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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

RICHARD JOSE DUPREE, JR,)	1:11cv0565 OWW DLB
)	
)	
Plaintiff,)	FINDINGS AND RECOMMENDATION
)	REGARDING DISMISSAL OF ACTION
v.)	
)	
JIM SCOTT,)	
)	
)	
Defendant.)	

Plaintiff Richard Jose Dupree, Jr., proceeding pro se and in forma pauperis, filed this civil rights action on February 25, 2011.

DISCUSSION

A. Screening Standard

Pursuant to [28 U.S.C. § 1915\(e\)\(2\)](#), the court must conduct an initial review of 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 on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. [28 U.S.C. § 1915\(e\)\(2\)](#). If the court determines that the complaint fails to state a claim, leave to amend may be granted to the extent that the deficiencies of the complaint can be cured by amendment.

1 In reviewing a complaint under this standard, the Court must accept as true the allegations
2 of the complaint in question, [Hospital Bldg. Co. v. Trustees of Rex Hospital, 425 U.S. 738, 740](#)
3 [\(1976\)](#), construe the pro se pleadings liberally in the light most favorable to the Plaintiff, [Resnick](#)
4 [v. Hayes, 213 F.3d 443, 447 \(9th Cir. 2000\)](#), and resolve all doubts in the Plaintiff's favor,
5 [Jenkins v. McKeithen, 395 U.S. 411, 421 \(1969\)](#).

6 B. Plaintiff's Allegations

7 Plaintiff's complaint is comprised of allegations against network television anchor Jim
8 Scott. Plaintiff alleges that Mr. Scott deceitfully extracted sexual favors from Plaintiff's future
9 wife, a meteorologist at the same television station.

10 C. Analysis

11 Plaintiff's allegations appear to be delusional. Court records indicate that Plaintiff has
12 filed several other actions containing similar allegations. For example, in Case No. 2:11-cv-
13 00533-KJN, Plaintiff filed a habeas corpus action alleging that Mr. Scott deceitfully extracted
14 sexual favors from Plaintiff's future wife. The court also noted that Plaintiff's allegations were
15 delusional. [Dupree v. Scott, 2:10-cv-00533 KJN, Dkt. No. 3 at 2](#).

16 A claim may be dismissed *sua sponte* if the allegations are found to be "fanciful,"
17 "fantastic," or "delusional" or if they rise to the level of the irrational or the wholly incredible.
18 [Denton v. Hernandez, 504 U.S. 25, 33 \(1992\)](#). An example of a factually frivolous claim
19 includes a claim describing fantastic or delusional scenarios. See [Neitzke v. Williams, 490 U.S.](#)
20 [319, 328 \(1989\)](#). Here, Plaintiff's complaint is subject to dismissal because the allegations made
21 "rise to the level of the irrational or the wholly incredible." [Denton, 504 U.S. at 33](#).

22 Further, Plaintiff's claim fails as a matter of law. A civil rights suit brought pursuant to
23 [42 U.S.C. § 1983](#) requires state action and the television news anchor defendant is not a state
24 actor. To succeed on a [§ 1983](#) damages claim, a plaintiff must demonstrate not only the
25 deprivation of a right secured by the Constitution or laws of the United States, but that the
26 defendant acted under color of state law. [West v. Atkins, 487 U.S. 42, 48 \(1988\)](#). A [§ 1983](#)
27 claim can lie against a private party only when "he is a willful participant in joint action with the
28

1 State or its agents.” [Dennis v. Sparks, 449 U.S. 24, 27 \(1980\)](#). Here, the fanciful allegations in
2 Plaintiff’s complaint are insufficient to support a [§ 1983](#) action.

3 **CONCLUSION AND RECOMMENDATION**

4 For the foregoing reasons, IT IS HEREBY RECOMMENDED that this action be
5 DISMISSED without prejudice.

6 These Findings and Recommendations will be submitted to the Honorable Oliver W.
7 Wanger pursuant to the provisions of [Title 28 U.S.C. § 636\(b\)\(1\)](#). Within **thirty (30) days** after
8 being served with these findings and recommendations, Plaintiff may file written objections with
9 the Court. [Fed. R. Civ. P. 72\(b\)](#); Local Rule 304(b). The document should be captioned
10 "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that
11 failure to file objections within the specified time may waive the right to appeal the District
12 Court's order. [Martinez v. Ylst, 951 F.2d 1153 \(9th Cir. 1991\)](#).

13
14 IT IS SO ORDERED.

15 **Dated: April 11, 2011**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE