

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 Although the Federal Rules of Civil Procedure adopt a flexible pleading policy, a
26 complaint must give the defendant fair notice of the plaintiff’s claims and must allege facts that
27 state the elements of each claim plainly and succinctly. FED. R. CIV. P. 8(a)(2); Jones v.
28 Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). “A pleading that offers ‘labels

1 and conclusions’ or ‘a formulaic recitation of the elements of cause of action will not do.’ Nor
2 does a complaint suffice if it tenders ‘naked assertions’ devoid of ‘further factual
3 enhancements.’” Ashcroft v. Iqbal, 556 U.S.662, 678 (2009) (quoting Twombly, 550 U.S. at 555,
4 557. A plaintiff must allege with at least some degree of particularity overt acts which the
5 defendants engaged in that support the plaintiff’s claims. Jones, 733 F.2d at 649.

6 Moreover, jurisdiction is a threshold inquiry that must precede the adjudication of any
7 case before the district court. Morongo Band of Mission Indians v. Cal. State Bd. of
8 Equalization, 858 F.2d 1376, 1380 (9th Cir. 1988). Federal courts are courts of limited
9 jurisdiction and may adjudicate only those cases authorized by federal law. Kokkonen v.
10 Guardian Life Ins. Co., 511 U.S. 375, 377 (1994); Willy v. Coastal Corp., 503 U.S. 131, 136-37
11 (1992). “Federal courts are presumed to lack jurisdiction, ‘unless the contrary appears
12 affirmatively from the record.’” Casey v. Lewis, 4 F.3d 1516, 1519 (9th Cir. 1993) (quoting
13 Bender v. Williamsport Area Sch. Dist., 475 U.S. 534, 546 (1986)).

14 Lack of subject matter jurisdiction may be raised by the court at any time during the
15 proceedings. Attorneys Trust v. Videotape Computer Prods., Inc., 93 F.3d 593, 594-95 (9th Cir.
16 1996). A federal court “ha[s] an independent obligation to address sua sponte whether [it] has
17 subject-matter jurisdiction.” Dittman v. California, 191 F.3d 1020, 1025 (9th Cir. 1999). It is the
18 obligation of the district court “to be alert to jurisdictional requirements.” Grupo Dataflux v.
19 Atlas Global Group, L.P., 541 U.S. 567, 593 (2004). Without jurisdiction, the district court
20 cannot decide the merits of a case or order any relief. See Morongo, 858 F.2d at 1380.

21 The burden of establishing jurisdiction rests upon plaintiff as the party asserting
22 jurisdiction. Kokkonen, 511 U.S. at 377; see also Hagans v. Lavine, 415 U.S. 528, 543 (1974)
23 (acknowledging that a claim may be dismissed for lack of jurisdiction if it is “so insubstantial,
24 implausible, . . . or otherwise completely devoid of merit as not to involve a federal controversy
25 within the jurisdiction of the District Court”); Bell v. Hood, 327 U.S. 678, 682-83 (1946)
26 (recognizing that a claim is subject to dismissal for want of jurisdiction where it is “wholly
27 insubstantial and frivolous” and so patently without merit as to justify dismissal for lack of
28 jurisdiction); Franklin v. Murphy, 745 F.2d 1221, 1227 n.6 (9th Cir. 1984) (holding that even

1 “[a] paid complaint that is ‘obviously frivolous’ does not confer federal subject matter jurisdiction
2 . . . and may be dismissed sua sponte before service of process.”).

3 Here, plaintiff’s complaint alleges that he contracted Hepatitis-C from the defendant who
4 never warned plaintiff that she had Hepatitis-C.¹ Plaintiff explains that he “would like the court
5 to hold the defendant . . . accountable for infecting” him with Hepatitis-C. (Complaint (Dkt. No.
6 1) at 7.) Based on this allegation the complaint asserts causes of action for negligence and
7 “Intentional Tort.” (Id. at 8-9.) With respect to jurisdiction, the complaint asserts that “[t]his
8 court is the proper court because” the injury occurred in its jurisdictional area.² (Id. at 2.)

9 However, the fact that the events allegedly resulting in plaintiff’s injury occurred within
10 the jurisdictional boundaries of this federal court does not, by itself, provide this court with
11 subject matter jurisdiction over plaintiff’s cause of action. The complaint’s claims for negligence
12 and intentional tort are based on California state law. Although a court may exercise
13 supplemental jurisdiction over state law claims, the plaintiff must first have a cognizable claim
14 for relief under federal law. See 28 U.S.C. § 1367.

15 Here, because it appears that the court lacks subject matter jurisdiction over plaintiff’s
16 state law claims, the court cannot evaluate the sufficiency of those claims and this matter must be
17 dismissed. The undersigned has carefully considered whether plaintiff may amend the complaint
18 to state a claim over which this court would have subject matter jurisdiction. “Valid reasons for
19 denying leave to amend include undue delay, bad faith, prejudice, and futility.” California
20 Architectural Bldg. Prod. v. Franciscan Ceramics, 818 F.2d 1466, 1472 (9th Cir. 1988). See also
21 Klamath-Lake Pharm. Ass’n v. Klamath Med. Serv. Bureau, 701 F.2d 1276, 1293 (9th Cir. 1983)
22 (holding that while leave to amend shall be freely given, the court does not have to allow futile

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25 ¹ In his complaint plaintiff alleges that he “was informed of [his] current condition . . . while
26 being arraigned for spouse abuse due to the breakup of [his] relationship with the defendant” and
27 that plaintiff is currently confined at the Rio Cosumnes Correctional Facility in Elk Grove, CA.
(Complaint (Dkt. No. 1) at 6.)

28 ² Plaintiff’s complaint was submitted on a Form Approved for Optional Use by the Judicial
Council of California.

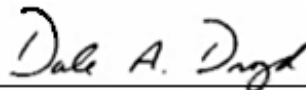
1 amendments). In light of the apparent lack of subject matter jurisdiction over plaintiff's state law
2 claims the undersigned finds that granting leave to amend would be futile.³

3 Accordingly, IT IS HEREBY RECOMMENDED that:

- 4 1. Plaintiff's June 23, 2014 application to proceed in forma pauperis (Dkt. No. 2)
5 be denied;
- 6 2. Plaintiff's June 23, 2014 complaint (Dkt. No. 1) be dismissed without leave to
7 amend; and
- 8 3. This action be dismissed.

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

16 Dated: October 24, 2014

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18 _____
19 DALE A. DROZD
20 UNITED STATES MAGISTRATE JUDGE

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27 ³ If plaintiff believes that a basis for this federal court's subject matter jurisdiction over this
28 action exists, he should assert and support that argument in his objections to these findings and
recommendations.