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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DUNCAN MCNEIL,

Plaintiff,

vs.

CHRISTINE O. GREGOIRE, et
al.,

Defendants.

NO. CV-04-372-AAM

ORDER DENYING *IN FORMA PAUPERIS*
STATUS AND DISMISSING COMPLAINT
WITH PREJUDICE

1915 (g)

Plaintiff, a prisoner at the Spokane County Jail, brings this action, tiled "Verified Taxpayer Suit," consisting of 107 pages against 66 Defendants, *pro se*. After review of Plaintiff's application to proceed *in forma pauperis* and his various submissions, the court finds Mr. McNeil's document is frivolous, malicious, and/or fails to state a claim upon which relief may be granted. Accordingly, **IT IS ORDERED** *in forma pauperis* status is **DENIED**.

PRISON LITIGATION REFORM ACT

Under the Prison Litigation Reform Act of 1995, the court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally

ORDER DENYING *IN FORMA PAUPERIS* STATUS
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1 "frivolous or malicious," that fail to state a claim upon which relief
2 may be granted, or that seek monetary relief from a defendant who is
3 immune from such relief. 28 U.S.C. §§ 1915A(b)(1), (2) and 1915(e)(2);
4 *See Barren v. Harrington*, 152 F.3d 1193 (9th Cir. 1998).

5 A claim is legally frivolous when it lacks an arguable basis
6 either in law or in fact. *Neitzke v. Williams*, 490 U.S. 319, 325
7 (1989); *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th Cir. 1984).
8 The court may, therefore, dismiss a claim as frivolous where it is
9 based on an indisputably meritless legal theory or where the factual
10 contentions are clearly baseless. *Neitzke*, 490 U.S. at 327. The
11 critical inquiry is whether a constitutional claim, however inartfully
12 pleaded, has an arguable legal and factual basis. *See Jackson v.*
13 *Arizona*, 885 F.2d 639, 640 (9th Cir. 1989); *Franklin*, 745 F.2d at
14 1227.

15 A complaint, or portion thereof, will be dismissed for failure to
16 state a claim upon which relief may be granted if it appears beyond
17 doubt Plaintiff can prove no set of facts in support of the claim or
18 claims that would entitle him to relief. *See Hishon v. King &*
19 *Spalding*, 467 U.S. 69, 73 (1984), *citing Conley v. Gibson*, 355 U.S.
20 41, 45-46 (1957); *see also Palmer v. Roosevelt Lake Log Owners Ass'n*,
21 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a complaint under
22 this standard, the court must accept as true the allegations of the
23 complaint in question, *Hospital Bldg. Co. v. Rex Hospital Trustees*,
24 425 U.S. 738, 740 (1976), construe the pleading in the light most
25 favorable to Plaintiff, and resolve all doubts in Plaintiff's favor.
26 *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). On the basis of these
27

1 standards, Plaintiff's allegations are frivolous, malicious, and/or
2 fail to state a claim upon which relief can be granted.

3 **MC-02-0010**

4 Mr. McNeil references cause number MC-02-0010. In May 2002, Mr.
5 McNeil attempted to "register a foreign judgment" in this District and
6 cause number MC-02-0010 was opened. Because Plaintiff had not fully
7 complied with 28 U.S.C. §§ 1963 and 1655, however, the court could not
8 grant the requested relief. Contrary to Plaintiff's assertions, no
9 foreign judgments have been registered in MC-02-0010. Therefore,
10 Plaintiff is not entitled to "Full Faith and Credit" as he avers.

11 **"CITIZEN'S ACTION"**

12 Mr. McNeil asserts he is bringing the present action "in the name
13 of the State of Washington" as a "taxpayer" to challenge the "unlawful
14 expenditure of taxpayer funds" pursuant to RCW 42.17.400(4). This
15 statutory provision, which governs campaign finances and lobbying in
16 Washington State, has no apparent relevance to any factual allegations
17 presented by Mr. McNeil. Mr. McNeil does not state which provision of
18 chapter 42.17 of the Revised Code of Washington was violated. As
19 presented, this claim is frivolous.

20 **OTHER STATUTORY PROVISIONS**

21 Plaintiff broadly asserts the "wrongful government acts of
22 discrimination, retaliation, intimidation, interference, malfeasance,
23 and other breaches of duty. . ." in violation of a host of federal
24 regulations, including 42 U.S.C. §§ 12131, 1981, 1983, 1985, 1986; ADA
25 Title II; Article IV, Sec. 1; 11 U.S.C. §§ 362 , 524, 1141; 28 U.S.C.
26 § 1495; 42 U.S.C. § 14141; 28 CFR part 42; and 42 U.S.C. § 3789d.

1 In essence, Plaintiff objects to the manner in which his
2 probation was handled, and to adverse family law proceedings in state
3 court. He further contends various city, county, state, and federal
4 agencies failed to "accommodate" his "disability" when they failed to
5 capitulate to his demands for forms, and electronic and telephonic
6 communications, in the manner and time Plaintiff allotted.

7 Plaintiff fails to present any facts from which the court could
8 infer a violation under the Americans with Disability Act (ADA). 42
9 U.S.C. § 12132. The ADA prohibits public entities from excluding the
10 disabled from participating in or benefitting from a public program,
11 activity, or service "solely by reason of disability." *Weinreich v.*
12 *Los Angeles County Metro. Transp. Auth.*, 114 F.3d 976, 978-79 (9th
13 Cir. 1997). Plaintiff presents no facts from which the court could
14 infer he was denied services "solely by reason of [his] disability."
15 He has not stated a violation of the ADA against any of the named
16 defendants. 42 U.S.C. § 12132.

17 **28 U.S.C. § 1495**

18 Plaintiff contends he is presently unlawfully incarcerated, and
19 restrained by the State of Washington, in the Spokane County Jail, in
20 violation of 28 U.S.C. § 1495. Plaintiff, however, presents no facts
21 indicating he has been unjustly convicted of an offense against the
22 *United States* and imprisoned. This statutory provision does not apply
23 to Mr. McNeil as he is incarcerated pursuant to state proceedings.
24 Any claim for damages for alleged unlawful incarceration is premature
25 at this time, *See Heck v. Humphrey*, 512 U.S. 477, 487 (1994).
26

1 *forma pauperis* "unless the prisoner is under imminent danger of
2 serious physical injury." 28 U.S.C. § 1915(g). Plaintiff is advised
3 to read the new statutory provisions under 28 U.S.C. § 1915. This
4 dismissal of Plaintiff's complaint may count as one of the three
5 dismissals allowed by 28 U.S.C. § 1915(g) and may adversely affect his
6 ability to file future claims.

7 IT IS SO ORDERED. The District Court Executive is directed to
8 enter this Order, forward a copy to Plaintiff at his last known
9 address, enter judgment, and close the file. The District Court
10 Executive is further directed to forward a copy of this Order to the
11 Office of the Attorney General of Washington, Criminal Justice
12 Division.

13 DATED this 9th day of November 2004.

14
15 S/ Alan A. McDonald
16 ALAN A. McDONALD
17 SENIOR UNITED STATES DISTRICT JUDGE
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