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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHARLES LEWIS BOBO,
Plaintiff,
v.
FRESNO COUNTY DEPENDCY COURT
AND TRUST FUND,
Defendant.

No. 2:16-cv-2339 TLN DB PS
FINDINGS AND RECOMMENDATIONS

Plaintiff, Charles Bobo, 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). Pending before the court is plaintiff's complaint and motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. (ECF Nos. 1 & 2.) Therein, plaintiff asks that this court grant plaintiff custody of his daughter and \$500,000,000 in damages.

The court is required to screen complaints brought by parties proceeding in forma pauperis. See 28 U.S.C. § 1915(e)(2); see also Lopez v. Smith, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc). Here, plaintiff's complaint is deficient and it appears that granting leave to amend would be futile. Accordingly, for the reasons stated below, the undersigned will recommend that plaintiff's complaint be dismissed without leave to amend.

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1 **I. Plaintiff's Application to Proceed In Forma Pauperis**

2 Plaintiff's in forma pauperis application makes the financial showing required by 28
3 U.S.C. § 1915(a)(1). However, a determination that a plaintiff qualifies financially for in forma
4 pauperis status does not complete the inquiry required by the statute. "A district court may deny
5 leave to proceed in forma pauperis at the outset if it appears from the face of the proposed
6 complaint that the action is frivolous or without merit." Minetti v. Port of Seattle, 152 F.3d
7 1113, 1115 (9th Cir. 1998) (quoting Tripati v. First Nat. Bank & Trust, 821 F.2d 1368, 1370 (9th
8 Cir. 1987)); see also McGee v. Department of Child Support Services, 584 Fed. Appx. 638 (9th
9 Cir. 2014) ("the district court did not abuse its discretion by denying McGee's request to proceed
10 IFP because it appears from the face of the amended complaint that McGee's action is frivolous
11 or without merit"); Smart v. Heinze, 347 F.2d 114, 116 (9th Cir. 1965) ("It is the duty of the
12 District Court to examine any application for leave to proceed in forma pauperis to determine
13 whether the proposed proceeding has merit and if it appears that the proceeding is without merit,
14 the court is bound to deny a motion seeking leave to proceed in forma pauperis.").

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

23 To state a claim on which relief may be granted, the plaintiff must allege "enough facts to
24 state a claim to relief that is plausible on its face." Bell Atlantic Corp. v. Twombly, 550 U.S. 544,
25 570 (2007). In considering whether a complaint states a cognizable claim, the court accepts as
26 true the material allegations in the complaint and construes the allegations in the light most
27 favorable to the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Hosp. Bldg. Co. v.
28 Trustees of Rex Hosp., 425 U.S. 738, 740 (1976); Love v. United States, 915 F.2d 1242, 1245

1 (9th Cir. 1989). Pro se pleadings are held to a less stringent standard than those drafted by
2 lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). However, the court need not accept as true
3 conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. Western
4 Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

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

6 A pleading which sets forth a claim for relief . . . shall contain (1) a
7 short and plain statement of the grounds upon which the court's
8 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.

9 Fed. R. Civ. P. 8(a).

10 **II. Plaintiff's Complaint**

11 Plaintiff's complaint fails to contain a short and plain statement of the grounds upon
12 which the court's jurisdiction depends. The basic federal jurisdiction statutes are 28 U.S.C. §§
13 1331 and 1332, which confer "federal question" and "diversity" jurisdiction, respectively.
14 Federal jurisdiction may also be conferred by federal statutes regulating specific subject matter.
15 "[T]he existence of federal jurisdiction depends solely on the plaintiff's claims for relief and not
16 on anticipated defenses to those claims." ARCO Env'tl. Remediation, LLC v. Dep't of Health &
17 Env'tl. Quality, 213 F.3d 1108, 1113 (9th Cir. 2000).

