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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHALLA ALFARO BRITTANY,
Plaintiff,
v.
UNITED STATES OF AMERICA,
Defendant.

No. 2:16-cv-2817 JAM DB PS

FINDINGS AND RECOMMENDATIONS

Plaintiff, Michalla Alfaro Brittany, 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 seeks an “[a]nswer [to] a question about” her children.

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 application to proceed in forma pauperis and complaint are deficient. Accordingly, for the reasons stated below, the undersigned will recommend that plaintiff’s application to proceed in forma pauperis be denied and 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 is incomplete. In this regard, plaintiff's in forma
3 pauperis application states that in the past twelve months plaintiff received money from several
4 sources. Plaintiff, however, fails to state the amounts received and if she expects to continue to
5 receive those funds. (ECF No. 2 at 1.) Moreover, even a determination that a plaintiff qualifies
6 financially for in forma pauperis status does not complete the inquiry required by the statute.

7 ““A district court may deny leave to proceed in forma pauperis at the outset if it appears
8 from the face of the proposed complaint that the action is frivolous or without merit.”” Minetti v.
9 Port of Seattle, 152 F.3d 1113, 1115 (9th Cir. 1998) (quoting Tripati v. First Nat. Bank & Trust,
10 821 F.2d 1368, 1370 (9th Cir. 1987)); see also McGee v. Department of Child Support Services,
11 584 Fed. Appx. 638 (9th Cir. 2014) (“the district court did not abuse its discretion by denying
12 McGee’s request to proceed IFP because it appears from the face of the amended complaint that
13 McGee’s action is frivolous or without merit”); Smart v. Heinze, 347 F.2d 114, 116 (9th Cir.
14 1965) (“It is the duty of the District Court to examine any application for leave to proceed in
15 forma pauperis to determine whether the proposed proceeding has merit and if it appears that the
16 proceeding is without merit, the court is bound to deny a motion seeking leave to proceed in
17 forma pauperis.”).

18 The court must dismiss an in forma pauperis case at any time if the allegation of poverty is
19 found to be untrue or if it is determined that the action is frivolous or malicious, fails to state a
20 claim on which relief may be granted, or seeks monetary relief against an immune defendant. See
21 28 U.S.C. § 1915(e)(2). A complaint is legally frivolous when it lacks an arguable basis in law or
22 in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221,
23 1227-28 (9th Cir. 1984). Under this standard, a court must dismiss a complaint as frivolous
24 where it is based on an indisputably meritless legal theory or where the factual contentions are
25 clearly baseless. Neitzke, 490 U.S. at 327; 28 U.S.C. § 1915(e).

26 To state a claim on which relief may be granted, the plaintiff must allege “enough facts to
27 state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544,
28 570 (2007). In considering whether a complaint states a cognizable claim, the court accepts as

1 true the material allegations in the complaint and construes the allegations in the light most
2 favorable to the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Hosp. Bldg. Co. v.
3 Trustees of Rex Hosp., 425 U.S. 738, 740 (1976); Love v. United States, 915 F.2d 1242, 1245
4 (9th Cir. 1989). Pro se pleadings are held to a less stringent standard than those drafted by
5 lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). However, the court need not accept as true
6 conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. Western
7 Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

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

9 A pleading which sets forth a claim for relief . . . shall contain (1) a
10 short and plain statement of the grounds upon which the court's
11 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.

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

13 **II. Plaintiff's Complaint**

14 Plaintiff's complaint fails to contain a short and plain statement of the grounds upon
15 which the court's jurisdiction depends and fails to state a claim showing that plaintiff is entitled to
16 relief. The basic federal jurisdiction statutes are 28 U.S.C. §§ 1331 and 1332, which confer
17 "federal question" and "diversity" jurisdiction, respectively. Federal jurisdiction may also be
18 conferred by federal statutes regulating specific subject matter. "[T]he existence of federal
19 jurisdiction depends solely on the plaintiff's claims for relief and not on anticipated defenses to
20 those claims." ARCO Env'tl. Remediation, LLC v. Dep't of Health & Env'tl. Quality, 213 F.3d
21 1108, 1113 (9th Cir. 2000).

22 District courts have diversity jurisdiction only over "all civil actions where the matter in
23 controversy exceeds the sum or value of \$75,000, exclusive of interest and costs," and the action
24 is between: "(1) citizens of different States; (2) citizens of a State and citizens or subjects of a
25 foreign state; (3) citizens of different States and in which citizens or subjects of a foreign state are
26 additional parties; and (4) a foreign state . . . as plaintiff and citizens of a State or of different
27 States." 28 U.S.C. § 1332. "To demonstrate citizenship for diversity purposes a party must (a) be
28 a citizen of the United States, and (b) be domiciled in a state of the United States." Lew v. Moss,

1 797 F.2d 747, 749 (9th Cir. 1986). “Diversity jurisdiction requires complete diversity between
2 the parties—each defendant must be a citizen of a different state from each plaintiff.” In re
3 Digimarc Corp. Derivative Litigation, 549 F.3d 1223, 1234 (9th Cir. 2008).

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

13 Here, plaintiff’s complaint simply alleges that one of her children is suicidal, one of her
14 children “keep going into a safeserve to live,” and the she has “a domestic violence problem with
15 these two children (sic) Dad.” (Compl. (ECF No. 1) at 5.) In this regard, plaintiff’s complaint
16 fails to allege a basis for this court’s jurisdiction. Moreover, even construed in the light most
17 favorable to the plaintiff, it appears plaintiff’s complaint concerns only state family law matters.

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

20 **III. Leave to Amend**

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

1 **CONCLUSION**

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

- 3 1. Plaintiff’s November 28, 2016 application to proceed in forma pauperis (ECF No. 2)
4 be denied;
- 5 2. Plaintiff’s November 28, 2016 complaint (ECF No. 1) be dismissed without prejudice;
6 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: April 11, 2017

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17 _____
18 DEBORAH BARNES
19 UNITED STATES MAGISTRATE JUDGE

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