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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

TANYA MCDANIEL,  
Plaintiff,  
v.  
UNITED STATES OF AMERICA, et al.,  
Defendants.

No. 2:15-cv-937-MCE-KJN PS

ORDER AND  
FINDINGS AND RECOMMENDATIONS

Plaintiff Tanya McDaniel, who proceeds in this action without counsel, has requested leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (ECF No. 2.)<sup>1</sup> Pursuant to 28 U.S.C. § 1915, the court is directed to dismiss the case at any time if it determines that the allegation of poverty is untrue, or if the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against an immune defendant. Also, a federal court has an independent duty to assess whether federal subject matter jurisdiction exists, whether or not the parties raise the issue. See United Investors Life Ins. Co. v. Waddell & Reed Inc., 360 F.3d 960, 967 (9th Cir. 2004). For the reasons discussed below, the court recommends that the action be dismissed for lack of subject matter jurisdiction pursuant to the substantiality

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<sup>1</sup> This case proceeds before the undersigned pursuant to E.D. Cal. L.R. 302(c)(21) and 28 U.S.C. § 636(b)(1).

1 doctrine, and that the request to proceed *in forma pauperis* be denied.

2 “Under the substantiality doctrine, the district court lacks subject matter jurisdiction when  
3 the question presented is too insubstantial to consider.” Cook v. Peter Kiewit Sons Co., 775 F.2d  
4 1030, 1035 (9th Cir. 1985) (citing Hagans v. Lavine, 415 U.S. 528, 536-39 (1974)). “The claim  
5 must be ‘so insubstantial, implausible, foreclosed by prior decisions of this Court or otherwise  
6 completely devoid of merit as not to involve a federal controversy within the jurisdiction of the  
7 District Court, whatever may be the ultimate resolution of the federal issues on the merits.’” Id.  
8 (quoting Oneida Indian Nation v. County of Oneida, 414 U.S. 661, 666 (1974)); see also Apple v.  
9 Glenn, 183 F.3d 477, 479 (6th Cir. 1999) (“a district court may, at any time, *sua sponte* dismiss a  
10 complaint for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of  
11 Civil Procedure when the allegations of a complaint are totally implausible, attenuated,  
12 unsubstantial, frivolous, devoid of merit, or no longer open to discussion.”).

13 In this case, plaintiff’s complaint is rambling and confusing. However, liberally  
14 construed, the complaint appears to allege that plaintiff, a multiracial disabled woman, was  
15 subjected on numerous occasions between 2008 and the present to harassment by various  
16 individuals and groups of University of California, Davis (“U.C. Davis”) students and staff, more  
17 specifically by way of loitering, littering, gang-affiliated parties, cyberbullying, yelling, use of  
18 profanities (calling plaintiff “psycho,” the “N” word, and a “harry Jew monkey”), gossiping,  
19 slandering, tormenting, and stalking plaintiff with Aggie flyers outside plaintiff’s relative’s  
20 apartment and other locations on and off the U.C. Davis campus in the City of Davis, particularly  
21 on weekends and on Picnic Day. Plaintiff claims that those persons have not respected policies  
22 by U.C. Davis or the City of Davis prohibiting rowdiness and unruly behavior, and protecting the  
23 “special rights of humanity.” Nevertheless, according to plaintiff, the City of Davis, U.C. Davis,  
24 U.C. Davis Chancellor Linda Katehi, and U.C. President Janet Napolitano (who plaintiff alleges  
25 is a former NSA military representative and has military authority) essentially ignored plaintiff’s  
26 complaints. (See generally ECF No. 1.)

27 The complaint also appears to attribute the alleged harassment to some type of scheme or  
28 conspiracy involving a “NSA military presence (fusion)” and a “FCC” (presumably referring to

1 the Federal Communications Commission) presence in the City of Davis:

2 making witchcraft against the Plaintiff with efforts to torment her.  
3 As if “Big Bertha” isn’t enough! The NSA knows all about that  
4 Big Bertha. A programmer of citizens in society that seeks to place  
5 the “mark of the Beast” upon society in their efforts to deceive and  
6 usher in New World Order with idiot and false “so called  
7 movements” that are leading to the demise of civilization.  
8 Essentially. Or perhaps some of the many harassments have  
stemmed from a society of celebrities, whom the Plaintiff dated  
retired Raider Lester Hayes some years ago, and the Plaintiff has  
celebrity (illuminati) relatives, whom are not close relatives to the  
Plaintiff. Yet, certainly don’t mind the Scandal that has been  
placed upon her.