18 District courts have diversity jurisdiction only over "all civil actions where the matter in
19 controversy exceeds the sum or value of \$75,000, exclusive of interest and costs," and the action
20 is between: "(1) citizens of different States; (2) citizens of a State and citizens or subjects of a
21 foreign state; (3) citizens of different States and in which citizens or subjects of a foreign state are
22 additional parties; and (4) a foreign state . . . as plaintiff and citizens of a State or of different
23 States." 28 U.S.C. § 1332. "To demonstrate citizenship for diversity purposes a party must (a) be
24 a citizen of the United States, and (b) be domiciled in a state of the United States." Lew v. Moss,
25 797 F.2d 747, 749 (9th Cir. 1986). "Diversity jurisdiction requires complete diversity between
26 the parties-each defendant must be a citizen of a different state from each plaintiff." In re
27 Digimarc Corp. Derivative Litigation, 549 F.3d 1223, 1234 (9th Cir. 2008).

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1 Here, plaintiff's complaint does not allege that plaintiff and defendant are citizens of
2 different States. Nor does the complaint allege a federal question. Instead, plaintiff's complaint
3 alleges that plaintiff and defendant are citizens of California and seeks custody of his daughter as
4 well as monetary damages. (Compl. (ECF No. 1) at 2.)

5 Moreover, the complaint fails to contain a short and plain statement of a claim showing
6 that plaintiff is entitled to relief. In this regard, under the Rooker-Feldman doctrine a federal
7 district court is precluded from hearing "cases brought by state-court losers complaining of
8 injuries caused by state-court judgments rendered before the district court proceedings
9 commenced and inviting district court review and rejection of those judgments." Exxon Mobil
10 Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005). The Rooker-Feldman doctrine
11 applies not only to final state court orders and judgments, but to interlocutory orders and non-
12 final judgments issued by a state court as well. Doe & Assoc. Law Offices v. Napolitano, 252
13 F.3d 1026, 1030 (9th Cir. 2001); Worldwide Church of God v. McNair, 805 F.2d 888, 893 n. 3
14 (9th Cir. 1986).

15 The Rooker-Feldman doctrine prohibits "a direct appeal from the final judgment of a state
16 court," Noel v. Hall, 341 F.3d 1148, 1158 (9th Cir. 2003), and "may also apply where the parties
17 do not directly contest the merits of a state court decision, as the doctrine prohibits a federal
18 district court from exercising subject matter jurisdiction over a suit that is a de facto appeal from a
19 state court judgment." Reusser v. Wachovia Bank, N.A., 525 F.3d 855, 859 (9th Cir. 2008)
20 (internal quotation marks omitted). "A suit brought in federal district court is a 'de facto appeal'
21 forbidden by Rooker-Feldman when 'a federal plaintiff asserts as a legal wrong an allegedly
22 erroneous decision by a state court, and seeks relief from a state court judgment based on that
23 decision.'" Carmona v. Carmona, 603 F.3d 1041, 1050 (9th Cir. 2010) (quoting Noel, 341 F.3d
24 at 1164); see also Doe v. Mann, 415 F.3d 1038, 1041 (9th Cir. 2005) ("[T]he Rooker-Feldman
25 doctrine bars federal courts from exercising subject-matter jurisdiction over a proceeding in
26 'which a party losing in state court' seeks 'what in substance would be appellate review of the
27 state judgment in a United States district court, based on the losing party's claim that the state
28 judgment itself violates the loser's federal rights.'" (quoting Johnson v. De Grandy, 512 U.S.

1 997, 1005-06 (1994), cert. denied 547 U.S. 1111 (2006)). “Thus, even if a plaintiff seeks relief
2 from a state court judgment, such a suit is a forbidden de facto appeal only if the plaintiff also
3 alleges a legal error by the state court.” Bell v. City of Boise, 709 F.3d 890, 897 (9th Cir. 2013).

4 [A] federal district court dealing with a suit that is, in part, a
5 forbidden de facto appeal from a judicial decision of a state court
6 must refuse to hear the forbidden appeal. As part of that refusal, it
7 must also refuse to decide any issue raised in the suit that is
‘inextricably intertwined’ with an issue resolved by the state court
in its judicial decision.

