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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MICHAEL HORNE,
Plaintiff,
v.
GOLDEN EMPIRE TRANSIT
Defendant.

Case No. 1:19-cv-01209-DAD-EPG
FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS CASE BE
DISMISSED AS FRIVOLOUS AND FOR
FAILURE TO STATE A CLAIM
(ECF No. 1)
OBJECTIONS, IF ANY, DUE WITHIN
TWENTY-ONE DAYS

Plaintiff, Michael Horne (“Plaintiff”), proceeding *pro se* and *in forma pauperis*, filed the complaint initiating this action on September 3, 2019. (ECF No. 1.)

For the reasons described below, the Court recommends that this action be dismissed for being frivolous and for failing to state a claim, without prejudice to the filing of a paid complaint making the same allegations

Plaintiff may file objections to these findings and recommendations within twenty-one days from the date of service of this order.

I. SCREENING REQUIREMENT

Under 28 U.S.C. § 1915(e)(2), in any case in which a plaintiff is proceeding *in forma pauperis*, the Court must conduct a review of the claims brought by the plaintiff to determine whether it “state[s] a claim on which relief may be granted,” is “frivolous or malicious,” or

1 “seek[s] monetary relief against a defendant who is immune from such relief.” If the Court
2 determines that the complaint fails to state a claim on which relief may be granted, it must be
3 dismissed. *Id.* Similarly, if the Court determines the complaint is frivolous or malicious, it must
4 be dismissed. *Id.* An action is deemed to be frivolous if it is “of little weight or importance:
5 having no basis in law or fact” and malicious if it was filed with the “intention or desire to harm
6 another.” *Andrews v. King*, 398 F.3d 1113, 1121 (9th Cir. 2005). Leave to amend may be granted
7 to the extent that the deficiencies of the complaint can be cured by amendment. *Cato v. United*
8 *States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

9 A complaint must contain “a short and plain statement of the claim showing that the
10 pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
11 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
12 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell*
13 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual
14 matter, accepted as true, to ‘state a claim that is plausible on its face.’” *Iqbal*, 556 U.S. at 663
15 (quoting *Twombly*, 550 U.S. at 555). While factual allegations are accepted as true, legal
16 conclusions are not. *Id.* at 678.

17 In determining whether a complaint states an actionable claim, the Court must accept the
18 allegations in the complaint as true, *Hosp. Bldg. Co. v. Trs. of Rex Hospital*, 425 U.S. 738, 740
19 (1976), construe *pro se* pleadings liberally in the light most favorable to the Plaintiff, *Resnick v.*
20 *Hayes*, 213 F.3d 443, 447 (9th Cir. 2000), and resolve all doubts in the Plaintiff’s favor, *Jenkins*
21 *v. McKeithen*, 395 U.S. 411, 421 (1969). Pleadings of *pro se* plaintiffs “must be held to less
22 stringent standards than formal pleadings drafted by lawyers.” *Hebbe v. Pliler*, 627 F.3d 338,
23 342 (9th Cir. 2010) (holding that *pro se* complaints should continue to be liberally construed
24 after *Iqbal*).

25 II. PLAINTIFF’S COMPLAINT

26 Plaintiff’s complaint states in its entirety:

27 “2 counts. Violation of speech. Slander and tell me be quiet / shut up. Government
28 conspiracy. Government coverup. Violation of American Disability Act. Attempted

1 murder 1st degree. Attempted mass murder 1st degree. Violation of CA State Penal
2 Code 273a. Herassment. Disable profile. Violation of public safety. Unbecoming of
3 a guard. Assersory before the crime, assersory after the fact. Violation of religion.
4 Violation of 9th Amendment. Violation of 14th Amendment.”

5 **III. LEGAL STANDARDS**

6 Under 28 U.S.C. § 1915(e), the court is required to dismiss a case of plaintiff proceeding
7 *in forma pauperis* at any time if the court determines that the action is (i) is frivolous or
8 malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief
9 against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *accord Martinez*
10 *v. Bureau of Immigration & Customs Enf’t*, 316 F. App’x 640, 641 (9th Cir. 2009) (unreported)
11 (upholding district court’s dismissal as frivolous under § 1915(e)(2)(B)(ii) for repeating
12 previously-litigated claims and noting the statute “requir[es] dismissal of a frivolous complaint
13 filed in forma pauperis”); *Peabody v. Zlaket*, 194 F.3d 1317, 1317 and n.3, 1999 WL 731360, at
14 *1 and n.3 (9th Cir. 1999) (Table, unpublished) (affirming district court’s dismissal under §
15 1915(e)(2)(B)(i)-(iii) for failing to state claim under civil rights statute); *Lopez v. Smith*, 203 F.3d
16 1122, 1129 (9th Cir. 2000) (“[S]ection 1915(e) applies to all in forma pauperis complaints, not
17 just those filed by prisoners.”).

