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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RODERICK L. MITCHELL,
Plaintiff,
v.
JERRY BROWN, et al.,
Defendants.

No. 2:14-cv-2994 GEB DAD PS

FINDINGS AND RECOMMENDATIONS

Plaintiff Roderick Mitchell 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).

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1 Here, the court's records reveal that the complaint filed in this action is identical to the
2 complaint plaintiff has filed in the matter of Roderick L. Mitchell v. Jerry Brown, et al., No. 2:14-
3 cv-2993 MCE AC, which is currently pending in this court and is at later stage in the proceedings
4 than this action.¹ Duplicative lawsuits filed by a plaintiff proceeding in forma pauperis are
5 subject to dismissal as either frivolous or malicious under 28 U.S.C. § 1915(e). See, e.g., Cato v.
6 United States, 70 F.3d 1103, 1105 n. 2 (9th Cir. 1995); McWilliams v. State of Colo., 121 F.3d
7 573, 574 (10th Cir. 1997); Pittman v. Moore, 980 F.2d 994, 994-95 (5th Cir.1993); Bailey v.
8 Johnson, 846 F.2d 1019, 1021 (5th Cir. 1988). An in forma pauperis complaint that merely
9 repeats pending or previously litigated claims may be considered abusive and dismissed under §
10 1915. Cato, 70 F.3d at 1105 n. 2; Bailey, 846 F.2d at 1021. Repeating the same factual
11 allegations asserted in an earlier case, even if now filed against new defendants, is subject to
12 dismissal as duplicative. See, e.g., Bailey, 846 F.2d at 1021; Van Meter v. Morgan, 518 F.2d
13 366, 368 (8th Cir. 1975). "Dismissal of the duplicative lawsuit, more so than the issuance of a
14 stay or the enjoinder of proceedings, promotes judicial economy and the comprehensive
15 disposition of litigation." Adams v. California, 487 F.3d 684, 688, 692 (9th Cir. 2007). "[I]n
16 assessing whether the second action is duplicative of the first, we examine whether the causes of
17 action and relief sought, as well as the parties or privies to the action, are the same." (Id. at 689.)

18 Here, plaintiff's complaint in this action raises the same allegations as those made against
19 the same defendant and is seeking the same relief as that sought in Roderick L. Mitchell v. Jerry
20 Brown, et al., No. 2:14-cv-2993 MCE AC. Indeed, the complaints in the two actions are
21 identical. The undersigned finds, therefore, that this action should be dismissed as duplicative of
22 plaintiff's earlier filed action in this court.

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26 ¹ This court may take judicial notice of its own records. See United States v. Howard, 381 F.3d
27 873, 876 n. 1 (9th Cir. 2004); United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980); see also
28 FED. R. EVID. 201 (court may take judicial notice of facts that are capable of accurate
determination by sources whose accuracy cannot reasonably be questioned).

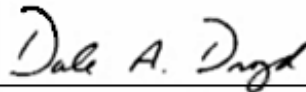
1 CONCLUSION

2 Accordingly, IT IS HEREBY RECOMMENDED that:

- 3 1. Plaintiff's December 29, 2014 application to proceed in forma pauperis (Dkt.
4 No. 2) be denied;
- 5 2. Plaintiff's December 29, 2014 complaint (Dkt. No. 1) be dismissed without
6 prejudice; and
- 7 3. This action be dismissed.

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

15 Dated: July 8, 2015

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18 DALE A. DROZD
19 UNITED STATES MAGISTRATE JUDGE

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