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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ABENA McKENZIE,

 Plaintiff,

 v.

KENNETH LEE WATKINS,

 Defendant.

No. 2:14-cv-1655 TLN DAD PS

FINDINGS AND RECOMMENDATIONS

Plaintiff Abena McKenzie 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 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 Jurisdiction is a threshold inquiry that must precede the adjudication of any case before
7 the district court. Morongo Band of Mission Indians v. Cal. State Bd. of Equalization, 858 F.2d
8 1376, 1380 (9th Cir. 1988). Federal courts are courts of limited jurisdiction and may adjudicate
9 only those cases authorized by federal law. Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375,
10 377 (1994); Willy v. Coastal Corp., 503 U.S. 131, 136-37 (1992). “Federal courts are presumed
11 to lack jurisdiction, ‘unless the contrary appears affirmatively from the record.’” Casey v. Lewis,
12 4 F.3d 1516, 1519 (9th Cir. 1993) (quoting Bender v. Williamsport Area Sch. Dist., 475 U.S. 534,
13 546 (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 entire complaint consists of a single paragraph, alleging that the named
4 defendant filed “a malicious public false health claim stating” that plaintiff had Hepatitis C,
5 “which is not true” and asking that the court order the defendant to “pay a sum for a harmful
6 infliction by him.” (Complaint (Dkt. No. 1) at 1.) In this regard, the complaint fails to contain a
7 short and plain statement of the grounds upon which the court’s jurisdiction depends, a short and
8 plain statement of plaintiff’s claim showing that the she is entitled to relief, or even a clear
9 demand for the relief she seeks. Moreover, in light of the nature of the complaint’s allegation, it
10 does not appear that the court could have subject matter jurisdiction over this action.¹

11 Accordingly, plaintiff’s complaint must be dismissed without prejudice for lack of subject
12 matter jurisdiction.² The undersigned has carefully considered whether plaintiff may amend the
13 complaint to state a claim over which this court would have subject matter jurisdiction. “Valid
14 reasons for denying leave to amend include undue delay, bad faith, prejudice, and futility.”
15 California Architectural Bldg. Prod. v. Franciscan Ceramics, 818 F.2d 1466, 1472 (9th Cir. 1988).
16 See also Klamath-Lake Pharm. Ass’n v. Klamath Med. Serv. Bureau, 701 F.2d 1276, 1293 (9th
17 Cir. 1983) (holding that while leave to amend shall be freely given, the court does not have to
18 allow futile amendments). In light of the nature of the complaint’s allegations and the apparent

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23 ¹ This is the second civil action plaintiff has filed against defendant Watkins in this court
24 requiring dismissal due to a lack of subject matter jurisdiction. See McKenzie v. Watkins, No.
2:14-cv-1653 JAM KJN PS (E.D. Cal. 2014).

25 ² It appears that plaintiff may be attempting to assert a claim for defamation. Under California
26 law, to state a prima facie case of defamation a plaintiff must show (1) “the intentional
27 publication” of (2) “a statement of fact” that (3) is “false” (4) “unprivileged,” and (5) “has a
28 natural tendency to injure or which causes special damage.” Smith v. Maldonado, 72 Cal.
App.4th 637, 645 (1999). Defamation, however, is a state law cause of action which does not
provide this court with subject matter jurisdiction.

1 lack of subject matter jurisdiction the undersigned finds that granting leave to amend would be
2 futile.³

3 Accordingly, IT IS HEREBY RECOMMENDED that:

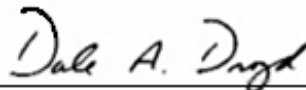
4 1. Plaintiff's July 14, 2014 application to proceed in forma pauperis (Dkt. No. 2)
5 be denied;

6 2. Plaintiff's July 14, 2014 complaint (Dkt. No. 1) be dismissed without prejudice
7 for a lack of subject matter jurisdiction; 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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19 DALE A. DROZD
20 UNITED STATES MAGISTRATE JUDGE

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

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