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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DMITRIY YEGOROV,
Plaintiff,
v.
LEONIDA BUCHKOVSKAYA,
Defendant.

No. 2:14-cv-2185 KJM DAD PS

FINDINGS AND RECOMMENDATIONS

Plaintiff Dmitriy Yegorov 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, although the complaint is difficult to decipher, it appears that this action concerns
4 solely an alleged violation of state law. In this regard, in his complaint plaintiff alleges as
5 follows. The defendant, “Leonida Buchkovskaya received special training in former Soviet
6 Union how to commit provocations and conflict with people.” (Compl. (Dkt. No. 1) at 2.)
7 Defendant Buchkovskaya obtained a restraining order against plaintiff during an ongoing family
8 law action and “committed crime perjury in Superior Court State of California” and “produced
9 fraudulent testimony under oath.” (*Id.* at 3.) Plaintiff’s complaint then simply recounts multiple
10 specific alleged examples of the defendant’s perjury followed by citations to the California Penal
11 Code. (*Id.* at 4-9.)

12 Even assuming arguendo that plaintiff’s complaint stated a cognizable claim for violation
13 of the California Penal Code, it would not grant this federal court subject matter jurisdiction over
14 that state law claim. Although this court, under certain circumstances, may exercise supplemental
15 jurisdiction over state law claims the complaint must first state a cognizable federal claim. 28
16 U.S.C. § 1367(a); Herman Family Revocable Trust v. Teddy Bear, 254 F.3d 802, 805 (9th Cir.
17 2001). Here, plaintiff’s complaint does not state any cognizable federal claim.

18 It is true that plaintiff’s complaint includes a single reference to “[c]onspiracy against
19 Constitution USA. Amendment 4, 5, 14.” (Compl. (Dkt. No. 1) at 1.) However, such vague and
20 conclusory allegations are insufficient to state a federal claim for relief. Moreover, a litigant who
21 complains of a violation of a constitutional right does not have a cause of action directly under the
22 United States Constitution. Livadas v. Bradshaw, 512 U.S. 107, 132 (1994) (affirming that it is
23 42 U.S.C. § 1983 that provides a federal cause of action for the deprivation of rights secured by
24 the United States Constitution); Chapman v. Houston Welfare Rights Org., 441 U.S. 600, 617
25 (1979) (explaining that 42 U.S.C. § 1983 was enacted to create a private cause of action for
26 violations of the United States Constitution); Azul-Pacifico, Inc. v. City of Los Angeles, 973 F.2d
27 704, 705 (9th Cir.1992) (“Plaintiff has no cause of action directly under the United States
28 Constitution.”).

1 Title 42 U.S.C. § 1983 provides that,

2 [e]very person who, under color of [state law] ... subjects, or causes
3 to be subjected, any citizen of the United States ... to the
4 deprivation of any rights, privileges, or immunities secured by the
5 Constitution and laws, shall be liable to the party injured in an
6 action at law, suit in equity, or other proper proceeding for redress.

7 In order to state a cognizable claim under § 1983 the plaintiff must allege facts
8 demonstrating that he was deprived of a right secured by the Constitution or laws of the United
9 States and that the deprivation was committed by a person acting under color of state law. West
10 v. Atkins, 487 U.S. 42, 48 (1988). It is the plaintiff's burden in bringing a claim under § 1983 to
11 allege, and ultimately establish, that the named defendants were acting under color of state law
12 when they deprived him of a federal right. Lee v. Katz, 276 F.3d 550, 553-54 (9th Cir. 2002).
13 Here, there are no allegations in plaintiff's complaint even suggesting that the named defendant
14 was at any time acting under color of state law.¹

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

25 _____
26 ¹ Although it is not clear from reading the allegations of the complaint, plaintiff's action in this
27 court may also be barred under the Rooker-Feldman doctrine, the Younger abstention doctrine
28 and/or Heck v. Humphrey, 512 U.S. 477 (1994). See generally Heck, 512 U.S. at 486-87;
Middlesex County Ethics Comm'n v. Garden State Bar Ass'n, 457 U.S. 423, 431-32 (1982);
Reusser v. Wachovia Bank, N.A., 525 F.3d 885, 859 (9th Cir. 2008).

² If plaintiff believes that a basis for this court's subject matter jurisdiction over this action exists
he should assert and support any such argument in his written objections to these findings and
recommendations.

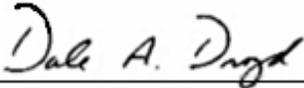
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Accordingly, IT IS HEREBY RECOMMENDED that:

1. Plaintiff's September 19, 2014 application to proceed in forma pauperis (Dkt. No. 2) be denied;
2. Plaintiff's September 19, 2014 complaint (Dkt. No. 1) be dismissed without prejudice for lack of subject matter jurisdiction; and
3. 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: January 8, 2015



DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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