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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LAWRENCE DEE WILLIAMS,)	1:09-cv-01435-OWW-SMS
)	
Plaintiff,)	FINDINGS AND RECOMMENDATION TO
)	DISMISS PLAINTIFF'S FIRST AMENDED
v.)	COMPLAINT WITHOUT LEAVE TO AMEND
)	FOR FAILURE TO STATE A BASIS FOR
)	JURISDICTION IN THIS COURT
FRESNO POLICE CHIEF JERRY)	(Doc. 4)
DYER, et al.,)	
)	
Defendants.)	
)	
)	

Plaintiff is a state prisoner who is proceeding pro se and in forma pauperis with an action for damages and other relief concerning alleged civil rights violations. The matter has been referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b) and Local Rules 72-302 and 72-304. Pending before the Court is Plaintiff's first amended complaint, filed on September 22, 2009.

I. Screening the Complaint

The Court must screen complaints brought by prisoners seeking relief against a governmental entity or officer. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the Court determines that an allegation of poverty is

1 untrue or that the action is 1) frivolous or malicious, 2) fails
2 to state a claim upon which relief may be granted, or 3) seeks
3 monetary relief from a defendant who is immune from such relief.
4 28 U.S.C. §§ 1915A(b), 1915(e)(2).

5 "Rule 8(a)'s simplified pleading standard applies to all
6 civil actions, with limited exceptions," none of which applies to
7 section 1983 actions. Swierkiewicz v. Sorema N. A., 534 U.S. 506,
8 512 (2002); Fed. R. Civ. P. 8(a). Pursuant to Rule 8(a), a
9 complaint must contain "a short and plain statement of the claim
10 showing that the pleader is entitled to relief" Fed. R.
11 Civ. P. 8(a). "Such a statement must simply give the defendant
12 fair notice of what the plaintiff's claim is and the grounds upon
13 which it rests." Swierkiewicz, 534 U.S. at 512. Detailed factual
14 allegations are not required, but "[t]hreadbare recitals of the
15 elements of a cause of action, supported by mere conclusory
16 statements, do not suffice." Ashcroft v. Iqbal, 129 S.Ct. 1937,
17 1949 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544,
18 555, 127 S.Ct. 1955, 1964-65 (2007)). Plaintiff must set forth
19 "sufficient factual matter, accepted as true, to 'state a claim
20 that is plausible on its face.'" Iqbal, 129 S.Ct. at 1949
21 (quoting Twombly, 550 U.S. at 555). While factual allegations are
22 accepted as true, legal conclusion are not. Id. at 1949.

23 If the Court determines that the complaint fails to state a
24 claim, leave to amend should be granted to the extent that the
25 deficiencies of the complaint can be cured by amendment. Lopez v.
26 Smith, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc). Dismissal
27 of a pro se complaint for failure to state a claim is proper only
28 where it is obvious that the Plaintiff cannot prevail on the

1 facts that he has alleged and that an opportunity to amend would
2 be futile. Lopez v. Smith, 203 F.3d at 1128.

3 II. Subject Matter Jurisdiction

4 It is Plaintiff's burden to allege a short and plain
5 statement of the grounds for the Court's jurisdiction unless the
6 Court already has jurisdiction and the claim needs no new
7 jurisdictional support. Fed. R. Civ. P. 8(a)(1); McNutt v. Gen.
8 Motors Acceptance Corp. of Ind., 298 U.S. 178, 189 (1936). Local
9 Rule 8-204 provides:

10 When an affirmative allegation of jurisdiction is
11 required pursuant to Fed. R. Civ. P. 8(a)(1), it
12 (i) shall appear as the first allegation of any
13 complaint, petition, counterclaim, cross-claim or
14 third party claim; (ii) shall be styled "Jurisdiction,"
15 (iii) shall state the claimed statutory or other
16 basis of federal jurisdiction, and (iv) shall state
17 the facts supporting such jurisdictional claim.

18 III. Plaintiff's Complaint

19 Here, Plaintiff alleges that he was defamed by the
20 Defendants (the Chief of Police and the Mayor of Fresno), who
21 stated that he had committed previous crimes (double murder and a
22 Merced home invasion rape), and that thereafter Plaintiff was
23 assaulted by inmates in Plaintiff's place of confinement.

24 Defamation is a state tort claim.

25 Plaintiff fails to state any basis for subject matter
26 jurisdiction in this Court. Plaintiff does not appear to be
27 asserting any right arising under federal statute, treaty, or the
28 Constitution that would confer jurisdiction pursuant to 28 U.S.C.
§ 1331.

Further, Plaintiff, who is an inmate in California, does not
include any allegations regarding the citizenship of Defendant or

1 of Plaintiff; however, because of the positions of the named
2 defendants, it is not likely that the named defendants are
3 citizens of a state other than California. Hence, it does not
4 appear that there would be subject matter jurisdiction based on
5 the citizenship of the parties pursuant to 28 U.S.C. § 1332.

6 Accordingly, Plaintiff has failed to state a basis for
7 jurisdiction in this Court.

8 Plaintiff has already been informed of the requirement of
9 stating grounds for jurisdiction, and Plaintiff has been given an
10 opportunity to file a first amended complaint. However, Plaintiff
11 has not cured the defect in his complaint.

12 It appears that affording Plaintiff a further opportunity to
13 state a jurisdictional basis would be futile.

14 IV. Recommendation

15 Accordingly, it IS RECOMMENDED that Plaintiff's second
16 amended complaint be dismissed without leave to amend for failure
17 to state grounds for jurisdiction in this Court.

18 This report and recommendation is submitted to the United
19 States District Court Judge assigned to the case, pursuant to the
20 provisions of 28 U.S.C. § 636 (b) (1) (B) and Rule 72-304 of the
21 Local Rules of Practice for the United States District Court,
22 Eastern District of California. Within thirty (30) days after
23 being served with a copy, any party may file written objections
24 with the Court and serve a copy on all parties. Such a document
25 should be captioned "Objections to Magistrate Judge's Findings
26 and Recommendations." Replies to the objections shall be served
27 and filed within ten (10) court days (plus three days if served
28 by mail) after service of the objections. The Court will then

1 review the Magistrate Judge's ruling pursuant to 28 U.S.C. § 636
2 (b) (1) (C). The parties are advised that failure to file
3 objections within the specified time may waive the right to
4 appeal the District Court's order. Martinez v. Ylst, 951 F.2d
5 1153 (9th Cir. 1991).

6

7 IT IS SO ORDERED.

8 **Dated:** November 17, 2009

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE

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