

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

KAMAL K. ROY,

Plaintiff,

No. 2:09-cv-3026 LKK DAD PS

vs.

USA,

FINDINGS AND RECOMMENDATIONS

Defendant.

_____ /

Kamal K. Roy, a New York resident proceeding pro se, has filed a collection of 58 pages that have been liberally construed as a civil complaint. The collection does not bear a proper caption, and the court has found it necessary to derive the names of the parties from the civil cover sheet included in the filing. Also included in plaintiff's filing is an application to proceed in forma pauperis, presented on a form utilized by the United States District Court for the District of Colorado. The proceeding has been referred to the undersigned in accordance with Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1).

A filing fee of \$350.00 is required to commence a civil action in a federal district court. 28 U.S.C. § 1914(a). The court may authorize the commencement of an action without prepayment of fees or security therefor by a litigant who submits an affidavit demonstrating inability to pay. 28 U.S.C. § 1915(a). Here, the affidavit submitted by plaintiff indicates that he

1 is a “part disabled” senior citizen whose income consists of SSI. (Doc. 1 at page electronically
2 numbered 8.)

3 Although plaintiff’s in forma pauperis application appears to demonstrate inability
4 to pay the filing fee, the determination that a plaintiff is eligible to proceed in forma pauperis
5 does not complete the required inquiry. Pursuant to 28 U.S.C. § 1915(e)(2), the court is required
6 to dismiss an in forma pauperis case at any time if the court determines that the allegation of
7 poverty is untrue or that the action is frivolous or malicious, fails to state a claim on which relief
8 may be granted, or seeks monetary relief against an immune defendant.

9 A case is frivolous when it lacks an arguable basis either in law or in fact.
10 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Balistreri v. Pacifica Police Dep’t, 901 F.2d 696,
11 699 (9th Cir. 1990). Under this standard, a court must dismiss a claim as frivolous where it is
12 based on an indisputably meritless legal theory or where the factual contentions are clearly
13 baseless. See Neitzke, 490 U.S. at 327; see also 28 U.S.C. § 1915(e).

14 To state a claim on which relief may be granted, the plaintiff must allege “enough
15 facts to state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 550
16 U.S. 544, 570 (2007). In considering whether a complaint states a cognizable claim, the court
17 accepts as true the material allegations in the complaint and construes the allegations in the light
18 most favorable to the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Hosp. Bldg.
19 Co. v. Trustees of Rex Hosp., 425 U.S. 738, 740 (1976); Love v. United States, 915 F.2d 1242,
20 1245 (9th Cir. 1989). Pro se pleadings are held to a less stringent standard than those drafted by
21 lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). However, the court is not required to
22 accept as true conclusory allegations, unreasonable inferences, or unwarranted deductions of fact.
23 Western Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

24 Although the Federal Rules of Civil Procedure adopt a flexible pleading policy, a
25 complaint must give the defendants fair notice of the plaintiff’s claims and must allege facts that
26 state the elements of the claims plainly and succinctly. Fed. R. Civ. P. 8(a)(2); Jones v.

1 Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). The plaintiff must allege with at
2 least some degree of particularity overt acts which the defendants engaged in that support the
3 plaintiff's claims. 733 F.2d at 649.

4 The Federal Rules of Civil Procedure also require that a pleading contain "a short
5 and plain statement of the grounds for the court's jurisdiction." Fed. R. Civ. P. 8(a)(1). Such a
6 statement is required because federal courts, as courts of limited jurisdiction, may adjudicate only
7 those cases authorized by federal law. Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 377
8 (1994); Willy v. Coastal Corp., 503 U.S. 131, 136-37 (1992).¹ "Federal courts are presumed to
9 lack jurisdiction, 'unless the contrary appears affirmatively from the record.'" Casey v. Lewis, 4
10 F.3d 1516, 1519 (9th Cir. 1993) (quoting Bender v. Williamsport Area Sch. Dist., 475 U.S. 534,
11 546 (1986)). Lack of subject matter jurisdiction may be raised by the court at any time during the
12 proceedings. Attorneys Trust v. Videotape Computer Prods., Inc., 93 F.3d 593, 594-95 (9th Cir.
13 1996). The burden of establishing jurisdiction rests upon the party asserting jurisdiction.
14 Kokkonen, 511 U.S. at 377.

15 Plaintiff's pleading consists of numerous pages filled with random scribbles
16 scattered across them. Some pages are copies of documents on which plaintiff has scrawled
17 various letters, numbers, words, and sentence fragments. In the civil cover sheet referenced
18 supra, plaintiff identifies defendants as "#1 To Whom It May Concern in USA et al, #2 Rev Dr
19 K. KK Roy, #3 Nobel Peace Prize Norwegian, #4 BH Obama." (Compl., page electronically
20 numbered 3.) In the section titled "Basis of Jurisdiction," plaintiff has checked boxes indicating
21 jurisdiction based on "U.S. Government Defendant" and "Federal Question (U.S. Government
22 Not a Party)." He has marked boxes indicating that the nature of his suit is "Other Civil Rights"
23 and his cause of action is "civil rights violations," for which he seeks "60 million US \$."

25 ¹ Congress has conferred jurisdiction upon the federal district courts as limited by the
26 United States Constitution. U.S. Const. Art. III, § 2; 28 U.S.C. § 132; Ankenbrandt v. Richards,
504 U.S. 689, 697-99 (1992).