18 “A claim is ‘frivolous’ when it is without basis in law or fact” *Knapp v. Hogan*, 738
19 F.3d 1106, 1109 (9th Cir. 2013); *accord Denton v. Hernandez*, 504 U.S. 25, 33 (1992) (holding
20 “a finding of factual frivolousness is appropriate when the facts alleged rise to the level of the
21 irrational or the wholly incredible”). A “district court properly dismis[s] [an] action as
22 frivolous [when] the complaint contains indecipherable facts and unsupported legal
23 assertions.” *Anderson v. Sy*, 486 F. App’x 644 (9th Cir. 2012) (unpublished) (citing *Jackson v.*
24 *Arizona*, 885 F.2d 639, 640–41 (9th Cir. 1989), *superseded by statute on other grounds as stated*
25 *in Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir.2000)).

26 Dismissals as frivolous do not prohibit a plaintiff from bringing the same action so long
27 as the filing fee is paid:

28 Because a § 1915(d) dismissal is not a dismissal on the merits, but rather an
exercise of the court's discretion under the *in forma pauperis* statute, the dismissal
does not prejudice the filing of a paid complaint making the same allegations. It

1 could, however, have a res judicata effect on frivolousness determinations for
2 future *in forma pauperis* petitions.

3 *Denton*, 504 U.S. at 34.

4 **IV. APPLICATION TO PLAINTIFF’S COMPLAINT**

5 Plaintiff’s claim is frivolous because it is incomprehensible and contains no basis in law
6 or fact. Plaintiff alleges no facts, and the legal principles Plaintiff mentions are
7 incomprehensible. Because the complaint is frivolous, it must be dismissed. 28 U.S.C. §
8 1915(e)(2)(B)(i).

9 **V. CONCLUSION AND RECOMMENDATIONS**

10 The Court has screened Plaintiff’s complaint and finds that it is frivolous and fails to state
11 any claims that should proceed past the screening stage. The Court recommends dismissal,
12 without prejudice to the filing of a paid complaint making the same allegations.

13 The Court does not recommend granting leave to amend because Plaintiff’s complaint is
14 incomprehensible with no basis in fact and law. Therefore, leave to amend would be futile. *See*
15 *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (explaining that there is no presumption that
16 a district court should grant leave to amend when it “determines that the pleading could not
17 possibly be cured by the allegation of other facts”); *accord Lukashin v. AllianceOne Receivables*
18 *Mgmt. Inc.*, 617 F. App’x 812, 813 (9th Cir. 2015) (unreported) (affirming denial of leave to
19 amend where plaintiffs “failed to allege facts sufficient to shows that defendants’ alleged
20 conduct was actionable”); *Villasenor v. Zamora*, 611 F. App’x 465, 466 (9th Cir. 2015)
21 (unreported) (“The district court did not abuse its discretion when it denied [prisoner plaintiff]
22 leave to amend his complaint because amendment would be futile.”); *Badfoot v. Estelle*, 874
23 F.2d 815 and n.1, 4 (9th Cir. 1989) (Unreported, Table) (affirming dismissal of prisoner’s
24 complaint without leave to amend based on finding it incomprehensible); *Yegorov v.*
25 *Hutchenson*, No. 2:18-CV-1095-TLN-DBPS, 2018 WL 4944881, at *2-3 (E.D. Cal. Oct. 11,
26 2018), *report and recommendation adopted*, 2019 WL 1095132 (E.D. Cal. Jan. 3, 2019)
27 (denying leave to amend where “the complaint consists of a single page of incomprehensible,
28 vague, and conclusory allegations”).

Based on the foregoing, it is HEREBY RECOMMENDED that:

1 1. This case be DISMISSED for being frivolous and failing to state a claim, without
2 prejudice to the filing of a paid complaint making the same allegations.

3 2. The Clerk of the Court be directed to CLOSE this case.

4 These findings and recommendations will be submitted to the United States district judge
5 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within twenty-one
6 (21) days after being served with these findings and recommendations, Plaintiff may file written
7 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s
8 Findings and Recommendations.”

9 Plaintiff is advised that failure to file objections within the specified time may result in
10 the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014)
11 (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

12
13 IT IS SO ORDERED.

14 Dated: April 13, 2020

15 /s/ Eric P. Gray
16 UNITED STATES MAGISTRATE JUDGE
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