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2 **UNITED STATES DISTRICT COURT**
3 **EASTERN DISTRICT OF CALIFORNIA**
4

5 **MELVIN LOWELL HAWKINS, JR.,**

6 **Plaintiff**

7 **v.**

8 **DAVID WESLEY, et al.,**

9 **Defendants**
10

CASE NO. 1:17-CV-0470 AWI EPG

**ORDER DISMISSING CASE AS
FRIVOLOUS AND CLOSING MATTER**

(Doc. No. 1)

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12 On April 4, 2017, Plaintiff filed this matter that purports to be a civil rights lawsuit.
13 Plaintiff is proceeding pro se and is a prisoner at the California Substance Abuse Treatment
14 Facility in Corcoran, California. Plaintiff captions his complaint as “MELVIN LOWELL
15 HAWKINS JR, registered trade name/business entity, and Hawkins, Melvin Lowell, registered
16 trade name holder and real party in interest.” Plaintiff names as Defendants David Wesley,
17 David Wesley’s husband, Jackie Lacey, and Jackie Lacey’s husband. An exhibit to the Complaint
18 includes of a certificate of service that names David Wesley as “dba presiding judge,” and names
19 Jackie Lacey as “dba prosecutor.” An address of 210 West Temple St., Los Angeles, CA is listed.
20 The address 210 West Temple St. is the location of the Clara Shortridge Foltz Criminal Justice
21 Center in Los Angeles County, CA.¹ David Wesley is a judge on the Los Angeles Superior
22 Court.² Jackie Lacey is the District Attorney of Los Angeles County.³ For the reasons that
23 follow, Plaintiff’s complaint will be dismissed as frivolous and this case will be closed.
24

25 ¹ The Court takes judicial notice under Fed. R. Evid. 201 of the following website:
<http://www.lacourt.org/courthouse/info/CCB>

26 ² The Court takes judicial notice under Fed. R. Evid. 201 of the following website:
27 <https://www.lacourt.org/judicialofficers/ui/SearchResult.aspx>.

28 ³ The Court takes judicial notice under Fed. R. Evid. 201 of the following website: <http://da.co.la.ca.us/about/meet-the-da>.

1 Factual Background

2 The Complaint is not a model of clarity. Plaintiff purports to grant his name (Hawkins,
3 Melvin Lowell) and his registered trade name “MELVIN LOWELL HAWKINS JR” to the court
4 for the future return of this interest. Plaintiff also makes claim to his free will and right of
5 dominion over his own body, blood, DNA, all properties, and all hereditaments. Plaintiff states
6 that he is a “private, non-statutory, non-citizen, de jure American in the de jure original
7 jurisdiction, not a ‘person,’ not a ‘citizen,’ not named in an U.S. or state ‘code,’ and not a ‘person’
8 as defined in the Trading With The Enemy Act as modified by the Emergency Banking Relief Act
9” Plaintiff states that David Wesley is being sued in his personal capacity because he was
10 “operating in his ministerial capacity, enforcing statutes” Plaintiff states that this case began
11 as an administrative remedy for civil rights violations, but “has now been reduced to a breach of
12 contract as all defendants admitted, via their own willful and voluntary default on the
13 administrative process, that they are guilty and they owe the amount requested by the plaintiffs,
14 and they failed to object or state any claim to immunity.” Plaintiff states that Defendants refused
15 to respond to various documents that he served upon them, and that he has “established ‘judicial
16 estoppel’ against Defendants, as evidence by the Certificate of Dishonor/Administrative Judgment
17 Nihil Dicit, testified to by Eileen Raye, a public minister” The documents served on
18 Defendants claim to be an “Affidavit of Obligation [which] is a commercial instrument”
19 Plaintiff request \$136,840,000.00 in damages.

20 Legal Framework

21 In order to state a claim, “a complaint must contain sufficient factual matter, accepted as
22 true, to state a claim to relief that is plausible on its face.” Iqbal v. Ashcroft, 556 U.S. 662, 678
23 (2009). “A claim has facial plausibility when the plaintiff pleads factual content that allows the
24 court draw the reasonable inference that the defendant is liable for the misconduct alleged.” Id.
25 Iqbal, 556 U.S. at 678. A complaint may be dismissed for failure to state a claim where there is
26 the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable
27 legal theory. Conservation Force v. Salazar, 646 F.3d 1240, 1242 (9th Cir. 2011); Johnson v.
28 Riverside Healthcare Sys., 534 F.3d 1116, 1121 (9th Cir. 2008). In reviewing a complaint, courts

