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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHADERICK A. INGRAM,

Plaintiff,

No. 2:12-cv-2034 MCE DAD PS

vs.

CITY OF SACRAMENTO, et al.,

FINDINGS AND RECOMMENDATIONS

Defendants.

_____ /

Plaintiff, proceeding pro se, commenced this action on August 3, 2012, by filing a complaint and a motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. (Doc. Nos. 1 & 2.) This matter was referred to the undersigned in accordance with Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1).

Plaintiff’s in forma pauperis application makes the showing required by 28 U.S.C. § 1915(a)(1). However, a determination that a plaintiff qualifies financially for in forma pauperis status does not complete the inquiry required by the statute. “A district court may deny leave to proceed in forma pauperis at the outset if it appears from the face of the proposed complaint that the action is frivolous or without merit.” Minetti v. Port of Seattle, 152 F.3d 1113, 1115 (9th Cir. 1998) (quoting Tripati v. First Nat. Bank & Trust, 821 F.2d 1368, 1370 (9th Cir. 1987)). See also Smart v. Heinze, 347 F.2d 114, 116 (9th Cir. 1965) (“It is the duty of the District Court to

1 examine any application for leave to proceed in forma pauperis to determine whether the
2 proposed proceeding has merit and if it appears that the proceeding is without merit, the court is
3 bound to deny a motion seeking leave to proceed in forma pauperis.”) Moreover, the court must
4 dismiss an in forma pauperis case at any time if the allegation of poverty is found to be untrue or
5 if it is determined that the action is frivolous or malicious, fails to state a claim on which relief
6 may be granted, or seeks monetary relief against an immune defendant. See 28 U.S.C. §
7 1915(e)(2). A complaint is legally frivolous when it lacks an arguable basis in law or in fact.
8 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28
9 (9th Cir. 1984). Under this standard, a court must dismiss a complaint as frivolous where it is
10 based on an indisputably meritless legal theory or where the factual contentions are clearly
11 baseless. Neitzke, 490 U.S. at 327; 28 U.S.C. § 1915(e).

12 To state a claim on which relief may be granted, the plaintiff must allege “enough
13 facts to state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 550
14 U.S. 544, 570 (2007). In considering whether a complaint states a cognizable claim, the court
15 accepts as true the material allegations in the complaint and construes the allegations in the light
16 most favorable to the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Hosp. Bldg.
17 Co. v. Trustees of Rex Hosp., 425 U.S. 738, 740 (1976); Love v. United States, 915 F.2d 1242,
18 1245 (9th Cir. 1989). Pro se pleadings are held to a less stringent standard than those drafted by
19 lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). However, the court need not accept as
20 true conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. Western
21 Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

22 The minimum requirements for a civil complaint in federal court are as follows:

23 A pleading which sets forth a claim for relief . . . shall contain (1) a
24 short and plain statement of the grounds upon which the court’s
25 jurisdiction depends . . . , (2) a short and plain statement of the
demand for judgment for the relief the pleader seeks.

26 Fed. R. Civ. P. 8(a).

1 Here, plaintiff's complaint does not contain a short and plain statement of his
2 claim showing that he is entitled to relief. In this regard, plaintiff's complaint consists of nine
3 pages of rambling, largely incoherent, vague allegations intermixed with references to federal
4 law.

5 For example, the complaint alleges the following:

6 Defendants ... sending Plaintiff mail after filling out IFP
7 application to proceed forth in civil suit against numerous
8 defendants, but jealous is the reason why Plaintiff is being violated
9 by such defendants that doesn't know Mr. Ingram, that's
10 discriminating against Mr. Ingram, and Mr. Ingram cant afford an
11 attorney, on purpose discriminating and defaming Plaintiffs
12 persons effecting him even more due to his mental disability
13 unreasonable harassing Plaintiff without being heard in trial after
14 being indigent and being granted IFP status...

15 (Compl. (Doc. No. 1) at 2.)

16 Although the Federal Rules of Civil Procedure adopt a flexible pleading policy, a
17 complaint must give the defendant fair notice of the plaintiff's claims and must allege facts that
18 state the elements of each claim plainly and succinctly. Fed. R. Civ. P. 8(a)(2); Jones v.
19 Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). "A pleading that offers 'labels
20 and conclusions' or 'a formulaic recitation of the elements of cause of action will not do.' Nor
21 does a complaint suffice if it tenders 'naked assertions' devoid of 'further factual
22 enhancements.'" Ashcroft v. Iqbal, 556 U.S.662, 678 (2009) (quoting Twombly, 550 U.S. at
23 555, 557). A plaintiff must allege with at least some degree of particularity overt acts which the
24 defendants engaged in that support the plaintiff's claims. Jones, 733 F.2d at 649.

25 Having reviewed plaintiff's allegations, the undersigned will make a substantive
26 finding of frivolousness as to the complaint filed in this action. In this regard, the allegations
found in plaintiff's complaint lack an arguable basis in law, are indisputably meritless and are
thus frivolous. See Neitzke, 490 U.S. at 325-27; Franklin, 745 F.2d at 1227-28.

Accordingly, for the reasons cited above, plaintiff's complaint should be
dismissed for failure to state a claim upon which relief can be granted.

1 The undersigned has carefully considered whether plaintiff may amend his
2 pleading to state a claim upon which relief can be granted. "Valid reasons for denying leave to
3 amend include undue delay, bad faith, prejudice, and futility." California Architectural Bldg.
4 Prod. v. Franciscan Ceramics, 818 F.2d 1466, 1472 (9th Cir. 1988). See also Klamath-Lake
5 Pharm. Ass'n v. Klamath Med. Serv. Bureau, 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that
6 while leave to amend shall be freely given, the court does not have to allow futile amendments).
7 In light of the obvious deficiencies of the complaint filed by plaintiff in this action as noted
8 above, the court finds that it would be futile to grant plaintiff leave to amend.

9 Accordingly, IT IS HEREBY RECOMMENDED that:

- 10 1. Plaintiff's August 3, 2012 application to proceed in forma pauperis (Doc. No.
11 2) be denied;
- 12 2. Plaintiff's August 3, 2012 complaint (Doc. No. 1) be dismissed without leave
13 to amend; and
- 14 3. This action be closed.

15 These findings and recommendations will be submitted to the United States
16 District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within
17 fourteen (14) days after being served with these findings and recommendations, plaintiff may file
18 written objections with the court. A document containing objections should be titled "Objections
19 to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
20 objections within the specified time may, under certain circumstances, waive the right to appeal
21 the District Court's order. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

22 DATED: November 8, 2012.

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25 _____
26 DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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