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

ANTHONY WILEY, SR.,

Case No.: 1:11-cv-00866-LJO-JLT

Plaintiff,

FINDINGS AND RECOMMENDATIONS  
DISMISSING FIRST AMENDED  
COMPLAINT WITH PREJUDICE

vs.

THE STATE OF CALIFORNIA, et al.,

(Doc. 8)

Defendants.

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Plaintiff Anthony Wiley, Sr. (“Plaintiff”) seeks to proceed pro se and in forma pauperis in this action, which he commenced on May 27, 2011. (Doc. 1.) On July 25, 2011, the Court screened Plaintiff’s complaint and found that it did not state cognizable claims. (Doc. 7.) The Court granted Plaintiff leave to file an amended complaint to cure the deficiencies identified in the order. (Id.) On August 15, 2011, Plaintiff filed his First Amended Complaint. (Doc. 8.)

After screening Plaintiff’s First Amended Complaint, the Court finds that despite the explicit recitation of the deficiencies of Plaintiff’s original complaint, Plaintiff has failed to demonstrate any violation of federal law.

**I. SCREENING REQUIREMENT**

When a plaintiff is proceeding in forma pauperis, the Court is required to review the complaint, and shall dismiss the case at any time if the Court determines that the allegation of poverty is untrue, or the action or appeal is “frivolous, malicious or fails to state a claim on

1 which relief may be granted; or ... seeks monetary relief against a defendant who is immune from  
2 such relief.” 28 U.S.C.1915(e)(2). A claim is frivolous “when the facts alleged arise to the level  
3 of the irrational or the wholly incredible, whether or not there are judicially noticeable facts  
4 available to contradict them.” Denton v. Hernandez, 504 U.S. 25, 32–33 (1992).

## 5 **II. Pleading Standards**

6 General rules for pleading complaints are governed by the Federal Rules of Civil  
7 Procedure. A pleading stating a claim for relief must include a statement affirming the court's  
8 jurisdiction, “a short and plain statement of the claim showing the pleader is entitled to relief;  
9 and . . . a demand for the relief sought, which may include relief in the alternative or different  
10 types of relief.” Fed.R.Civ.P. 8(a). The Federal Rules adopt a flexible pleading policy, and pro  
11 se pleadings are held to “less stringent standards” than pleadings drafted by attorneys. Haines v.  
12 Kerner, 404 U.S. 519, 521–21 (1972). However, a complaint must give fair notice and state the  
13 elements of the plaintiff's claim in a plain and succinct manner. Jones v. Cmty Redevelopment  
14 Agency, 733 F.2d 646, 649 (9th Cir.1984).

15 “[T]he pleading standard Rule 8 announces does not require ‘detailed factual allegations,’  
16 but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.”  
17 Ashcroft v. Iqbal, 556 U.S. 662, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009) (quoting Bell Atl.  
18 Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). “[A] complaint  
19 must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible  
20 on its face.’” Id. (quoting Twombly, 550 U.S. at 557). “[A] complaint [that] pleads facts that  
21 are ‘merely consistent with’ a defendant's liability . . . ‘stops short of the line between possibility  
22 and plausibility of entitlement to relief.’” Id. (quoting Twombly, 550 U.S. at 557). Further,  
23 although a court must accept as true all factual allegations contained in a complaint, a court need  
24 not accept a plaintiff's legal conclusions as true. Id. “Threadbare recitals of the elements of a  
25 cause of action, supported by mere conclusory statements, do not suffice.” Id. (quoting  
26 Twombly, 550 U.S. at 555). A claim is legally frivolous when it lacks an arguable basis either in  
27 law or in fact. Neitzke v. Williams, 490 U.S. 319, 325, (1989); Franklin v. Murphy, 745 F.2d  
28 1221, 1227–28 (9th Cir. 1984). Accordingly, the court may dismiss a claim as frivolous where it

1 is based on an indisputably meritless legal theory. Neitzke, 490 U.S. at 327.

