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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PATRICK BLACKSHIRE,

Plaintiff,

v.

SACRAMENTO REGIONAL TRANSIT,

Defendant.

No. 2:16-cv-2540 MCE AC (PS)

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is proceeding in this action pro se. This matter was accordingly referred to the undersigned by E.D. Cal. R. (“Local Rule”) 302(c)(21). Plaintiff has also requested leave to proceed in forma pauperis (“IFP”) pursuant to 28 U.S.C. § 1915. ECF No. 2. Plaintiff has submitted the affidavit required by the statute, and according the request to proceed IFP will be granted.

I. SCREENING

Granting IFP status does not end the court’s inquiry. The federal IFP statute requires federal courts to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989). In reviewing a complaint under this standard, the

1 court will (1) accept as true all of the factual allegations contained in the complaint, unless they
2 are clearly baseless or fanciful, (2) construe those allegations in the light most favorable to the
3 plaintiff, and (3) resolve all doubts in the plaintiffs' favor. See Neitzke, 490 U.S. at 327;
4 Erickson v. Pardus, 551 U.S. 89, 94 (2007); Von Saher v. Norton Simon Museum of Art at
5 Pasadena, 592 F.3d 954, 960 (9th Cir. 2010), cert. denied, 564 U.S. 1037 (2011); Hebbe v. Plieler,
6 627 F.3d 338, 340 (9th Cir. 2010).

7 A. The Complaint

8 The factual allegations of plaintiff's complaint are identical to the allegations of the
9 complaint he filed in Blackshire v. Sacramento Regional Transit, 2:12-cv-1803, ECF No. 1 (E.D.
10 Cal. July 9, 2012). In the original lawsuit, the assigned magistrate judge recommended that the
11 action be dismissed with leave to amend. Id. at ECF No. 6. When plaintiff declined to amend,
12 and stood on his original complaint, the magistrate judge recommended that the action be
13 dismissed with prejudice. Id. at ECF No. 7. The district judge dismissed the action with
14 prejudice, and judgment was entered. Id. at ECF Nos. 10, 11.

15 Plaintiff appealed the judgment. Id. at ECF No. 12. On July 15, 2013, the appeal was
16 dismissed because plaintiff failed to perfect his appeal and failed to comply with the Ninth
17 Circuit's order. Id. at ECF No. 16. Two years later, plaintiff asked the district court to re-open
18 the case. Id. at ECF No. 20. The request was denied on October 15, 2015. Id. at ECF No. 22.

19 B. Analysis

20 "The doctrine of *res judicata* provides that a final judgment on the merits bars further
21 claims by parties or their privies based on the same cause of action." Tahoe-Sierra Preservation
22 Council, Inc. v. Tahoe Regional Planning Agency, 322 F.3d 1064, 1077 (9th Cir. 2003) (internal
23 quotation marks omitted). Although this doctrine is normally raised as an affirmative defense,
24 where its application is plain from the face of the complaint, the court may raise it *sua sponte*:

25 [I]f a court is on notice that it has previously decided the issue
26 presented, the court may dismiss the action *sua sponte*, even though
27 the defense has not been raised. This result is fully consistent with
28 the policies underlying *res judicata*: it is not based solely on the
defendant's interest in avoiding the burdens of twice defending a
suit, but is also based on the avoidance of unnecessary judicial
waste.

1 Arizona v. California, 530 U.S. 392, 412 (2000) (internal quotation marks omitted); Headwaters
2 Inc. v. U.S. Forest Serv., 399 F.3d 1047, 1054 (9th Cir. 2005) (“[a]s a general matter, a court
3 may, *sua sponte*, dismiss a case on preclusion grounds where the records of that court show that a
4 previous action covering the same subject matter *and parties* had been dismissed”) (emphasis in
5 text). This is no less true where, as here, plaintiff’s original action – making factual allegations
6 identical to those of this complaint – was dismissed for lack of federal jurisdiction, his attempt to
7 appeal that dismissal failed, and his attempt to re-open that case failed. This action should be
8 dismissed with prejudice to avoid the continued fruitless expenditure of scarce judicial resources.

9 III. CONCLUSION

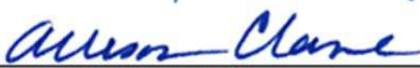
10 For the reasons explained above:

11 IT IS HEREBY ORDERED that plaintiff’s request to proceed in forma pauperis (ECF
12 No. 2) is GRANTED;

13 Further, IT IS HEREBY RECOMMENDED that this action be dismissed with prejudice.

14 These findings and recommendations are submitted to the United States District Judge
15 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one (21)
16 days after being served with these findings and recommendations, plaintiff may file written
17 objections with the court. Such document should be captioned “Objections to Magistrate Judge’s
18 Findings and Recommendations.” Local Rule 304(d). Plaintiff is advised that failure to file
19 objections within the specified time may waive the right to appeal the District Court’s order.
20 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

21 DATED: November 1, 2016

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23 ALLISON CLAIRE
24 UNITED STATES MAGISTRATE JUDGE
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