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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DUNCAN MCNEIL,

Plaintiff,

vs.

ROBERT D. MILLER, et al.,

Defendants.

NO. CV-04-378-AAM

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

1915(g)

Plaintiff, a prisoner at the Spokane County Jail brings this *pro se* civil rights complaint, consisting of 27 pages against 45 named defendants, pursuant to 42 U.S.C. §§ 1983, 1981, 1985(3), 12132, 2000e-2, and 2000e-5, RCW 49.60.180, 210, 215, and RCW 9.91.010(2). 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

ORDER DENYING *IN FORMA PAUPERIS* STATUS
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1 against a governmental entity or officer or employee of a governmental
2 entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or
3 portion thereof if the prisoner has raised claims that are legally
4 "frivolous or malicious," that fail to state a claim upon which relief
5 may be granted, or that seek monetary relief from a defendant who is
6 immune from such relief. 28 U.S.C. §§ 1915A(b)(1), (2) and 1915(e)(2);
7 See *Barren v. Harrington*, 152 F.3d 1193 (9th Cir. 1998).

8 A claim is legally frivolous when it lacks an arguable basis
9 either in law or in fact. *Neitzke v. Williams*, 490 U.S. 319, 325
10 (1989); *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th Cir. 1984).
11 The court may, therefore, dismiss a claim as frivolous where it is
12 based on an indisputably meritless legal theory or where the factual
13 contentions are clearly baseless. *Neitzke*, 490 U.S. at 327. The
14 critical inquiry is whether a constitutional claim, however inartfully
15 pleaded, has an arguable legal and factual basis. See *Jackson v.*
16 *Arizona*, 885 F.2d 639, 640 (9th Cir. 1989); *Franklin*, 745 F.2d at
17 1227.

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

1 425 U.S. 738, 740 (1976), construe the pleading in the light most
2 favorable to Plaintiff, and resolve all doubts in Plaintiff's favor.
3 *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). On the basis of these
4 standards, Plaintiff's allegations are frivolous and malicious.

5 **MC-02-0010**

6 Mr. McNeil brings this action, claiming the knowing and
7 intentional violation of certain "Writs of Obedience" and to obtain
8 enforcement of "judgments registered in case no. MC-02-0010, USDC ED
9 WA." In May 2002, Mr. McNeil attempted to "register a foreign
10 judgment" in this District and cause number MC-02-0010 was opened.
11 Because Plaintiff had not fully complied with 28 U.S.C. §§ 1963 and
12 1655, however, the court could not grant the requested relief.
13 Contrary to Plaintiff's assertions, no foreign judgments have been
14 registered in MC-02-0010. Therefore, Plaintiff is not entitled to
15 "Full Faith and Credit" as he avers. The court finds his allegations
16 frivolous and malicious.

17 **"EXHIBIT A"**

18 Once again, Mr. McNeil attaches "Exhibit A" as his "Statement of
19 Claim." This exhibit has been filed in numerous actions in this
20 District in the past month. It does not set forth a factual basis for
21 a cognizable claim in the Federal District Court. See Fed. R. Civ. P.
22 8(a). Furthermore, it violates pleading requirements as set forth in
23 LR 10.1(a)(2), Local Rules for the Eastern District of Washington.
24 Finally, exhibits should not be submitted with a complaint. Instead,
25 the relevant information contained in an exhibit should be paraphrased
26 in the complaint.

1 After review of Mr. McNeil's submissions, the court finds
2 amendment would be futile. *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th
3 Cir. 1987). The court notes Mr. McNeil has filed over fourteen
4 actions since October 14, 2004, naming hundreds of defendants and
5 failing to present specific allegations. The court finds Mr. McNeil's
6 submissions abusive of the judicial process, *Chambers v. NASCO, Inc.*,
7 501 U.S. 32, 44-45 (1991), and a sanction of fees or threatening
8 incarceration would be unavailing.

9 For the reasons set forth above, **IT IS ORDERED** the complaint is
10 **DISMISSED with prejudice** as frivolous and malicious. 28 U.S.C. §§
11 1915A(b)(1), (2) and 1915(e)(2)

12 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a
13 prisoner who brings three or more civil actions or appeals which are
14 dismissed as frivolous, malicious, or for failure to state a claim
15 will be precluded from bringing any other civil action or appeal *in*
16 *forma pauperis* "unless the prisoner is under imminent danger of
17 serious physical injury." 28 U.S.C. § 1915(g). Plaintiff is advised
18 to read the new statutory provisions under 28 U.S.C. § 1915. This
19 dismissal of Plaintiff's complaint may count as one of the three
20 dismissals allowed by 28 U.S.C. § 1915(g) and may adversely affect his
21 ability to file future claims.

22 **IT IS SO ORDERED.** The District Court Executive is directed to
23 enter this Order, forward a copy to Plaintiff at his last known
24 address, enter judgment, and close the file. The District Court
25 Executive is further directed to forward a copy of this Order to the
26 Office of the Attorney General of Washington, Criminal Justice

27
28 ORDER DENYING *IN FORMA PAUPERIS* STATUS
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1 Division.

2 DATED this 9th day of November 2004.

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S/ Alan A. McDonald

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ALAN A. McDONALD

SENIOR UNITED STATES DISTRICT JUDGE

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