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

DARYL LEON HANSON,
Plaintiff,

CASE NO. CV F 06-1398 AWI LJO

**FINDINGS AND RECOMMENDATIONS TO
DISMISS ACTION**

vs.

GEORGE W. BUSH,
Defendant.

INTRODUCTION

Plaintiff Daryl Leon Hanson (“plaintiff”) proceeds pro se and in forma pauperis and on October 10, 2006, filed a document which this Court construes as a complaint against George W. Bush. The complaint is generally unintelligible and states that plaintiff “was kidnaped by Mexican Fresno police officers” and “got set up by black people.” The complaint further alleges that “Mr. George Bush used my illegal civil rights case to get into office” and that plaintiff “witnessed George Bush’s illegal campaign.”

DISCUSSION

Standards For Screening

“A trial court may dismiss a claim sua sponte under Fed.R.Civ.P. 12(b)(6). . . . Such dismissal may be made without notice where the claimant cannot possibly win relief.” *Omar v. Sea-Land Service, Inc.*, 813 F.2d 986, 991 (9th Cir. 1987); *see Wong v. Bell*, 642 F.2d 359, 361-362 (9th Cir. 1981). Sua

1 sponte dismissal may be made before process is served on defendants. *Neitzke v. Williams*, 490 U.S.
2 319, 324 (1989) (dismissals under 28 U.S.C. § 1915(d) are often made sua sponte); *Franklin v. Murphy*,
3 745 F.2d 1221, 1226 (9th Cir. 1984) (court may dismiss frivolous in forma pauperis action sua sponte
4 prior to service of process on defendants).

5 When a plaintiff proceeds in forma pauperis, this Court, notwithstanding any filing fee that may
6 have been paid, shall dismiss a case at any time if the Court determines the action is frivolous, malicious,
7 fails to state a claim on which relief may be granted, or seeks monetary relief against an immune
8 defendant. See 28 U.S.C. § 1915(e); 2 Schwarzer, Tashima & Wagstaffe, California Practice Guide:
9 Federal Civil Procedure Before Trial (2006) Attacking the Pleadings, para. 9:226.1, pp. 9-69. A court
10 need not accept as true factual allegations in in forma pauperis complaints and may reject “completely
11 baseless” allegations, including those which are “fanciful,” “fantastic” or “delusional.” *Denton v.*
12 *Hernandez*, 504 U.S. 25, 32, 112 S.Ct. 1728, 1733 (1992).

13 A claim is legally frivolous when it lacks an arguable basis either in law or fact. *Neitzke v.*
14 *Williams*, 490 U.S. 319, 325 (1989); *Franklin v. Murphy*, 745 F.2d 1221, 1227-1228 (9th Cir. 1984). A
15 frivolous claim is based on an inarguable legal conclusion or a fanciful factual allegation. *Neitzke*, 490
16 U.S. at 324. A federal court may dismiss a claim as frivolous where it is based on an indisputably
17 meritless legal theory or where the factual contentions are clearly baseless. *Neitzke*, 490 U.S. at 327.

18 The test for maliciousness is a subjective one and requires the court to “determine the . . . good
19 faith of the applicant.” *Kinney v. Plymouth Rock Squab Co.*, 236 U.S. 43, 46 (1915); see *Wright v.*
20 *Newsome*, 795 F.2d 964, 968, n. 1 (11th Cir. 1986). A lack of good faith is found most commonly in
21 repetitive suits filed by plaintiffs who have used the advantage of cost-free filing to file a multiplicity
22 of suits. A complaint is malicious if it suggests an intent to vex defendants or abuse the judicial process
23 by relitigating claims decided in prior cases. *Crisafi v. Holland*, 655 F.2d 1305, 1309 (D.C. Cir. 1981);
24 *Phillips v. Carey*, 638 F.2d 207, 209 (10th Cir. 1981); *Ballentine v. Crawford*, 563 F.Supp. 627, 628-629
25 (N.D. Ind. 1983); cf. *Glick v. Gutbrod*, 782 F.2d 754, 757 (7th Cir. 1986) (court has inherent power to
26 dismiss case demonstrating “clear pattern of abuse of judicial process”). A lack of good faith or malice
27 also can be inferred from a complaint containing untrue material allegations of fact or false statements
28 made with intent to deceive the court. See *Horsey v. Asher*, 741 F.2d 209, 212 (8th Cir. 1984).

1 A complaint, or portion thereof, may be dismissed for failure to state a claim if it appears beyond
2 doubt that plaintiff can prove no set of facts in support of the claim or claims that would entitle him to
3 relief. *See Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984) (citing *Conley v. Gibson*, 355 U.S. 41,
4 45-46 (1957)); *see also Palmer v. Roosevelt Lake Log Owners Ass'n*, 651 F.2d 1289, 1294 (9th Cir.
5 1981). “[W]hen a federal court reviews the sufficiency of a complaint, before the reception of any
6 evidence either by affidavit or admissions, its task is necessarily a limited one. The issue is not whether
7 a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support
8 claims.” *Scheurer v. Rhodes*, 416 U.S. 232, 94 S.Ct. 1683, 1688 (1974); *Gilligan v. Jamco Development*
9 *Corp.*, 108 F.3d 246, 249 (9th Cir. 1997).