### 2 **III. DISCUSSION AND ANALYSIS**

3 At the outset, we note that Plaintiff's twenty-seven page complaint resembles his previous  
4 complaint insofar as the averments contained in paragraphs are repetitive, conclusory, and are at  
5 best difficult to follow. As a result, it is difficult to discern any coherent set of facts that support  
6 Plaintiff's claims. As far as can be discerned, Plaintiff alleges as follows. Plaintiff states that he  
7 is a disabled American citizen who previously manufactured "young adolescent wagons and  
8 carts" in order to support himself. (Doc. 8 at 4.) Plaintiff states he lost his business which  
9 appears to be the result of several seemingly independent events occurring in 2011. (Id. at 9.)  
10 Plaintiff's descriptions of these events include but are not limited to allegations that:

11 (1) Plaintiff was unlawfully arrested and falsely imprisoned by the Kern County  
12 Sheriff's Department, (Id. at 4, 14.);

13 (2) Plaintiff was improperly named in a civil suit brought by Defendant Producers  
14 Dairy Foods, Inc., (hereinafter "Producers") which was later dismissed on May  
15 31, 2011, (Id. at 4, 8.);

16 (3) Judges for the Kern County Superior Court acted improperly in that they  
17 allowed defendants to conspire and build a fraudulent complaint against Plaintiff  
18 and improperly allowed both criminal and civil actions to precede against  
19 Plaintiff, (Id. at 5, 6, 8, 12, 15.);

20 (4) A clerk employed by the Superior Court of Kern County denied him the right  
21 to file a motion alleging various errors in a civil proceeding and to file a request  
22 for default, (Id. at 5, 11 );

23 (5) Following Plaintiff's arrest for alleged criminal conduct, Defendant Barnett's  
24 Towing (hereinafter "Barnetts"), unlawfully acquired Plaintiff's vehicle and  
25 improperly assessed charges against Plaintiff, (Id. at 5,6.);

26 (6) Criminal prosecutors unlawfully fabricated charges against Plaintiff, (Id. at 7,  
27 11-12, 16, 22.);

28 (7) During Plaintiff's criminal proceedings, sheriff's deputies made various  
threats including a threat that they would deny Plaintiff a "hot meal" and medical  
treatment if Plaintiff elected to address the court, (Id. at 9-10.); and

(8) Alberto Ortega, an individual affiliated with Defendant Sierra Iron and Metal,  
slandered Plaintiff by informing sheriff's officers that Plaintiff had frequently  
driven his vehicle onto Sierra Iron and Metal's business property with a "cloud of  
marijuana smoke" exiting his vehicle and that Plaintiff did not "like cops". (Id. at  
9, 13, 21.)

Based on these and other similar factual allegations, Plaintiff raised causes of action

1 against Defendants Producers, Sierra Iron and Metal, Sierra Recycling and Demolition, Barnetts,  
2 the State of California, the Kern County Sheriff’s Department, Kern County Superior Court  
3 Judges, the Clerk of the Kern County Superior court, the District Attorney’s Office, and the  
4 Public Defender’s office. Plaintiff’s brings federal causes of actions for violation of RICO and  
5 for violating the federal “hate crime” statute and additionally raises the following state law  
6 claims: (1) witness tampering; (2) illegal court procedures; (3) false imprisonment; (4) unfair  
7 business practices; (5) judicial corruption; (6) slander; and (7) extortion and bond fraud.<sup>1</sup>

8 **A. Liability of the State of California**

9 As the Court’s July 25, 2011 order screening Plaintiff’s initial complaint noted, Plaintiff  
10 is unable to raise cognizable claims against State of California, or its officers in their official  
11 capacities due to the Eleventh Amendment immunity provision. (Doc. 7 at 5). The immunity  
12 provided by the Eleventh Amendment applies to officials of a state because “an official-capacity  
13 suit is, in all respects other than name, to be treated as a suit against the entity. [citation].” Id.  
14 Plaintiff has failed to address this previously identified deficiency in his amended complaint.  
15 Thus to the extent that Plaintiff intends to sue the State of California, Plaintiff’s amended  
16 complaint fails to raise cognizable claims against the state. Accordingly, the Court recommends  
17 that all claims as to the State of California be **DISMISSED** with prejudice.

18 **B. Violation of RICO**

19 The Racketeer Influenced and Corrupt Organizations Act ("RICO") allows a private  
20 citizen to recover damages for conduct of an enterprise through a patter of racketeering activity  
21 or the collection of an unlawful debt. 18 U.S.C. § 1960, et seq. The elements of a civil RICO

