

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON
8

9 PAT BUDIG,

10 Plaintiff,

11 v.

12 NORTH IDAHO COLLEGE,

13 Defendant.
14

No.: 2:15-cv-00084-SAB

**ORDER DISMISSING
COMPLAINT**

15 On March 31, 2015 Plaintiff Pat Budig filed an ex parte complaint with the
16 Court and attempted to proceed with this case pro se and in forma pauperis. After
17 three attempts, in forma pauperis status was granted on June 3, 2015.¹ The matter
18 was then referred to this Court for pre-service adjudication.

19 The Court must dismiss a complaint or portion thereof if an in forma
20 pauperis plaintiff has raised claims that are legally “frivolous or malicious,” that
21 fail to state a claim upon which relief may be granted, or that seek monetary relief
22 from a defendant who is immune from such relief. See 28 U.S.C. § 1915(e)(2)(B);
23 see also *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (“[S]ection 1915e
24 not only permits but requires a district court to dismiss an in forma pauperis
25 complaint that fails to state a claim.”).

26
27 _____
28 ¹ Due to a regretful error, the matter was not brought to the Court’s attention until
July 2017.

ORDER DISMISSING COMPLAINT ^ 1

1 A claim is legally frivolous when it lacks an arguable basis either in law or
2 in fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989), superseded by statute on
3 other grounds, 203 F.3d 1122, 1126 (9th Cir. 2000) (en banc); *Franklin v.*
4 *Murphy*, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The Court may, therefore,
5 dismiss a claim as frivolous where it is based on an indisputably meritless legal
6 theory or where the factual contentions are clearly baseless. *Neitzke*, 490 U.S. at
7 327. The critical inquiry is whether a constitutional claim, however inartfully
8 pleaded, has an arguable legal and factual basis. See *Jackson v. Arizona*, 885 F.2d
9 639, 640 (9th Cir. 1989), superseded by statute on other grounds, 203 F.3d at
10 1130–31; *Franklin*, 745 F.2d at 1227.

11 The facts alleged in a complaint are to be taken as true and must “plausibly
12 give rise to an entitlement to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).
13 Mere legal conclusions “are not entitled to the assumption of truth.” *Id.* The
14 complaint must contain more than “a formulaic recitation of the elements of a
15 cause of action.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). It must
16 plead “enough facts to state a claim to relief that is plausible on its face.” *Id.* at
17 570. On the basis of these standards, Plaintiff’s present allegations fail to state a
18 claim upon which relief may be granted.

19 20 **PLAINTIFF’S ALLEGATIONS**

21 Plaintiff’s complaint alleges that North Idaho College issued a trespass
22 order against Plaintiff on September 18, 2012, and that there was no reason for the
23 order to issue. Plaintiff alleges Defendant slandered him in its student newspaper.
24 Defendant also alleges that this slander violated civil rights and the Americans
25 with Disabilities Act.

26 Plaintiff also alleges that Defendant did not show a correct grade on a 2014
27 transcript and did not provide a disability accommodation in a student program
28 called “CEA.” Plaintiff cites another student’s lawsuit against the school. Plaintiff

1 alleges that a person named Alex Harris asked Plaintiff to sign a contract which
2 “[went] against [his] civil, student, and disability rights.” ECF No. 9 at 3. The
3 complaint states that Defendant is a resident of Kootenai County, Idaho.
4

5 ANALYSIS

6 A court must hold personal jurisdiction over a defendant before it may
7 entertain a lawsuit against it. This is to prevent the unfair situation of forcing a
8 defendant with no reasonable connection to a forum state to litigate in that forum.
9 Because there is no federal statute governing jurisdiction in this case, the Court
10 uses the law of Washington, the potential forum, where this Court sits. *Core–Vent*
11 *Corp. v. Nobel Industries AB*, 11 F.3d 1482, 1484 (9th Cir. 1993).

12 Here the relevant law is the Washington State long-arm statute, RCW
13 4.28.185(1). The state of Washington places no restriction on the use of its long-
14 arm statute besides the restrictions of federal due process. *Chan v. Soc.*
15 *Expeditions, Inc.*, 39 F.3d 1398, 1405 (9th Cir. 1994) (citing *Mirza Minds Inc. v.*
16 *Kenvox U.S. L.L.C.*, No. 2:15-CV-00053-SAB, 2015 WL 6693689, at *1 (E.D.
17 Wash. Nov. 3, 2015)). Though two kinds of jurisdiction are generally considered
18 under federal due process, only specific jurisdiction is applicable here.²

19 Specific jurisdiction must arise from the acts of the defendant in the case at
20 hand. In the Ninth Circuit, three factors are considered: “(1) The non-resident
21 defendant must purposefully direct his activities or consummate some transaction
22 with the forum or resident thereof; or perform some act by which he purposefully
23