10 The complaint’s face reflects deficiencies to prevent plaintiff from offering evidence to proceed
11 on the indecipherable complaint.

12 **Subject Matter Jurisdiction**

13 Federal courts are courts of limited jurisdiction and lack inherent or general subject matter
14 jurisdiction. Federal courts can adjudicate only those cases in which the United States Constitution and
15 Congress authorize them to adjudicate. *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 114 S.Ct.
16 1673, 1677 (1994); *Finley v. United States*, 490 U.S. 545, 109 S.Ct. 2003, 2008 (1989). Federal courts
17 are presumptively without jurisdiction over civil actions, and the burden to establish the contrary rests
18 upon the party asserting jurisdiction. *Kokkonen*, 511 U.S. at 377; 114 S.Ct. at 1677. Lack of subject
19 matter jurisdiction is never waived and may be raised by the court sua sponte. *Attorneys Trust v.*
20 *Videotape Computer Products, Inc.*, 93 F.3d 593, 594-595 (9th Cir. 1996). “Nothing is to be more
21 jealously guarded by a court than its jurisdiction. Jurisdiction is what its power rests upon. Without
22 jurisdiction it is nothing.” *In re Mooney*, 841 F.2d 1003, 1006 (9th Cir. 1988).

23 F.R.Civ.P. 8 establishes general pleading rules and provides in pertinent part:

24 (a) Claims for Relief. A pleading which sets forth a claim for relief . . . shall
25 contain (1) a short and plain statement of the grounds upon which the court’s jurisdiction
26 depends, unless the court already has jurisdiction and the claim needs no new grounds
27 of jurisdiction to support it, (2) a short plain statement of the claim showing that the
28 pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader
seeks.

...

1 (e) Pleading to be Concise and Direct; Consistency.

2 (1) Each averment of a pleading shall be simple, concise and direct.

3 The complaint alleges neither grounds for nor facts to support this Court's jurisdiction. The
4 complaint reveals no grounds to properly invoke this Court's jurisdiction.

5 **Pleading Deficiencies**

6 A pleading may not simply allege a wrong has been committed and demand relief. The
7 underlying requirement is that a pleading give "fair notice" of the claim being asserted and the "grounds
8 upon which it rests." *Conley v. Gibson*, 355 U.S. 41, 47-48, 78 S.Ct. 99, 103 (1957); *Yamaguchi v.*
9 *United States Department of Air Force*, 109 F.3d 1475, 1481 (9th Cir. 1997). Although a complaint need
10 not outline all elements of a claim, "[i]t must be possible . . . for an inference to be drawn that these
11 elements exist." *Walker v. South Central Bell Telephone Co.*, 904 F.2d 275, 277 (5th Cir. 1990); *Lewis*
12 *v. ACB Business Service, Inc.*, 135 F.3d 389, 405-406 (6th Cir. 1998). Despite the flexible pleading
13 policy of the Federal Rules of Civil Procedure, a complaint must give fair notice and state the elements
14 of the claim plainly and succinctly. *Jones v. Community Redev. Agency*, 733 F.2d 646, 649 (9th Cir.
15 1984). A plaintiff must allege with at least some degree of particularity overt facts which defendant
16 engaged in to support plaintiff's claim. *Jones*, 733 F.2d at 649.

17 The complaint makes fanciful and delusional references to kidnaping, getting set up, using civil
18 rights violations to reach elected office, and witnessing an illegal campaign. The complaint is
19 unintelligible and alleges no specific claims. The complaint fails to provide fair notice and to state facts
20 to support elements of particular claims. The complaint seeks no relief.

21 **RECOMMENDATION AND ORDER**

22 For the reasons discussed above, this Court RECOMMENDS to DISMISS this action without
23 prejudice on grounds that: (1) the complaint fails to establish this Court's subject matter jurisdiction;
24 (2) the complaint fails to state a claim upon which relief may be granted; and (3) a further attempt at
25 amendment is unwarranted based on jurisdictional defects and the complaint's fanciful, delusional and
26 unintelligible statements.

27 These findings and recommendations are submitted to the United States district judge assigned
28 to this action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule 72-304. No later than

1 October 30, 2006, plaintiff may file with the Court written objections to these findings and
2 recommendations otherwise in compliance with this Court's Local Rule 72-304(b). Such a document
3 should be captioned "Objections to Magistrate Judge's Findings and Recommendations." The district
4 court will then review the magistrate judge's ruling, pursuant to 28 U.S.C. § 636(b)(1)(c). Plaintiff is
5 admonished that failure to file objections within the specified time may waive the right to appeal the
6 district court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

7 **Plaintiff is admonished not to attempt to file an amended complaint as plaintiff's recourse**
8 **is to object to these findings and recommendations. Plaintiff is further admonished this Court will**
9 **strike any papers to attempt to file an amended complaint unless this Court specifically grants**
10 **plaintiff permission to file an amended complaint.**

11 IT IS SO ORDERED.

12 **Dated: October 13, 2006**
66h44d

/s/ Lawrence J. O'Neill
UNITED STATES MAGISTRATE JUDGE

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