

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION**

KENNETH ALAN SIERRA,
CDCR #D-00119,

Plaintiff,

vs.

GRANNIS, et al.,

Defendants.

Civil No. 08-0887 RTB (CAB)

ORDER:

**(1) SUA SPONTE DISMISSING
COMPLAINT AS FRIVOLOUS
PURSUANT TO
28 U.S.C. §§ 1915(e)(2) and 1915A(b);
AND**

**(2) DENYING MOTION FOR
EXTENSION OF TIME [Doc. No. 10]
AS MOOT**

I.

PROCEDURAL HISTORY

On June 23, 2008, Plaintiff, an inmate currently incarcerated at the California State Prison located in Corcoran, California and proceeding pro se, filed a civil rights Complaint pursuant to 42 U.S.C. § 1983. Plaintiff did not prepay the \$350 filing fee mandated by 28

1 U.S.C. § 1914(a) to commence a civil action; instead, he filed a Motion to Proceed *In Forma*
2 *Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) [Doc. No. 2]. The Court granted Plaintiff’s
3 Motion to Proceed *IFP* on June 27, 2008 [Doc. No. 4]. Plaintiff filed a “Motion for Extension
4 of Time” on September 15, 2008 [Doc. No. 10].

5 On November 25, 2008, this matter was reassigned to District Judge Roger T. Benitez
6 for all further proceedings [Doc. No. 15].

7 **II.**

8 **SCREENING PURSUANT TO 28 U.S.C. §§ 1915(e)(2) & 1915A(b)**

9 The Prison Litigation Reform Act (“PLRA”) obligates the Court to review complaints
10 filed by all persons proceeding IFP and by those, like Plaintiff, who are “incarcerated or
11 detained in any facility [and] accused of, sentenced for, or adjudicated delinquent for, violations
12 of criminal law or the terms or conditions of parole, probation, pretrial release, or diversionary
13 program,” “as soon as practicable after docketing.” *See* 28 U.S.C. §§ 1915(e)(2) and 1915A(b).
14 Under these provisions, the Court must sua sponte dismiss any IFP or prisoner complaint, or any
15 portion thereof, which is frivolous, malicious, fails to state a claim, or which seeks damages
16 from defendants who are immune. *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A; *Lopez v. Smith*,
17 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (§ 1915(e)(2)); *Resnick v. Hayes*, 213 F.3d
18 443, 446 (9th Cir. 2000) (§ 1915A).

19 Before amendment by the PLRA, the former 28 U.S.C. § 1915(d) permitted sua sponte
20 dismissal of only frivolous and malicious claims. *Lopez*, 203 F.3d at 1126, 1130. An action is
21 frivolous if it lacks an arguable basis in either law or fact. *Neitzke v. Williams*, 490 U.S. 319,
22 324 (1989). However 28 U.S.C. §§ 1915(e)(2) and 1915A now mandate that the court reviewing
23 an IFP or prisoner’s suit make and rule on its own motion to dismiss before effecting service of
24 the Complaint by the U.S. Marshal pursuant to FED.R.CIV.P. 4(c)(3). *Id.* at 1127 (“[S]ection
25 1915(e) not only permits, but requires a district court to dismiss an in forma pauperis complaint
26 that fails to state a claim.”); *see also Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998)
27 (discussing 28 U.S.C. § 1915A).

28 ////

1 “[W]hen determining whether a complaint states a claim, a court must accept as true all
2 allegations of material fact and must construe those facts in the light most favorable to the
3 plaintiff.” *Resnick*, 213 F.3d at 447; *Barren*, 152 F.3d at 1194 (noting that § 1915(e)(2)
4 “parallels the language of Federal Rule of Civil Procedure 12(b)(6)”). In addition, the Court’s
5 duty to liberally construe a pro se’s pleadings, *see Karim-Panahi v. Los Angeles Police Dept.*,
6 839 F.2d 621, 623 (9th Cir. 1988), is “particularly important in civil rights cases.” *Ferdik v.*
7 *Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992).

8 Section 1983 imposes two essential proof requirements upon a claimant: (1) that a person
9 acting under color of state law committed the conduct at issue, and (2) that the conduct deprived
10 the claimant of some right, privilege, or immunity protected by the Constitution or laws of the
11 United States. *See* 42 U.S.C. § 1983; *Parratt v. Taylor*, 451 U.S. 527, 535 (1981), *overruled*
12 *on other grounds by Daniels v. Williams*, 474 U.S. 327, 328 (1986); *Haygood v. Younger*, 769
13 F.2d 1350, 1354 (9th Cir. 1985) (en banc).

14 Here, the allegations in Plaintiff’s Complaint are nearly incomprehensible. Very little
15 of Plaintiff’s Complaint is discernible but he appears to allege that he was known to former
16 President John F. Kennedy, and his brother Robert F. Kennedy, as “Kenny.” (Compl. at 8.)
17 Plaintiff further claims that he is the “source as to the identify of the riflemen on the grassy knoll
18 in Dallas, Texas.” (*Id.*) Plaintiff also appears to be seeking recovery of his World Series ring
19 that he received as a member of the Florida Marlins baseball team. (*Id.* at 3.)

20 In reviewing the Complaint, it is simply impossible to understand the underlying factual
21 allegations that Plaintiff claims give rise to the alleged constitutional violation. A complaint is
22 frivolous “where it lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S.
23 319, 325 (1989). Here, the Court finds Plaintiff’s claims to be frivolous under 1915(e)(2)(B)
24 because they lack even “an arguable basis either in law or in fact,” and appear “fanciful,”
25 “fantastic,” or “delusional.” *Neitzke*, 490 U.S. at 325, 328.

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III.

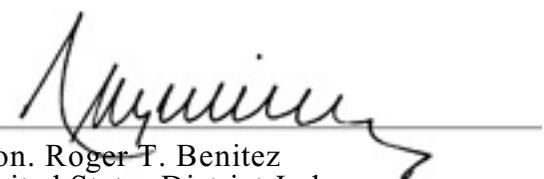
CONCLUSION AND ORDER

Good cause appearing, **IT IS HEREBY ORDERED** that:

Plaintiff's Complaint [Doc. No. 1] is **DISMISSED** without prejudice as frivolous. See 28 U.S.C. §§ 1915(e)(2)(b) & 1915A(b). Moreover, because the Court finds amendment of Plaintiff's § 1983 claims would be futile at this time, leave to amend is **DENIED**. See Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 339 (9th Cir. 1996) (denial of a leave to amend is not an abuse of discretion where further amendment would be futile); see also Robinson v. California Bd. of Prison Terms, 997 F. Supp. 1303, 1308 (C.D. Cal. 1998) ("Since plaintiff has not, and cannot, state a claim containing an arguable basis in law, this action should be dismissed without leave to amend; any amendment would be futile.") (citing Newland v. Dalton, 81 F.3d 904, 907 (9th Cir. 1996)). In addition, Plaintiff's "Motion for Extension of Time" [Doc. No. 10] is **DENIED** as moot.

The Clerk shall close the file.

DATED: January 20, 2009



Hon. Roger T. Benitez
United States District Judge