

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No. 08-0643MHP

ERIC M. PENATE,
Plaintiff(s),**ORDER DISMISSING
COMPLAINT**

vs.

WILSHIRE CREDIT CORPORATION, et al.,
Defendant(s).

Plaintiff attempts to invoke the admiralty jurisdiction of this court with his complaint which he titles "Petition for Libel Review of an Administrative Judgment" and denominating himself as *Sramineus Homo, US Vessel, Libellant*". His complaint is strewn with misused, nonexistent or curious words purportedly in English, Latin and bloated legalese.¹ The complaint seems to be a repeat of other complaints recently filed in this court, all filed under the mistaken impression that the plaintiff need merely designate himself and the other parties as "vessels" in order to invoke the admiralty jurisdiction of the court and to achieve some other mistaken objectives.

What is clear from plaintiff's complaint is that nothing is clear. It is not a short and plain statement of his case. It is incomprehensible and nonsensical. The papers appear to be drawn from some web site or other publicly available boilerplate drafted by someone who is ill-informed and is misinforming others such as this plaintiff.²

Apparently plaintiff has a dispute with the defendant about some extension of credit, loan or debt collection. It is impossible to determine this from his papers. Plaintiff would do well to submit

1 a short and plain statement of his case as required by Federal Rule of Civil Procedure 8(a) rather
2 than try to use concepts he does not understand or follow the suggestions of some "wannabe"
3 lawyer. Or, better yet, he should retain a real lawyer to represent him.

4 The district court may dismiss a complaint sua sponte if federal subject matter jurisdiction is
5 lacking or if the complaint is frivolous. See 28 U.S.C. §1915(e)(2). A complaint is frivolous if "it
6 lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325
7 (1989)(found to be superseded on other grounds by reason of adoption of section 1915(e) which
8 makes dismissal for failure to state a claim mandatory), see, e.g., Lopez v. G.A.Smith, 203 F.3d
9 1122, 1126 (9thCir.2000); Cruz v. Gomez, I/O, 202 F.3d 593, 596 (2dCir.2000).

10 Where a complaint fails to state "any constitutional or statutory right that was violated, nor
11 asserts any basis for federal subject matter jurisdiction", there is no "arguable basis in law" under
12 Neitzke and the court on its own initiative may decline to permit the plaintiff to proceed and dismiss
13 the complaint under section 1915(d). Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995).

14 Furthermore, where the complaint alleges facts that are "clearly baseless", "fanciful", or
15 "delusional" it may be dismissed as frivolous. Denton v. Hernandez, 504 U.S. 25, 112 S.Ct. 1728,
16 1733 (1992)(also found superseded in that dismissal was within discretion of district court under
17 section 1915(d)) and now, under section 1915(e)(2) dismissal is mandatory, see Cruz v. Gomez, 202
18 F.3d at 596. If the pro se plaintiff can cure the factual allegations in order to state a claim, the court
19 may give him or her leave to do so. However, if repleading cannot cure the deficiencies the court
20 may dismiss without leave to amend and even dismiss with prejudice. See Cato v. United States, 70
21 F.3d at 1106.

22 It is possible that plaintiff could state some plausible claim over which this court or the state
23 court would have jurisdiction. It may be that plaintiff has some legitimate contract or debt collection
24 claims, for example, but it is impossible to tell from plaintiff's current complaint. Certainly, there is
25 nothing that appears in the papers that falls within the court's admiralty jurisdiction. Plaintiff cannot
26 make himself and the defendant vessels just by calling them vessels.

1 Therefore, the complaint is DISMISSED with leave to amend to state a proper and
2 comprehensible claim within this court's jurisdiction. If plaintiff intends to amend to comply with
3 this order, he must file his amended complaint **within thirty (30) days of the date of this order.**

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5 IT IS SO ORDERED.

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7 Date: February 1, 2008

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9 MARILYN HALL PATEL
10 Judge, United States District Court
11 Northern District of California
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ENDNOTES

1. For example, in the caption plaintiff refers to himself as “Sramineus Homo”. There is no such word as “sramineus” in Latin; there is a word “stramineus” which means “straw” and would render plaintiff a “straw man”. That term, of course, refers to an idea or argument that has no substance, but is set up so that it can be easily knocked down. So, either plaintiff misunderstands the meaning of the term or perhaps he has a sense of humor.
2. Indeed, this court has located a website that seems to be spawning the type of complaint filed in this action. The court has reviewed the website and instructs plaintiff that the contents of that site are a fraud being perpetrated on the public. It is full of false information. The use of the heading “United States District Court” is a misrepresentation. It is not issued or approved by any United State District Court. The contents of the document on the website are full of false statements. People use it at their peril and may, unfortunately, jeopardize real and legitimate claims or disputes they have. They can only do themselves harm by following the ill-advised, wacky recommendations on this website.

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on February 5, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Eric Miguel Penate
26021 Gettysburg Avenue
Hayward, CA Exempt

Dated: February 5, 2008

Richard W. Wieking, Clerk
By: Anthony Bowser, Deputy Clerk