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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

PAUL BLANK,  
  
                                Plaintiff,  
  
                                v.  
  
UNITED STATES OF AMERICA,  
  
                                Defendant.

No. 2:16-cv-2991 JAM DB PS

FINDINGS AND RECOMMENDATIONS

Plaintiff, Paul Blank, 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 complains about slavery.

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. 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.

**I. Plaintiff’s Application to Proceed In Forma Pauperis**

Plaintiff’s in forma pauperis application makes the financial showing required by 28 U.S.C. § 1915(a)(1). However, a determination that a plaintiff qualifies financially for in forma

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

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

20 To state a claim on which relief may be granted, the plaintiff must allege “enough facts to  
21 state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544,  
22 570 (2007). In considering whether a complaint states a cognizable claim, the court accepts as  
23 true the material allegations in the complaint and construes the allegations in the light most  
24 favorable to the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Hosp. Bldg. Co. v.  
25 Trustees of Rex Hosp., 425 U.S. 738, 740 (1976); Love v. United States, 915 F.2d 1242, 1245  
26 (9th Cir. 1989). Pro se pleadings are held to a less stringent standard than those drafted by  
27 lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). However, the court need not accept as true  
28 conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. Western

1 Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

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

3 A pleading which sets forth a claim for relief . . . shall contain (1) a  
4 short and plain statement of the grounds upon which the court's  
5 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.

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

## 7 **II. Plaintiff's Complaint**

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

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

25 Here, plaintiff's complaint simply alleges that "[c]itizens of the United States that are of  
26 Negro race were not treated fairly and denied humane rights from 1776 to end of slavery."  
27 (Compl. (ECF No. 1) at 1.) Moreover, the "Civil War of 1861 . . . would have been avoided if the  
28 government would have in 1776 abolished slavery in the first place . . ." (Id. at 1-2.) In this

1 regard, the complaint fails to identify a basis for jurisdiction or a cause of action upon which  
2 relief can be granted.

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

5 **III. Leave to Amend**

6 The undersigned has carefully considered whether plaintiff may amend the complaint to  
7 state a claim over which the court would have jurisdiction and upon which relief could be  
8 granted. “Valid reasons for denying leave to amend include undue delay, bad faith, prejudice,  
9 and futility.” California Architectural Bldg. Prod. v. Franciscan Ceramics, 818 F.2d 1466, 1472  
10 (9th Cir. 1988); see also Klamath-Lake Pharm. Ass’n v. Klamath Med. Serv. Bureau, 701 F.2d  
11 1276, 1293 (9th Cir. 1983) (holding that while leave to amend shall be freely given, the court  
12 does not have to allow futile amendments). In light of the deficiencies noted above, the  
13 undersigned finds that it would be futile to grant plaintiff leave to amend in this case.

14 **CONCLUSION**

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

- 16 1. Plaintiff’s December 22, 2016 application to proceed in forma pauperis (ECF No. 2) be  
17 denied;  
18 2. Plaintiff’s December 22, 2016 complaint (ECF No. 1) be dismissed without prejudice;  
19 and  
20 3. This action be dismissed.

21 These findings and recommendations will be submitted to the United States District Judge  
22 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)  
23 days after being served with these findings and recommendations, plaintiff may file written  
24 objections with the court. A document containing objections should be titled “Objections to  
25 Magistrate Judge’s Findings and Recommendations.”

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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: April 12, 2017



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DEBORAH BARNES  
UNITED STATES MAGISTRATE JUDGE

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