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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PATRICK A. BOCKARI,
Plaintiff,
v.
CHASE BANK,
Defendant.

No. 2:14-cv-0019 JAM DAD PS

FINDINGS AND RECOMMENDATIONS

Plaintiff Patrick Bockari is proceeding in this action pro se. This matter was referred to the undersigned in accordance with Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1). Plaintiff has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

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 examine any application for leave to proceed in forma pauperis to determine whether the proposed proceeding has merit and if it appears that the proceeding is without merit, the court is

1 bound to deny a motion seeking leave to proceed in forma pauperis.”).

2 Moreover, the court must dismiss an in forma pauperis case at any time if the allegation of
3 poverty is found to be untrue or if it is determined that the action is frivolous or malicious, fails to
4 state a claim on which relief may be granted, or seeks monetary relief against an immune
5 defendant. See 28 U.S.C. § 1915(e)(2). A complaint is legally frivolous when it lacks an
6 arguable basis in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v.
7 Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). Under this standard, a court must dismiss a
8 complaint as frivolous where it is based on an indisputably meritless legal theory or where the
9 factual contentions are clearly baseless. Neitzke, 490 U.S. at 327; 28 U.S.C. § 1915(e).

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

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

21 A pleading which sets forth a claim for relief . . . shall contain (1) a
22 short and plain statement of the grounds upon which the court’s
23 jurisdiction depends . . . , (2) a short and plain statement of the
claim showing that the pleader is entitled to relief, and (3) a demand
for judgment for the relief the pleader seeks.

24 FED. R. CIV. P. 8(a).

25 Here, plaintiff’s complaint alleges that on December 31, 2013, the defendant, “without
26 notice placed a restriction” on his bank account and “refused to release the funds.” (Compl. (Dkt.
27 No. 1) at 2.) Plaintiff alleges that he believes the restriction was placed in “retaliation for a civil
28 complaint filed in this court against the defendant for stealing [his] money back in 2010.” (Id.)

1 Based solely on this allegation, plaintiff seeks \$250,000 in damages. (Id) Plaintiff has also filed
2 a motion to consolidate this action with the matter of Patrick A. Bockari v. JP Morgan Chase
3 Bank, No. 2:13-cv-2603 JAM EFB, which is currently pending in this court. (Dkt. No. 3.) In that
4 pending action, plaintiff's first amended complaint alleges, in part, that on December 31, 2013,
5 defendant Chase Bank retaliated against plaintiff by putting a restriction on his bank account.
6 Plaintiff seeks the award of \$800,000 in damages in this other action pending in this court.

7 Duplicative lawsuits filed by a plaintiff proceeding in forma pauperis are subject to
8 dismissal as either frivolous or malicious under 28 U.S.C. § 1915(e). See, e.g., Cato v. United
9 States, 70 F.3d 1103, 1105 n. 2 (9th Cir. 1995); McWilliams v. State of Colo., 121 F.3d 573, 574
10 (10th Cir. 1997); Pittman v. Moore, 980 F.2d 994, 994-95 (5th Cir.1993); Bailey v. Johnson, 846
11 F.2d 1019, 1021 (5th Cir. 1988). An in forma pauperis complaint that merely repeats pending or
12 previously litigated claims may be considered abusive and dismissed under § 1915. Cato, 70 F.3d
13 at 1105 n. 2; Bailey, 846 F.2d at 1021. Repeating the same factual allegations asserted in an
14 earlier case, even if now filed against new defendants, is subject to dismissal as duplicative. See,
15 e.g., Bailey, 846 F.2d at 1021; Van Meter v. Morgan, 518 F.2d 366, 368 (8th Cir. 1975).

16 “Dismissal of the duplicative lawsuit, more so than the issuance of a stay or the enjoinder of
17 proceedings, promotes judicial economy and the comprehensive disposition of litigation.” Adams
18 v. California, 487 F.3d 684, 688, 692 (9th Cir. 2007). “[I]n assessing whether the second action
19 is duplicative of the first, we examine whether the causes of action and relief sought, as well as
20 the parties or privies to the action, are the same.” (Id. at 689.)

21 Here, plaintiff's complaint in this action raises the same allegations against the same
22 defendant and is seeking the same type of relief as that sought in Patrick A. Bockari v. JP Morgan
23 Chase Bank, No. 2:13-cv-2603 JAM EFB. In both actions plaintiff complains that on December
24 31, 2013, defendant Chase Bank retaliated against plaintiff by putting a restriction on his bank
25 account. The undersigned finds, therefore, that this action should be dismissed as duplicative of
26 his earlier filed action in this court.

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CONCLUSION

Accordingly, IT IS HEREBY RECOMMENDED that:

1. Plaintiff's January 3, 2014 application to proceed in forma pauperis (Dkt. No. 2) be denied;
2. Plaintiff's January 3, 2014 complaint (Dkt. No. 1) be dismissed without prejudice;
3. Plaintiff's February 23, 2015 motion to consolidate be denied; and
4. This action be dismissed.

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

Dated: July 7, 2015



DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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