

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

GREGORY GAMACHE,)
)
 Plaintiff,)
)
 v.)
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)
 _____)

Case No. 11-1085-KHV

REPORT AND RECOMMENDATION

This matter is before the court on plaintiff's motion for leave to proceed *in forma pauperis* (Doc. 3). As explained in greater detail below, the undersigned judge recommends that plaintiff's motion to proceed *in forma pauperis* be DENIED and the case DISMISSED.

Proceeding *in forma pauperis* in a civil case is a privilege, not a right. White v. Colorado, 157 F.3d 1226, 1233 (10th Cir. 1998). Under 28 U.S.C. § 1915(a)(1), a federal court *may* authorize the commencement, prosecution or defense of any suit, action, or proceeding without the prepayment of fees by a person who lacks financial means. The decision whether to grant or deny *in forma pauperis* status under section 1915 lies within the sound discretion of the court. Cabrera v. Horgas, No. 98-4231, 1999 WL 241783, at *1 (10th Cir. 1999)(unpublished). In addition to plaintiff's financial status, the court considers whether the action: (1) is frivolous or malicious, (2) fails to state a claim on which relief may

be granted, or (3) seeks monetary relief against a defendant who is immune from such relief.
28 U.S.C. § 1915(e)(2)(B).

Gamache, a resident of St. Charles, Missouri, filed this complaint seeking the immediate passage of a federal law to protect citizens “from the use of electronic weapons.” Gamache has apparently filed more than eighty lawsuits concerning “electronic weapons” in various other federal courts. See, e.g., Gamache v. Delaware, 2011 WL 2198109 (D. Del. June 6, 2011)(reviewing a five month period of the Public Access to Court Electronic Records website records).

The United States of America is the sole defendant and it is well established that such an action cannot be maintained unless the United States waives its sovereign immunity. See United States v. Mitchell (I), 445 U.S. 535, 538 (1980). The United States of America has not waived its immunity to this lawsuit; therefore, the claim against the United States is barred by sovereign immunity. Gamache v. United States, 2011 WL 2198326 (D. Del. June 6, 2011). Because Gamache’s claim against the United States for the creation of a federal statute has no arguable basis in law or fact and is frivolous, the court recommends that the case be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B).

IT IS THEREFORE RECOMMENDED that plaintiff’s motion to proceed in forma pauperis (**Doc. 3**) be **DENIED**.

IT IS FURTHER RECOMMENDED that the complaint be **DISMISSED** pursuant to 28 U.S.C. § 1915(e)(2)(B) and that the Clerk of the Court be directed to **CLOSE** this case.

Pursuant to 28 U.S.C. § 636(b)(1)(C), plaintiff may file written objections to the

proposed findings and recommendations with the clerk of the district court within **fourteen (14) days** after being served with a copy of this recommendation and report. Failure to make a timely objection to this report and recommendation waives appellate review of both factual and legal issues.

IT IS SO ORDERED.

Dated at Wichita, Kansas this 14th day of June 2011.

S/ Karen M. Humphreys

KAREN M. HUMPHREYS
United States Magistrate Judge