9 (ECF No. 1 at 8.)

10 Plaintiff’s complaint purportedly asserts causes of action for violation of her Fourth and  
11 Fourteenth Amendment rights under 42 U.S.C. § 1983, violation of the ADA, intentional  
12 infliction of emotional distress, harassment, violation of the California Code of Civil Procedure,  
13 violation of proper business ethics pursuant to the Better Business Bureau, violation of federal  
14 and California university rules and regulations, violation of UCD policies, and “equitable tolling  
15 rights to relief” against defendants United States of America, U.C. Davis, U.C. Davis Chancellor  
16 Linda Katehi, the City of Davis, U.C. President Janet Napolitano, the NSA, and the FCC. (ECF  
17 No. 1 at 1, 9-11.) Plaintiff seeks damages in the sum of \$1,500,000.00; punitive damages in the  
18 sum of \$3,000,000.00; injunctive and equitable relief; and attorneys’ fees and costs. (Id. at 11-  
19 12.)

20 Because plaintiff’s allegations are fanciful, delusional, implausible, and completely  
21 devoid of merit, the court finds plaintiff’s claims to be so insubstantial as to not involve a federal  
22 controversy within the jurisdiction of this court. Plaintiff fails to allege any plausible  
23 constitutional violations or violations of federal law by the named defendants which could  
24 potentially support non-frivolous claims invoking the jurisdiction of this court.<sup>2</sup> Even though the

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25 <sup>2</sup> The court notes that the complaint also contains passing references to allegedly harassing  
26 interactions plaintiff had with the Davis Police Department. However, those interactions are  
27 already the subject of prior pending lawsuits filed by plaintiff against the Davis Police  
28 Department, the City of Davis, and individual police officers. (See McDaniel v. Powell et al.,  
2:13-cv-2653-MCE-AC, ECF No. 31; McDaniel v. United States et al., 2:14-cv-2213-TLN-EFB,  
ECF No. 5.) Any claims based on those interactions must be pursued in plaintiff’s prior lawsuits.

1 court would ordinarily grant a pro se litigant leave to amend to correct any deficiencies, the nature  
2 of plaintiff's claims and allegations in this case demonstrates that granting leave to amend would  
3 be futile. See Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 339 (9th Cir. 1996). Therefore, the  
4 court recommends dismissal of the action without leave to amend.

5 Accordingly, for the reasons outlined above, IT IS HEREBY RECOMMENDED that:

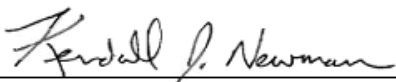
- 6 1. The action be dismissed for lack of subject matter jurisdiction pursuant to the  
7 substantiality doctrine.
- 8 2. Plaintiff's motion to proceed *in forma pauperis* (ECF No. 2) be denied.

9 In light of the above recommendations, IT IS ALSO HEREBY ORDERED that all  
10 pleading, discovery, and motion practice in this action are stayed pending resolution of the  
11 findings and recommendations. Other than objections to the findings and recommendations and  
12 non-frivolous motions of an emergency nature, the court will not entertain or respond to any  
13 motions, pleadings, or other filings until the findings and recommendations have been resolved.

14 These findings and recommendations are submitted to the United States District Judge  
15 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)  
16 days after being served with these findings and recommendations, any party may file written  
17 objections with the court and serve a copy on all parties. Such a document should be captioned  
18 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections  
19 shall be served on all parties and filed with the court within fourteen (14) days after service of the  
20 objections. The parties are advised that failure to file objections within the specified time may  
21 waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th  
22 Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

23 IT IS SO ORDERED AND RECOMMENDED.

24 Dated: July 24, 2015

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27 KENDALL J. NEWMAN  
28 UNITED STATES MAGISTRATE JUDGE