24 ² General jurisdiction is inappropriate, as Defendant is not domiciled in the
25 Eastern District of Washington, and otherwise “[f]or general jurisdiction to exist
26 over a nonresident defendant . . . the defendant must engage in ‘continuous and
27 systematic general business contacts.’” *Schwarzenegger v. Fred Martin Motor*
28 *Co.*, 374 F.3d 797, 801 (9th Cir. 2004) (quoting *Helicopteros Nacionales de*
Colombia, S.A. v. Hall, 466 U.S. 408, 416 (1984)). The allegations in the
complaint do not come close to meeting this “exacting standard.” *Id.*

1 avails himself of the privilege of conducting activities in the forum, thereby
2 invoking the benefits and protections of its laws; (2) the claim must be one which
3 arises out of or relates to the defendant’s forum-related activities; and (3) the
4 exercise of jurisdiction must comport with fair play and substantial justice, i.e. it
5 must be reasonable.” *Lake v. Lake*, 817 F.2d 1416, 1421 (9th Cir. 1987).

6 Overall, “[f]or a court to exercise personal jurisdiction over a nonresident
7 defendant, that defendant must have at least ‘minimum contacts’ with the relevant
8 forum such that the exercise of jurisdiction ‘does not offend traditional notions of
9 fair play and substantial justice.’” *Boschetto v. Hansing*, 539 F.3d 1011, 1015-16
10 (9th Cir. 2008) (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 316
11 (1945)).

12 Absent an evidentiary hearing, plaintiffs need only, through “pleadings and
13 affidavits[,] make a prima facie showing of personal jurisdiction.” *Caruth v. Int’l*
14 *Psychoanalytical Ass’n*, 59 F.3d 126, 127-28 (9th Cir. 1995). Without personal
15 jurisdiction over a defendant, a case must be dismissed; this is no different when
16 the Court reviews a complaint for sufficient cause under 28 U.S.C.

17 § 1915(e)(2)(B). Even the pro se must allege sufficient contacts to secure specific
18 jurisdiction, or their case is dismissed. *Fiorani v. Berenzweig*, 441 F. App’x 540,
19 541 (9th Cir. 2011).

20 Reading through the complaint’s sparse allegations convinces the Court that
21 there is no prima facie showing that it possess specific jurisdiction over Defendant
22 in this matter. If Defendant University is able to “issue a trespass,” it is unlikely to
23 be able to do so beyond its local authority in Idaho. Any discussions of Plaintiff
24 and a trespass order against him in the student newspaper is unlikely to extend
25 past the university campus, and there is no evidence whatsoever that Defendant
26 attempted to distribute physical copies of the newspaper in Washington State. See,
27 e.g., *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774-75 (1984) (finding
28

1 purposeful direction where defendant published magazines in Ohio and circulated
2 them in the forum state, New Hampshire).

3 It appears that Defendant did consummate a transaction with Plaintiff in that
4 Plaintiff is or was a student at the university (though this fact is not directly
5 alleged). It further appears that the claims alleged arise out of Defendant's alleged
6 forum-related conduct. But any alleged harms committed by Defendant in regard
7 to the faulty transcript or accommodations in a student group took place in Idaho;
8 none of these activities were directed at Washington or took place in Washington.
9 There is no indication these activities were directed at Washington State.

10 Haling Defendant into this Court would simply not comport with traditional
11 notions of fairness. There are insufficient factual allegations to show that this
12 Court has personal, specific jurisdiction over Defendant. As such, Plaintiff has
13 failed to state a claim for which this Court may grant relief, and the complaint
14 must be dismissed.

15
16 **OPPORTUNITY TO AMEND OR VOLUNTARILY DISMISS**
17 **COMPLAINT**

18 Unless it is absolutely clear that amendment would be futile, a pro se
19 litigant must be given the opportunity to amend his complaint to correct any
20 deficiencies. *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987), superseded on
21 other grounds by statute, 203 F.3d 1122 (9th Cir. 2000) (en banc). Additionally,
22 dismissals on grounds of lack of personal jurisdiction must be granted a chance to
23 amend. Fed. R. Civ. P. 4(m); *Grigsby v. CMI Corp.*, 765 F.2d 1369, 1372 n.5 (9th
24 Cir. 1985). Plaintiff may submit an amended complaint within **sixty (60) days** of
25 the date of this Order which includes sufficient facts to establish federal subject-
26 matter jurisdiction. *Broughton v. Cutter Labs.*, 622 F.2d 458, 460 (9th Cir. 1980)
27 (citations omitted).

1 Accordingly, **IT IS ORDERED:**

2 1. Plaintiff's Complaint is **DISMISSED WITHOUT PREJUDICE.**

3 2. Plaintiff may file an amended complaint within sixty days of the entry of
4 this order. Alternatively, Plaintiff may file the complaint with a court that
5 possesses personal jurisdiction to hear the case.

6 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
7 Order and to provide a copy to pro se Plaintiff.

8 **DATED** this 13th day of July, 2017.



12 

13 Stanley A. Bastian

14 United States District Judge