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23 <sup>1</sup>For those claims sounding in state law, Plaintiff inexplicably provides citations to such federal statutes as  
24 18 U.S.C. § 1960, which prohibits unlicensed money transmitting businesses or 18 U.S.C. § 249, the federal statute  
25 which criminalizes conduct causing “bodily injury” through the use of a dangerous weapon such as a firearm or an  
26 explosive device. Additionally, even construing Plaintiff citation to “18 U.S.C. § 1960 et seq.” as an erroneous  
27 citation to the RICO statutes, Plaintiff’s cites to federal statutes which are unrelated to the facts of his state law  
28 claims which include such common law torts as slander and fraud. To the extent the federal citations represent  
efforts to raise questions of federal law, the effort is unsuccessful. “Merely referring to a federal statute, . . . does  
not establish federal jurisdiction if the dispute does not involve “a substantial question of federal law.”” Am. Fed. of  
Television and Radio Artists, AFL-CIO, 164 F.3d 1004, 1007 (6th Cir. 1999); see also Williston Basin Interstate  
Pipeline Co. v. An Exclusive Gas Storage Leasehold and Easement 524 F.3d 1090, 1094 (9th Cir. 2008) (stating that  
a suit may be dismissed for “want of federal jurisdiction where the alleged claim under the Constitution or federal  
statutes clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction . . .”).

1 claim are “(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity  
2 (known as ‘predicate acts’) (5) causing injury to plaintiff’s business or property.” Living Designs,  
3 Inc. v. E.I. DuPont de Nemours Co., 431 F.3d 353, 361 (9th Cir. 2005); Sedima, S.P.R.L. v.  
4 Imrex Co., 473 U.S. 479, 496 (1985). The RICO statute enumerates specific acts which satisfy  
5 the “racketeering activity” element, such as “an act or threat involving murder, kidnapping,  
6 gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled  
7 substance or listed chemical . . .” 18 U.S.C. § 1961(1). A element common element to all of the  
8 actions included under RICO a requirement that the conduct by its nature constitute a criminal  
9 act, ie. that it be punishable as a crime. Id. In addition, to establish a pattern, Plaintiff must  
10 “show that the racketeering predicates are related [to each other] and that they amount to or pose  
11 a threat of continued criminal activity.” H.J. Inc. v. Northwestern Bell Telephone Co., 492 U.S.  
12 229, 239 (1989).

13 Here, similar to his original complaint, Plaintiff’s RICO allegations remain confusing  
14 because it remains unclear, even after amendment, what predicate acts Plaintiff alleges occurred.  
15 As noted above, Plaintiff’s list of multiple acts which he claims constitute a pattern of  
16 “racketeering activity” include a false arrest and imprisonment, the filing of a civil lawsuit  
17 against Plaintiff, various alleged improper court proceedings, Defendant Barnett’s improper  
18 storage of his personal property (including his vehicle) following his arrest, and misconduct  
19 charged against prosecutors, public defenders and sheriff officers, during various aspects of  
20 Plaintiff’s prior criminal and civil proceedings. None of Plaintiff’s proffered list of events appear  
21 to amount to criminal conduct, much less establish the requisite pattern of racketeering activity to  
22 establish a RICO violation. Sanford v. MemberWorks, Inc., 625 F.3d 550, 557 (9th Cir. 2010) (a  
23 plaintiff must show two or more criminal acts constituting a pattern). Further, Plaintiff  
24 allegations that as a result of this varied activity he suffered losses not less than \$2,500,000,000,  
25 (over two billion dollars<sup>2</sup> (Doc. 8 at 9.)), are not only implausible but are also conclusory in that  
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27 <sup>2</sup>Plaintiff amended complaint states that his suffered losses not less than “\$25,000,000,00” for the RICO  
28 claim. (Doc. 8 at 9.) To the extent that Plaintiff misrepresented this figure and that he intended to claim either 25  
million or 2.5 million, Plaintiff’s claim still appears implausible.

1 the allegations is insufficient to describe a “concrete proof of financial loss” to establish a  
2 violation. Chaset v. Fleer/Skybox Int'l, 300 F.3d 1083, 1087 (9th Cir. 2002). Accordingly,  
3 Plaintiff has failed to state a cognizable claim for a violation of RICO, and this claim against  
4 Defendants should be **DISMISSED** with prejudice.

5 **C. Plaintiff’s Hate Crime Allegations**

6 Plaintiff’s fourth cause of action attempts to state a civil cause of action against  
7 Defendants Kern County Sheriff’s Department, Sierra Iron and Metal, Sierra Recycling and  
8 Demolition, and Producers for there commitment of a “Hate Crime” against Plaintiff, a  
9 individual suffering from disability. More specifically, Plaintiff alleges that as a result of Alberto  
10 Ortega’s<sup>3</sup> slanderous statements, sheriff officers—using racial profiling—investigated Plaintiff’s  
11 activities and eventually arrested him which caused him to suffer billions of dollars in losses.  
12 Plaintiff’s allegations fail to state a cognizable civil claim for at least two reasons.