1 are not required “to accept as true allegations that are merely conclusory, unwarranted deductions
2 of fact, or unreasonable inferences.” Wilson v. Hewlett-Packard Co., 668 F.3d 1136, 1145 n. 4
3 (9th Cir. 2012); Spewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir. 2001). An action
4 is “frivolous” if it has no arguable basis in fact or law; the term embraces both inarguable legal
5 conclusions and fanciful factual allegations. Neitzke v. Williams, 490 U.S. 319, 325 (1989);
6 Barnard, 635 F. App’x at 389. A court may *sua sponte* dismiss a complaint for failure to state a
7 claim, without providing notice or an opportunity to respond, where the plaintiff cannot possibly
8 win relief. Barnard v. United States Gov’t, 635 F. App’x 389 (9th Cir. 2016); Sparling v.
9 Hoffman Constr. Co., 864 F.2d 635, 638 (9th Cir. 1988); Omar v. Sea-Land Service, Inc., 813
10 F.2d 986, 991 (9th Cir. 1987); Herrejon v. Ocwen Loan Servicing, LLC, 980 F.Supp.2d 1186,
11 1194 (E.D. Cal. 2013); Young v. Hawaii, 911 F.Supp.2d 972, 995 (D. Haw. 2012).

12 Discussion

13 It is apparent that Plaintiff is attempting to use non-applicable law to either obtain his
14 release from custody, or obtain money from the judge and prosecutor of his criminal conviction.

15 The nature of the Complaint indicates that Judge Wesley would be entitled to absolute
16 judicial immunity against Plaintiff’s claims. See Moore v. Brewster, 96 F.3d 1240, 1243-44 (9th
17 Cir. 1996). Because of the nature of judicial immunity, amendment with respect to Judges Wesley
18 would be futile. Martinez v. Newport Beach City, 125 F.3d 777, 785 (9th Cir. 1997).

19 The nature of the Complaint also indicates that District Attorney Lacey is entitled to
20 absolute prosecutorial immunity. See Van de Kamp v. Goldstein, 555 U.S. 335, 342-43 (2009).
21 Because of the nature of prosecutorial immunity, amendment with respect to District Attorney
22 Lacey would be futile. See Smith v. Delaware, 624 Fed. Appx. 788, 790-91 (3d Cir. 2015); Lopez
23 v. County of L.A., 2016 U.S. Dist. LEXIS 1339, *21 (N.D. Cal. Jan. 5, 2016); Douglas v. Miller,
24 864 F.Supp.2d 1205, 1221 (W.D. Ok. 2012).

25 Moreover, no plausible cause of action is alleged in the Complaint.⁴ The allegations and
26 apparent theories for Plaintiffs’ claims are specious and fanciful. Plaintiff attempted to create
27

28 ⁴ The Court notes that Plaintiff cites 42 U.S.C. §§ 1981 and 1985, but no factual allegations support plausible claims under these statutes.

1 unilateral liability by sending what purports to be a commercial paper, specifically an “affidavit of
2 obligation for claim upon public hazard bonds demand for release,” to a sitting superior court
3 judge and the district attorney of Los Angeles. Plaintiff’s complaint is reminiscent of the
4 discredited theories of the “sovereign citizen” movement. Cf. Koshkaryan v. Kuhl, 2017 U.S.
5 Dist. LEXIS 49711, *5 (E.D. Cal. Mar. 31, 2017); Leiter v. Kenney, 2016 U.S. Dist. LEXIS
6 172482 (D. Minn. Oct. 26, 2016); Smithson v. York Cnty. Ct. of Common Pleas, 2016 U.S. Dist.
7 LEXIS 102674 (M.D. Pa. Aug. 3, 2016); Payne v. Kilda, 2016 U.S. Dist. LEXIS 14968 (E.D.
8 Mich. Jan. 6, 2016); Alexio v. Obama, 2015 U.S. Dist. LEXIS 168035 (D. Haw. Dec. 16, 2015);
9 Nunez v. D.T.C., 2013 U.S. Dist. LEXIS 138514, *6 (D. S.C. Aug. 30, 2013). Because the
10 allegations and bases for the Complaint’s theories are frivolous, amendment would be futile.

11 Plaintiffs’ claims are specious and frivolous, and no plausible claims are alleged. See
12 Neitzke, 490 U.S. at 325; Wilson, 668 F.3d 1136, 1145 n. 4. Because amendment would be futile
13 and Plaintiff cannot possibly win relief, the Court will dismiss this case as frivolous and for failure
14 to state a claim. See Neitzke, 490 U.S. at 325; Barnard, 635 F. App’x at 389; Sparling, 864 F.2d
15 at 638; Omar, 813 F.2d at 991; Herrejon, 980 F.Supp.2d at 1194; Koshkaryan, 2017 U.S. Dist.
16 LEXIS 49711 at *1-*5 (dismissing as frivolous a complaint that is essentially identical to
17 Plaintiff’s complaint).

18
19 **ORDER**

20 Accordingly, IT IS HEREBY ORDERED that:

- 21 1. This case is DISMISSED as frivolous and for failure to state a claim; and
22 2. The Clerk shall CLOSE this case.

23
24 IT IS SO ORDERED.

25 Dated: April 7, 2017

26 
27 SENIOR DISTRICT JUDGE
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