1 The court is unable to discern in plaintiff's filing any statement that can be
2 construed as jurisdictional or any allegations that state a cognizable federal claim against any
3 person or entity within the jurisdiction of this court. It is impossible to summarize plaintiff's
4 allegations, as no comprehensible statements can be found in plaintiff's filing.

5 It appears that this court lacks subject matter jurisdiction over this action. See
6 Bell v. Hood, 327 U.S. 678, 682-83 (1946) (recognizing that a claim is subject to dismissal for
7 want of jurisdiction where it is "wholly insubstantial and frivolous" and so patently without merit
8 as to justify dismissal for lack of jurisdiction); Hagans v. Lavine, 415 U.S. 528, 543 (1974)
9 (acknowledging that a claim may be dismissed for lack of jurisdiction if it is "so insubstantial,
10 implausible, . . . or otherwise completely devoid of merit as not to involve a federal controversy
11 within the jurisdiction of the District Court"). See also Franklin v. Murphy, 745 F.2d 1221, 1227
12 n.6 (9th Cir. 1984) (holding that even "[a] paid complaint that is 'obviously frivolous' does not
13 confer federal subject matter jurisdiction . . . and may be dismissed sua sponte before service of
14 process.").

15 The court notes that among the documents plaintiff has used for writing paper is a
16 multi-page PACER search result showing that as of May 20, 2009, plaintiff had filed over a
17 hundred cases in federal courts across the nation. The records of the United States District Court
18 for the Eastern District of California reveal that plaintiff has filed two previous cases in this
19 court.² On August 13, 2007, Kamal K. Roy filed Roy v. Unknown, 2:07-cv-1665 MCE GGH PS,
20 a case in which the defendants could not be discerned from plaintiff's 166-page pleading. The
21 case was dismissed on May 2, 2008, due to plaintiff's failure to comply with a court order
22 requiring him to file a properly completed in forma pauperis application on the form provided by
23 ////

24
25 ² A court may take judicial notice of its own files and of documents filed in other courts.
26 Reyn's Pasta Bella, LLC v. Visa USA, Inc., 442 F.3d 741, 746 n.6 (9th Cir. 2006); Burbank-
Glendale-Pasadena Airport Auth. v. City of Burbank, 136 F.3d 1360, 1364 (9th Cir. 1998); Hott
v. City of San Jose, 92 F. Supp. 2d 996, 998 (N.D. Cal. 2000).

1 the court. On October 24, 2008, Kamal K. Roy filed Roy v. USA Government, 2:08-cv-2537

2 GEB KJM PS. In screening plaintiff's pleading, Magistrate Judge Mueller observed that

3 [t]he complaint consists of 38 pages, some of which are jotted
4 handwritten notes of what appear to be random thoughts, rather
5 than an attempt to state a cause of action. There is no discernible
6 theme running through the notes, other than it appears that plaintiff
7 is complaining about the political process and is demanding \$49.8
8 million dollars in "matching funds." On page seventeen of the
9 complaint, there is an order from the United States District Court
for the Eastern District of New York indicating that plaintiff is
prone to filing vexatious and frivolous pleadings. Because plaintiff
presently resides in New York and there is no apparent connection
between the allegations of the complaint and the Eastern District of
California, plaintiff's choice of venue appears random and is
dubious, at best.

10 Order filed in 2:08-cv-2537 GEB KJM PS on Nov. 17, 2008, at 2. Although plaintiff's 2008
11 complaint was dismissed with leave to amend, plaintiff did not file an amended complaint or
12 respond to the court's November 17, 2008 order in any manner. The 2008 case was dismissed on
13 March 10, 2009 due to plaintiff's failure to file an amended complaint.

14 In light of the severe deficiencies of plaintiff's current pleading and his past
15 failure to cure similar deficiencies in response to court orders in prior cases in this court, the
16 undersigned finds that it would be futile to grant plaintiff leave to amend the complaint in this
17 action. See California Architectural Bldg. Prod. v. Franciscan Ceramics, 818 F.2d 1466, 1472
18 (9th Cir. 1988) ("Valid reasons for denying leave to amend include undue delay, bad faith,
19 prejudice, and futility."); Klamath-Lake Pharm. Ass'n v. Klamath Med. Serv. Bureau, 701 F.2d
20 1276, 1293 (9th Cir. 1983) (holding that, while leave to amend shall be freely given, the court
21 does not have to allow futile amendments). The undersigned will therefore recommend that
22 plaintiff's in forma pauperis application be denied and that this action be dismissed with
23 prejudice for lack of subject matter jurisdiction. See Fed. R. Civ. P. 12(h)(3).

24 ////

25 ////

26 ////

1 Accordingly, IT IS HEREBY RECOMMENDED that:

2 1. Plaintiff's October 29, 2009 application to proceed in forma pauperis (Doc.
3 No. 1 at pages electronically numbered 7 through 10) be denied; and

4 2. This action be dismissed with prejudice for lack of subject matter jurisdiction.

5 These findings and recommendations will be submitted to the United States
6 District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within
7 twenty-one (21) days after these findings and recommendations are served by the Clerk of the
8 Court, plaintiff may file written objections with the court. A document containing objections
9 must be titled "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is
10 advised that failure to file objections within the specified time may waive the right to appeal the
11 District Court's order. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

12 DATED: December 22, 2009.

13
14 
15 _____
DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

16 DAD:kw
17 Ddad1\orders.prose\roy 3026.f&r.dsm