

1
2
3
4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF NEVADA**
6

7 ERIC LEON CHRISTIAN,

8 Plaintiff,

9 vs.

10 UNITED STATES OF AMERICA, et al.,

11 Defendants.
12

)
)
) Case No. 2:14-cv-01151-RFB-GWF
)
)
)

ORDER

Amended Complaint (#7)

13 This matter comes before the Court on the screening of Plaintiff’s Amended Complaint
14 (#7), filed on August 7, 2014.

15 **BACKGROUND**

16 Plaintiff initially brought this action pursuant to 18 U.S.C. § 241 for conspiracy against his
17 rights. This case arises from Plaintiff’s criminal case in which he was convicted for two counts of
18 transmitting through interstate commerce email communications containing threats to injure the
19 person of another. *See United States v. Christian*, 749 F.3d 806, 808 (9th Cir. 2014); *see also* case
20 #2:09-cr-00303-JCM-VCF. As the Court understood Plaintiff’s complaint, he alleged that Judge
21 Mahan, CJA attorney Jess Marchese, the U.S. Marshal’s Service, and the U.S. Attorney’s Office,
22 all employees of defendant United States of America, conspired against him by keeping him
23 unlawfully imprisoned for 998 days over the sentencing guidelines maximum. *See Dkt. #1-2.*
24 Plaintiff initially brought this suit for restitution pursuant to the “Mandatory Victim’s Restitution
25 Act” for causing Plaintiff to serve 44 months for a 13 month sentence. The Court dismissed
26 Plaintiff’s claims without prejudice, however, for failing to allege any theory under which the
27 United States could be held liable for monetary damages. The Court granted Plaintiff leave to
28 amend his complaint to allege an enforceable cause of action.

1 On August 7, 2014, Plaintiff filed his Amended Complaint (#7), which does not plead facts
2 similar to his initial complaint. Instead, Plaintiff alleges a cause of action against the United States
3 under the Federal Torts Claim Act for Defamation and Trade Defamation. Specifically, Plaintiff
4 alleges that Las Vegas Metropolitan Police Officer Eric Honea falsely identified him as the owner
5 of an email address without first meeting and speaking with him in person, which Plaintiff argues is
6 required pursuant to case law, “227 F.2d 864”. Plaintiff alleges that he was subsequently taken into
7 custody unconstitutionally “creating a case that is the fruit of a poisonous tree”. Plaintiff further
8 alleges that he was appointed incompetent representation who falsely informed the Court that
9 Plaintiff did not understand his case, which led to the Court eventually granting a continuation so
10 that Plaintiff could receive a mental health evaluation. Plaintiff now requests that the Court correct
11 both the defamation and trade defamation caused by “this unnecessary case”.

DISCUSSION

I. Screening the Complaint

12 Upon granting a request to proceed *in forma pauperis*, a court must additionally screen a
13 complaint pursuant to 28 U.S.C. § 1915(e). Specifically, federal courts are given the authority to
14 dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which
15 relief may be granted, or seeks monetary relief from a defendant/third party plaintiff who is
16 immune from such relief. 28 U.S.C. § 1915(e)(2). A complaint, or portion thereof, should be
17 dismissed for failure to state a claim upon which relief may be granted “if it appears beyond a
18 doubt that the plaintiff can prove no set of facts in support of his claims that would entitle him to
19 relief.” *Buckey v. Los Angeles*, 968 F.2d 791, 794 (9th Cir. 1992). A complaint may be dismissed
20 as frivolous if it is premised on a nonexistent legal interest or delusional factual scenario. *Neitzke*
21 *v. Williams*, 490 U.S. 319, 327–28 (1989). Moreover, “a finding of factual frivolousness is
22 appropriate when the facts alleged rise to the level of the irrational or the wholly incredible,
23 whether or not there are judicially noticeable facts available to contradict them.” *Denton v.*
24 *Hernandez*, 504 U.S. 25, 33 (1992). When a court dismisses a complaint under § 1915(e), the
25 plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies,
26 unless it is clear from the face of the complaint that the deficiencies could not be cured by
27
28

1 amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

2 Defamation is a publication of a false statement of fact. *See Pegasus v. Reno Newspapers,*
3 *Inc.*, 118 Nev. 706, 57 P.3d 82, 87 (2002). Under Nevada law, to establish a prima facie case of
4 defamation, a plaintiff must prove: (1) a false and defamatory statement by defendant concerning
5 plaintiff; (2) an unprivileged publication to a third person; (3) fault, amounting to at least
6 negligence; and (4) actual or presumed damages. *See Wynn v. Smith*, 117 Nev. 6, 16 P.3d 424, 427
7 (2001); *see also Flowers v. Carville*, 266 F.Supp.2d 1245, 1251 (D.Nev. 2003). Absolute privilege
8 exempts persons from liability for potentially defamatory statements made during judicial
9 proceedings. *See Circus Circus Hotels v. Witherspoon*, 99 Nev. 56, 657 P.2d 101, 104 (1983); *see*
10 *also Chachas v. City of Ely, Nev.*, 615 F.Supp.2d 1193, 1210 (D.Nev. 2009).

11 Here, Plaintiff failed to plead facts to state a claim for defamation. Possibly Plaintiff is
12 alleging that his defense counsel's false statements to the Court that Plaintiff did not understand his
13 case, and the Court's subsequent order to continue the trial pending Plaintiff's mental health
14 evaluation, constituted defamation. Local Rule 15-1 requires that an amended complaint be
15 complete in itself without reference to any prior pleading. This is because, as a general rule, an
16 amended complaint supercedes the original complaint. *See Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.
17 1967). The Court therefore may not assume facts alleged in Plaintiff's initial complaint that were
18 not properly plead in Plaintiff's amended complaint. Furthermore, such statements were made
19 during judicial proceedings and are therefore exempted from a claim of defamation due to absolute
20 privilege. Plaintiff's Amended Complaint therefore fails to state a claim upon which relief can be
21 granted.

22 The Court will dismiss Plaintiff's Amended Complaint with leave to amend to give the
23 Plaintiff an opportunity to allege an appropriate cause of action. In the event Plaintiff elects to
24 proceed in this matter by filing an amended complaint, he is informed that the Court cannot refer to
25 a prior pleading to make his amended complaint complete. Local Rule 15-1 requires that an
26 amended complaint be complete in itself without reference to any prior pleading. This is because,
27 as a general rule, an amended complaint supercedes the original complaint. *See Loux v. Rhay*, 375
28 F.2d 55, 57 (9th Cir. 1967). Once Plaintiff files an amended complaint, as in an original complaint,

1 each claim and the involvement of each defendant must be sufficiently alleged. Accordingly,

2 **IT IS HEREBY ORDERED** that Plaintiff's Amended Complaint (#7) be **dismissed**,
3 without prejudice, with leave to amend in accordance with the discussion above. Plaintiff shall
4 have until **September 15, 2014** to file an amended complaint. Failure to do so may result in the
5 dismissal of this action.

6 DATED this 15th day of August, 2014.

7
8 
9 GEORGE FOLEY, JR.
United States Magistrate Judge

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28