13 First, none of Plaintiff’s factual allegations are remotely related to the criminal conduct  
14 prohibited under the act which includes causing “bodily injury” through the use of a “firearm, a  
15 dangerous weapon, or explosive device or incendiary device.” 18 U.S.C. § 249(a). Second,  
16 though the Ninth Circuit has not specifically addressed whether there is a private right of action  
17 under the Hate Crimes Act, district courts both within the Ninth Circuit and those in other  
18 circuits have found that the Hate Crimes Act, as a criminal statute, does not give rise to a private  
19 right of action. Perry v. Garcia, No. CIV 09-622 LAB RBB, 2010 WL 3633042, at \*12 (S.D.Cal.  
20 July 16, 2010) (stating that “murder and a violent hate crime are criminal charges, not properly  
21 part of a civil action.”); Lorenz v. Managing Director, St. Luke's Hosp., No. CIV 8898 DAB  
22 JCF, 2010 WL 4922267 (S.D.N.Y. Nov. 5, 2010); Lee v. Lewis, No. CIV 2:10-55-F DWD, 2010  
23 WL 5125327 (E.D.N.C. Oct. 28, 2010). In the Court’s view, the analysis provided by these  
24 courts is correct.

25 To determine whether a statute provides a private right of action, the Court must decide  
26 whether Congress intended to create both a personal right and a private remedy. In re Digimarc

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27  
28 <sup>3</sup>Plaintiff also alleges that Alberto Ortega is affiliated with Sierra Iron and Metal. (Doc. 8 at 13.)

1 Corp. Derivative Litigation, 549 F.3d 1223, 1231 (9th Cir. 2008). Here, the federal act, clearly  
2 does not confer rights on a specific class of persons, but rather criminalizes certain offenses  
3 based on, among other traits, a person's national origin, gender, or sexual orientation and  
4 provides for criminal enforcement and penalties including imprisonment. 18 U.S.C. § 249(a).  
5 Because the Court finds neither personal rights nor private remedies in the statutory text, the  
6 Court concludes that there is no private right of action under 18 U.S.C. § 249.

7 For these reasons, Plaintiff's fourth cause of action fails to state a cognizable claim and  
8 should be **DISMISSED** with prejudice.

9 **D. Plaintiff's remaining state law claims**

10 As discussed above, Plaintiff has failed to present cognizable federal claims, and the  
11 amended complaint's sole remaining claims arise under state law. However, because the Federal  
12 Court is a court of limited jurisdiction, the complaint must be dismissed. Federal courts are  
13 courts of limited jurisdiction. Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377,  
14 (1994). Generally, federal jurisdiction may be invoked if a civil action arises under the  
15 Constitution, laws, or treaties of the United States, see 28 U.S.C. § 1331, or if there is complete  
16 diversity between the parties and the amount in controversy exceeds \$75,000. See 28 U.S.C. §  
17 1332. It is presumed that a cause lies outside this limited scope, and the burden of establishing  
18 the contrary rests upon the party asserting federal jurisdiction. Kokkonen, 511 U.S. at 377;  
19 Vacek v. United States Postal Serv., 447 F.3d 1248, 1250 (9th Cir. 2006). Because Plaintiff's  
20 remaining state law claims satisfy neither "federal question" nor "diversity" jurisdiction, the  
21 action must be dismissed for lack of jurisdiction.

22 **E. No leave to amend**

23 The Court will not grant Plaintiff leave to amend because it is apparent that the  
24 deficiencies identified in this order cannot be cured. See Noll v. Carlson, 809 F.2d 1446,  
25 1448–49 (9th Cir.1987) ("A pro se litigant must be given leave to amend his or her complaint  
26 unless it is absolutely clear that the deficiencies of the complaint could not be cured by  
27 amendment.") (internal quotations omitted).

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1 **IV. Findings and Recommendation**

2 In accordance with the above, it is **HEREBY RECOMMENDED** that:

- 3 1. This action be **DISMISSED**; and  
4 2. This case be closed.

5 These findings and recommendations are submitted to the United States District Judge  
6 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B). Within 21 days  
7 after being served with these findings and recommendations, Plaintiff may file written objections  
8 with the Court. If Plaintiff elects to file written objections, he should caption the document as  
9 “Objections to Magistrate Judge's Findings and Recommendations.” Plaintiff is advised that  
10 failure to file objections within the specified time may waive the right to appeal the District  
11 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

12  
13 IT IS SO ORDERED.

14 Dated: November 30, 2011

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE