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

JEREMIAH BALIK,)	Case No.: 1:15-cv-01420 - AWI - JLT
)	
Plaintiff,)	FINDINGS AND RECOMMENDATIONS
)	DISMISSING PLAINTIFF’S COMPLAINT
v.)	WITHOUT LEAVE TO AMEND
)	
HON. KEVIN MCCARTHY,)	
)	
Defendant.)	
)	
)	

Plaintiff Jeremiah Balik initiated this action by filing a complaint against Congressman Kevin McCarthy in Kern County Superior Court on August 12, 2015. (Doc. 1 at-1 at 2) Defendant filed a Notice of Removal from the state court on September 18, 2015 (Doc. 1), thereby initiating the matter in this Court. Because, as discussed below, the Court finds Plaintiff’s claims are fanciful and frivolous, it is recommended that Plaintiff’s complaint be **DISMISSED** without leave to amend.

I. Screening Requirement

Although Plaintiff has not requested to proceed *in forma pauperis* in this Court, the Kern County Superior Court granted him this status on September 3, 2015. (Doc. 1-4 at 2) When a plaintiff proceeds *in forma pauperis*, the Court is required to review the complaint, and shall dismiss the case at any time if the Court determines the action or appeal is “frivolous, malicious or fails to state a claim on which relief may be granted; or . . . seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. 1915(e)(2).

1 A claim is frivolous “when the facts alleged arise to the level of the irrational or the wholly
2 incredible, whether or not there are judicially noticeable facts available to contradict them.” *Denton v.*
3 *Hernandez*, 504 U.S. 25, 32-33 (1992); *see also Neitzke v. Williams*, 490 U.S. 319, 325, 328 (1989)
4 (finding claims may be dismissed as “frivolous” where the allegations are “fanciful” or “describe[e]
5 fantastic or delusional scenarios”).

6 **II. Pleading Requirements**

7 General rules for pleading complaints are governed by the Federal Rules of Civil Procedure. A
8 complaint must include a statement affirming the court’s jurisdiction, “a short and plain statement of
9 the claim showing the pleader is entitled to relief; and . . . a demand for the relief sought, which may
10 include relief in the alternative or different types of relief.” Fed. R. Civ. P. 8(a). The Federal Rules
11 adopt a flexible pleading policy, and *pro se* pleadings are held to “less stringent standards” than those
12 drafted by attorneys. *Haines v. Kerner*, 404 U.S. 519, 521-21 (1972).

13 A complaint must state the elements of the plaintiff’s claim in a plain and succinct manner.
14 *Jones v. Cmty Redevelopment Agency*, 733 F.2d 646, 649 (9th Cir. 1984). The purpose of a complaint
15 is to give the defendant fair notice of the claims against him, and the grounds upon which the
16 complaint stands. *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002). The Supreme Court noted,
17 Rule 8 does not require detailed factual allegations, but it demands more than an
18 unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers
19 labels and conclusions or a formulaic recitation of the elements of a cause of action will
not do. Nor does a complaint suffice if it tenders naked assertions devoid of further
factual enhancement.

20 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks and citations omitted).

21 Conclusory and vague allegations do not support a cause of action. *Ivey v. Board of Regents*, 673 F.2d
22 266, 268 (9th Cir. 1982). The Court clarified further,

23 [A] complaint must contain sufficient factual matter, accepted as true, to “state a claim
24 to relief that is plausible on its face.” [Citation]. A claim has facial plausibility when the
25 plaintiff pleads factual content that allows the court to draw the reasonable inference
26 that the defendant is liable for the misconduct alleged. [Citation]. The plausibility
27 standard is not akin to a “probability requirement,” but it asks for more than a sheer
possibility that a defendant has acted unlawfully. [Citation]. Where a complaint pleads
facts that are “merely consistent with” a defendant’s liability, it “stops short of the line
between possibility and plausibility of ‘entitlement to relief.’

28 *Iqbal*, 556 U.S. at 678 (citations omitted). If factual allegations are well-pled, a court should assume

1 their truth and determine whether the facts would make the plaintiff entitled to relief; conclusions in the
2 pleading are not entitled to the same assumption of truth. *Id.*

3 **III. Plaintiff's Allegations**

4 Plaintiff contends Congressman Upton learned he was “interacting with Super Model Kate
5 Upton” on Twitter and “had a sophisticated way to communicate [with] her on Instagram,” which
6 angered Defendant. (Doc. 1-1 at 9) According to Plaintiff, Upton did not want him dating a
7 supermodel, and so Upton “called in a favor” with Congressman McCarthy and Chocolate Shoppe Ice
8 Cream CEO David Deadman, “and told them not do to do business with [Plaintiff].” (*Id.*) He alleges
9 also that Congressmen Upton and McCarthy called in favors to have “various law enforcement
10 agencies, to have them unlawfully patrol around [Plaintiff]” and for Plaintiff’s phone to be “tampered
11 with by numerous carriers.” (*Id.* at 11, 12)

12 **IV. Discussion and Analysis**

13 Based upon the foregoing factual allegations, Plaintiff asserts Defendant is liable for harassment
14 in violation of California Code of Civil Procedure 527.6, which “defines ‘harassment’ as ‘unlawful
15 violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific
16 person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose.’”
17 *Rockridge Trust v. Wells Fargo, N.A.*, 985 F. Supp.2d 1110, 1155 (N.D. Cal. 2013) (quoting Cal. Civ.
18 P. § 527.6) In addition, the alleged actions “must be such that would cause a reasonable person to
19 suffer substantial emotional distress, and must actually cause substantial emotional distress to the
20 [plaintiff].” (*Id.*)

21 Here, Plaintiff has not alleged any acts of violence, threats of violence, or conduct that
22 “seriously alarms, annoys, or harasses the person” by Congressman McCarthy. Furthermore, the
23 allegations—namely, that Congressman McCarthy has “called in favors” with individuals to law
24 enforcement officers to follow Plaintiff or is responsible for the Chocolate Shoppe Ice Cream CEO
25 deciding to not do business with Plaintiff—are have no factual support. In short, the Court finds the
26 allegations—that Plaintiff has a social relationship with a super model, that a Congressman has such a
27 pronounced interest in Plaintiff’s social networking life as to become angry, that, in this angry state, the
28 Congressman engaged the assistance of another Congressman and an ice cream store executive to

1 thwart the social networking relationship—to be lacking all credibility and all plausibility. *Iqbal*, 556
2 U.S. at 678. Accordingly, the Court finds Plaintiff’s allegations are fanciful, and lack an arguable basis
3 in fact. *See Denton*, 504 U.S. at 32-33.

4 **V. Findings and Recommendations**

5 Plaintiff fails to state a cognizable claim for civil harassment in violation of California law.
6 Moreover, given the fanciful nature of Plaintiff’s claims, the Court finds leave to amend would be
7 futile. *See Iqbal*, 556 U.S. at 679 (noting that a court should “draw on its judicial experience and
8 common sense” to determine whether a claim is plausible); *Denton*, 504 U.S. at 32-33 (a court may
9 dismiss a claim as frivolous if the alleged facts are “clearly baseless,” “fanciful,” or “fantastic”); *Lopez*
10 *v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (“Under Ninth Circuit case law, district courts are only
11 required to grant leave to amend if a complaint can possibly be saved. Courts are not required to grant
12 leave to amend if a complaint lacks merit entirely”).

13 Based upon the foregoing, **IT IS HEREBY RECOMMENDED:**

- 14 1. Plaintiff’s complaint be **DISMISSED** without leave to amend; and
- 15 2. The Clerk of Court be directed to close this matter.

16 These Findings and Recommendations are submitted to the United States District Judge
17 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local
18 Rules of Practice for the United States District Court, Eastern District of California. Within fourteen
19 days after being served with these Findings and Recommendations, any party may file written
20 objections with the court. Such a document should be captioned “Objections to Magistrate Judge’s
21 Findings and Recommendations.” The parties are advised that failure to file objections within the
22 specified time may waive the right to appeal the District Court’s order. *Martinez v. Ylst*, 951 F.2d 1153
23 (9th Cir. 1991); *Wilkerson v. Wheeler*, 772 F.3d 834, 834 (9th Cir. 2014).

24
25 IT IS SO ORDERED.

26 Dated: October 1, 2015

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE