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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TOBY JO TODD,
Plaintiff,
v.
CITY COUNCIL OF SACTO,
Defendant.

No. 2:16-cv-2497 MCE DB PS

FINDINGS AND RECOMMENDATIONS

Plaintiff, Toby Todd, 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 application to proceed in forma pauperis and amended complaint. (ECF Nos. 2 & 4.) Therein, plaintiff complains about parking.

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 amended complaint is deficient. Accordingly, for the reasons stated below, the undersigned will recommend that plaintiff's in forma pauperis application be denied and that the amended 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 Amended Complaint**

11 Plaintiff’s amended complaint fails to comply with the minimum requirements for a civil
12 complaint in federal court. In this regard, the amended complaint consists of three pages of vague
13 and conclusory allegations that fail to allege a basis for jurisdiction, state a claim, or state a
14 demand for the relief plaintiff seeks. For example, the amended complaint states that it seeks
15 “damages caused by an artificial corporation Sacramento City,” and that the defendant “ruin[ed]
16 [plaintiff’s] perfect record of driving . . . all for parking on public land that was in place before
17 the founding of Sacramento City in 1849.” (Am. Compl. (ECF No. 4) at 2-3.) “These burdens
18 would not happen in [plaintiff’s] real world of equal status for both sides.” (Id. at 3.)

19 As the April 5, 2017 order advised plaintiff, 42 U.S.C. § 1983 provides that,

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

23 A municipality may be liable under § 1983 where the municipality itself causes the
24 constitutional violation through a “policy or custom, whether made by its lawmakers or those
25 whose edicts or acts may fairly be said to represent official policy[.]” Monell v. Department of
26 Social Services, 436 U.S. 658, 694 (1978). Municipal liability in a § 1983 case may be premised
27 upon: (1) an official policy; (2) a “longstanding practice or custom which constitutes the standard
28 operating procedure of the local government entity;” (3) the act of an “official whose acts fairly

1 represent official policy such that the challenged action constituted official policy;” or (4) where
2 “an official with final policy-making authority delegated that authority to, or ratified the decision
3 of, a subordinate.” Price v. Sery, 513 F.3d 962, 966 (9th Cir. 2008). To sufficiently plead a
4 Monell claim, allegations in a complaint “may not simply recite the elements of a cause of action,
5 but must contain sufficient allegations of underlying facts to give fair notice and to enable the
6 opposing party to defend itself effectively.” AE ex rel. Hernandez v. Cnty. of Tulare, 666 F.3d
7 631, 637 (9th Cir. 2012) (quoting Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011)).

8 Moreover, although the Federal Rules of Civil Procedure adopt a flexible pleading policy,
9 a complaint must give the defendant fair notice of the plaintiff’s claims and must allege facts that
10 state the elements of each claim plainly and succinctly. Fed. R. Civ. P. 8(a)(2); Jones v.
11 Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). “A pleading that offers ‘labels
12 and conclusions’ or ‘a formulaic recitation of the elements of cause of action will not do.’ Nor
13 does a complaint suffice if it tenders ‘naked assertions’ devoid of ‘further factual
14 enhancements.’” Ashcroft v. Iqbal, 556 U.S.662, 678 (2009) (quoting Twombly, 550 U.S. at 555,
15 557). A plaintiff must allege with at least some degree of particularity overt acts which the
16 defendants engaged in that support the plaintiff’s claims. Jones, 733 F.2d at 649.

17 Accordingly, for the reasons stated above, plaintiff’s amended complaint should be
18 dismissed for failure to state a cognizable claim.

19 **III. Leave to Amend**

20 The undersigned has carefully considered whether plaintiff may further amend the
21 amended complaint to state a claim upon which relief can be granted. “Valid reasons for denying
22 leave to amend include undue delay, bad faith, prejudice, and futility.” California Architectural
23 Bldg. Prod. v. Franciscan Ceramics, 818 F.2d 1466, 1472 (9th Cir. 1988); see also Klamath-Lake
24 Pharm. Ass’n v. Klamath Med. Serv. Bureau, 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that
25 while leave to amend shall be freely given, the court does not have to allow futile amendments).
26 In light of the deficiencies noted above, and plaintiff’s inability to successfully amend the original
27 complaint, the undersigned finds that it would be futile to grant plaintiff further leave to amend in
28 this case.

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CONCLUSION

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

1. Plaintiff's October 19, 2016 motion to proceed in forma pauperis (ECF No. 2) be denied;
2. Plaintiff's April 20, 2017 amended complaint (ECF No. 4) be dismissed without leave to amend; 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: September 28, 2017



DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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