8 Doe, 415 F.3d at 1043 (quoting Noel, 341 F.3d at 1158); see also Exxon, 544 U.S. at 286 n. 1 (“a
9 district court [cannot] entertain constitutional claims attacking a state-court judgment, even if the
10 state court had not passed directly on those claims, when the constitutional attack [is]
11 ‘inextricably intertwined’ with the state court’s judgment”) (citing Feldman, 460 U.S. at 482 n.
12 16)); Bianchi v. Rylaarsdam, 334 F.3d 895, 898, 900 n. 4 (9th Cir. 2003) (“claims raised in the
13 federal court action are ‘inextricably intertwined’ with the state court’s decision such that the
14 adjudication of the federal claims would undercut the state ruling or require the district court to
15 interpret the application of state laws or procedural rules”) (citing Feldman, 460 U.S. at 483 n. 16,
16 485).

17 Moreover, the Younger abstention doctrine generally forbids federal courts from
18 interfering with ongoing state judicial proceedings. See Younger v. Harris, 401 U.S. 37, 53-54
19 (1971); Kenneally v. Lungren, 967 F.2d 329, 331 (9th Cir. 1992). Thus, Younger abstention is
20 appropriate when state proceedings of a judicial nature: (1) are ongoing; (2) implicate important
21 state interests; and (3) provide an adequate opportunity to raise federal questions. Middlesex
22 County Ethics Comm’n v. Garden State Bar Ass’n, 457 U.S. 423, 432 (1982); Gilbertson v.
23 Albright, 381 F.3d 965, 984 (9th Cir. 2004) (en banc). State judicial proceedings involving
24 domestic relations implicate important state interests. See Ankenbrandt v. Richards, 504 U.S.
25 689, 703-04 (1992) (holding that the domestic relations exception to federal subject matter
26 jurisdiction “divests the federal courts of power to issue divorce, alimony and child custody
27 decrees); Coats v. Woods, 819 F.2d 236, 237 (9th Cir. 1987) (affirming abstention where the case
28 raised constitutional issues but was “at its core a child custody dispute”); Peterson v. Babbitt, 708

1 F.2d 465, 466 (9th Cir. 1983) (finding abstention appropriate despite the presence of
2 constitutional issues where the plaintiff sought visitation with children who were wards of the
3 state court).

4 Here, it appears plaintiff failed to prevail in state court, is now complaining of injuries
5 caused by a state court judgment rendered before this federal action was commenced, and is
6 inviting this federal court to review those state court proceedings to find error. To the extent the
7 state court has not rendered a final judgment, it appears plaintiff would be inviting this federal
8 court to interfere with ongoing state proceedings related to domestic relations. As recognized by
9 the authorities cited above, under the Rooker-Feldman and Younger abstention doctrines this
10 federal district court is precluded from hearing such an action.

11 Accordingly, for the reasons stated above, plaintiff's complaint should be dismissed for
12 lack of jurisdiction and failure to state a cognizable claim.

13 **III. Leave to Amend**

14 The undersigned has carefully considered whether plaintiff may amend the complaint to
15 state a claim over which the court would have jurisdiction and upon which relief could be
16 granted. "Valid reasons for denying leave to amend include undue delay, bad faith, prejudice,
17 and futility." California Architectural Bldg. Prod. v. Franciscan Ceramics, 818 F.2d 1466, 1472
18 (9th Cir. 1988); see also Klamath-Lake Pharm. Ass'n v. Klamath Med. Serv. Bureau, 701 F.2d
19 1276, 1293 (9th Cir. 1983) (holding that while leave to amend shall be freely given, the court
20 does not have to allow futile amendments). In light of the deficiencies noted above, the
21 undersigned finds that it would be futile to grant plaintiff leave to amend in this case.


22 **CONCLUSION**

23 Accordingly, for the reasons stated above, IT IS HEREBY RECOMMENDED that:

- 24 1. Plaintiff's September 30, 2016 application to proceed in forma pauperis (ECF No. 2)
25 be denied;
- 26 2. Plaintiff's September 30, 2016 complaint (ECF No. 1) be dismissed without prejudice;
27 and
- 28 3. This action be dismissed.

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

8 Dated: April 3, 2017

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12 DEBORAH BARNES
13 UNITED STATES MAGISTRATE JUDGE
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