancy
22 | Reagan, the Phoenix Suns, Charles Barkley, the Arizona governor, the
23 | Arizona attorney general, and National Basketball Association
24 | Commissioner David Stern had assaulted the plaintiff using electronic
25 | and satellite equipment, contaminated the plaintiff with germs, and
26 | conspired to dictate whom she should marry; court dismissed the action
27 | on the ground that the allegations were "so bizarre and delusional
28 | that they [were] wholly insubstantial" to support subject matter

1 jurisdiction); Doran v. McGinnis, 158 F.R.D. 383 (E.D. Mich. 1994)
2 (dismissing paid complaint as frivolous, where plaintiff alleged
3 prison officials implanted "telepathic mind control device" in his
4 brain to control his mind and bodily functions).

5
6 **RECOMMENDATION**

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8 For the foregoing reasons, IT IS RECOMMENDED that the Court issue
9 an Order: (1) approving and adopting this Report and Recommendation;
10 and (2) dismissing the Complaint without leave to amend and dismissing
11 the action without prejudice for lack of subject matter jurisdiction.

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13 DATED: July 7, 2011.

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15 _____/s/
16 CHARLES F. EICK
17 UNITED STATES MAGISTRATE JUDGE
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1 **NOTICE**

2 Reports and Recommendations are not appealable to the Court of
3 Appeals, but may be subject to the right of any party to file
4 objections as provided in the Local Rules Governing the Duties of
5 Magistrate Judges and review by the District Judge whose initials
6 appear in the docket number. No notice of appeal pursuant to the
7 Federal Rules of Appellate Procedure should be filed until entry of
8 the judgment of the District Court.

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