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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MANUAL ALCALA FARIAS,)	1:09-cv-01267 LJO GSA
)	
Plaintiff,)	ORDER DISMISSING COMPLAINT WITH
)	LEAVE TO AMEND
v.)	
)	
GEICO,)	
)	
Defendant.)	

Plaintiff Manuel Alcala Farias, appearing pro se and proceeding in forma pauperis, filed a complaint on July 21, 2009. Plaintiff names Government Employees Insurance Company or GEICO as Defendant.

DISCUSSION

A. Screening Standard

Pursuant to Title 28 of the United States Code Section 1915(e)(2), the court has reviewed the complaint for sufficiency to state a claim. The court must dismiss a complaint or portion thereof if the court determines that the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). In reviewing a complaint under this standard, the Court must accept as true the allegations of the complaint in question (*Hospital Bldg. Co. v.*

1 *Trustees of Rex Hospital*, 425 U.S. 738, 740 (1976)), construe the pro se pleadings liberally in
2 the light most favorable to the Plaintiff (*Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000)),
3 and resolve all doubts in the Plaintiff's favor (*Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969)).

4 Pursuant to Rule 8(a), a complaint must contain “a short and plain statement of the claim
5 showing that the pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Although the Federal
6 Rules adopt a flexible pleading policy, a complaint must give fair notice and state the elements of
7 the claim plainly and succinctly. *Jones v. Community Redev. Agency*, 733 F.2d 646, 649 (9th
8 Cir. 1984).

9 **B. Plaintiff's Allegations**

10 Plaintiff's complaint is largely incomprehensible. He asserts, in a single page, that he
11 “cannot have a fair agreement with Geico employees” and therefore seeks “fair justice” following
12 a spinal or back injury caused on June 29, 2007. He “petition[s] for lifetime med[i]cine” and
13 “also a strong compensation.”

14 **C. Discussion**

15 Federal courts are courts of limited jurisdiction and lack inherent or general subject
16 matter jurisdiction. Federal courts can adjudicate only those cases authorized by the United
17 States Constitution and Congress. Generally, those cases involve diversity of citizenship or a
18 federal question, or cases in which the United States is a party. *Kokkonen v. Guardian Life Ins.*
19 *Co.*, 511 U.S. 375, 114 S.Ct. 1673, 1677 (1994); *Finley v. United States*, 490 U.S. 545, 109 S.Ct.
20 2003, 2008 (1989). Federal courts are presumptively without jurisdiction over civil actions, and
21 the burden to establish the contrary rests on the party asserting jurisdiction. *Kokkonen*, 511 U.S.
22 at 377. Lack of subject matter jurisdiction is never waived and may be raised by the Court sua
23 sponte. *Attorneys Trust v. Videotape Computer Products, Inc.*, 93 F.3d 593, 594-95 (9th Cir.
24 1996). “Nothing is to be more jealously guarded by a court than its jurisdiction. Jurisdiction is
25 what its power rests upon. Without jurisdiction it is nothing.” *In re Mooney*, 841 F.2d 1003,
26 1006 (9th Cir. 1988).

27 Federal Rules of Civil Procedure, Rule 8, establishes general pleading rules and provides
28 in pertinent part:

1 (a) Claim for Relief. A pleading that states a claim for relief must contain:
2 (1) a short and plain statement of the grounds for the court's jurisdiction, unless
3 the court already has jurisdiction and the claim needs no new jurisdictional
4 support; (2) a short and plain statement of the claim showing that the pleader is
entitled to relief; and (3) a demand for the relief sought, which may include relief
in the alternative or different types of relief.

5 Plaintiff has failed to allege the deprivation of a federal constitutional or statutory right.
6 Plaintiff appears to be making a claim that Defendant has acted wrongfully or improperly, but
7 fails to explain the conduct in any way. Plaintiff's complaint is void of establishing the court's
8 jurisdiction because he has not cited to any statutory or other legal authority in the complaint to
9 establish federal court jurisdiction. In fact, he makes no mention whatsoever of the Constitution
10 or federal law.¹ A reference to "federal court justice" is insufficient. A pleading may not simply
11 allege a wrong has been committed and demand relief. The underlying requirement is that a
12 pleading give "fair notice" of the claim being asserted and the "grounds upon which it rests."
13 *Conley v. Gibson*, 355 U.S. 41, 47-48 (1957); *Yamaguchi v. United States Department of Air*
14 *Force*, 109 F.3d 1475, 1481 (9th Cir. 1997).

15 To the degree Plaintiff believes GEICO is affiliated with the United States Government,
16 and thus may be properly subject to suit in this Court, he appears mistaken. In fact, as an exhibit
17 to his Complaint he has appended a letter of June 15, 2009, from GEICO. At the bottom of the
18 letter appears the following phrase: "Shareholder Owned Companies *Not* Affiliated With The
19 U.S. Government." (Emphasis added.)

20 Title 28 of the United States Code section 1332 defines diversity and provides in relevant
21 part: "(a) The district courts shall have original jurisdiction of all civil actions where the matter in
22 controversy exceeds the sum or value of \$75,000, exclusive of interests and costs, and is between
23 - (1) *citizens of different States . . .*" Here, the Court notes that Plaintiff has indicated that both
24 he and Defendant GEICO are citizens of California. *See* Civil Cover Sheet dated 7/11/2009.

25
26 ¹Despite being asked to check "one box only" in section II - Basis of Jurisdiction - on the
27 Civil Cover Sheet, Plaintiff checked three boxes: the United States Government as Plaintiff *and*
28 Defendant, and Federal Question. In section IV - Nature of Suit - asked again to check "one box
only," Plaintiff checked three boxes: subcategory Contract-Insurance, and subcategories Personal
Injury-Motor Vehicle and Motor Vehicle Product Liability. He also indicated the proceeding was
both original and removed, as well as class action proceeding.

1 Thus, while Plaintiff demands the sum of \$125,000, which exceeds the required amount in
2 controversy, there is no diversity for both parties are citizens of California. Plaintiff shall be
3 given an opportunity to amend his complaint to assert proper diversity of citizenship, if in fact it
4 exists. Plaintiff is directed to Title 28 of the United States Code section 1332(c)(1) concerning
5 citizenship of a corporation.

6 Because Plaintiff has not alleged a deprivation of a constitutional or statutory right, and
7 diversity jurisdiction has not been established, his complaint fails to establish this Court's subject
8 matter jurisdiction. In the absence of subject matter jurisdiction, this Court is unable to proceed
9 on Plaintiff's claims.

10 Additionally, it may be that Plaintiff is not pleased with the proffer of GEICO, on behalf
11 of its insured Jose Tafoya, of \$6,500.00 in settlement of his claims. *See* GEICO letter of 6/15/09.
12 However, Plaintiff's apparent displeasure with the offer to settle does not state a claim. A
13 pleading may not simply allege a wrong has been committed and demand relief. *Conley v.*
14 *Gibson*, 355 U.S. at 47-48; *Yamaguchi v. United States Department of Air Force*, 109 F.3d at
15 1481.

16 Finally, this Court is concerned that Plaintiff has brought this action in absence of good
17 faith. Moreover, Plaintiff recently brought another action in this Court wherein he named
18 Sidney P. Chapin, Kern County Superior Court Judge, as a defendant. *See Farias v. Chapin*,
19 Case No. 1:09-CV-1228-LJO-DLB. Notably however, on the Civil Cover Sheet - in both that
20 matter and the instant matter - Plaintiff referenced the same "related case" in Kern County
21 Superior Court, case number S-1500CV-267172.

22 CONCLUSION

23 For the above reasons, the complaint is DISMISSED WITH LEAVE TO AMEND.
24 Plaintiff's first amended complaint is due within thirty (30) days of the date of service of this
25 order. If Plaintiff fails to file a first amended complaint, the Court will recommend that this
26 action be dismissed for failure to follow a court order.

27
28 Plaintiff is cautioned that an amended complaint supercedes the original complaint

1 (*Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997); *King v. Atiyeh*, 814 F.2d 565,
2 567 (9th Cir. 1987)), and must be “complete in itself without reference to the prior or superceded
3 pleading.” Local Rule 15-220. Plaintiff is warned that “[a]ll causes of action alleged in an
4 original complaint which are not alleged in an amended complaint are waived.” *King*, 814 F.2d
5 at 567, citing to *London v. Coopers & Lybrand*, 644 F.2d 811, 814 (9th Cir. 1981); *accord*
6 *Forsyth*, 114 F.3d at 1474.

7
8 IT IS SO ORDERED.

9 **Dated: August 17, 2009**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE