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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LEON ALLEN,

Plaintiff,

v.

NINA BURNSIDE dba Soul Legacy
Entertainment, et al.,

Defendants.

No. 2:17-cv-0602 KJM DB PS

ORDER

Plaintiff, Leon Allen, 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 an “interest in the real property which is the subject matter of this action . . . 3801 Florin Rd., Sacramento, CA, 95823.” (Compl. (ECF No. 1) at 4.)

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, plaintiff’s complaint will be dismissed with leave to amend.

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

2 The court is required to screen complaints brought by parties proceeding in forma
3 pauperis. See 28 U.S.C. § 1915(e)(2); see also Lopez v. Smith, 203 F.3d 1122, 1129 (9th Cir.
4 2000) (en banc). ““A district court may deny leave to proceed in forma pauperis at the outset if it
5 appears from the face of the proposed complaint that the action is frivolous or without merit.””
6 Minetti v. Port of Seattle, 152 F.3d 1113, 1115 (9th Cir. 1998) (quoting Tripati v. First Nat. Bank
7 & Trust, 821 F.2d 1368, 1370 (9th Cir. 1987)); see also McGee v. Department of Child Support
8 Services, 584 Fed. Appx. 638 (9th Cir. 2014) (“the district court did not abuse its discretion by
9 denying McGee’s request to proceed IFP because it appears from the face of the amended
10 complaint that McGee’s action is frivolous or without merit”); Smart v. Heinze, 347 F.2d 114,
11 116 (9th Cir. 1965) (“It is the duty of the District Court to examine any application for leave to
12 proceed in forma pauperis to determine whether the proposed proceeding has merit and if it
13 appears that the proceeding is without merit, the court is bound to deny a motion seeking leave to
14 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 **II. Plaintiff’s Complaint**

24 Jurisdiction is a threshold inquiry that must precede the adjudication of any case before
25 the district court. Morongo Band of Mission Indians v. Cal. State Bd. of Equalization, 858 F.2d
26 1376, 1380 (9th Cir. 1988). Federal courts are courts of limited jurisdiction and may adjudicate
27 only those cases authorized by federal law. Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375,
28 377 (1994); Willy v. Coastal Corp., 503 U.S. 131, 136-37 (1992). “Federal courts are presumed

1 to lack jurisdiction, ‘unless the contrary appears affirmatively from the record.’” Casey v. Lewis,
2 4 F.3d 1516, 1519 (9th Cir. 1993) (quoting Bender v. Williamsport Area Sch. Dist., 475 U.S. 534,
3 546 (1986)).

4 Lack of subject matter jurisdiction may be raised by the court at any time during the
5 proceedings. Attorneys Trust v. Videotape Computer Prods., Inc., 93 F.3d 593, 594-95 (9th Cir.
6 1996). A federal court “ha[s] an independent obligation to address sua sponte whether [it] has
7 subject-matter jurisdiction.” Dittman v. California, 191 F.3d 1020, 1025 (9th Cir. 1999). It is the
8 obligation of the district court “to be alert to jurisdictional requirements.” Grupo Dataflux v.
9 Atlas Global Group, L.P., 541 U.S. 567, 593 (2004). Without jurisdiction, the district court
10 cannot decide the merits of a case or order any relief. See Morongo, 858 F.2d at 1380.

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

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

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1 Here, plaintiff's complaint alleges that it is brought pursuant to 42 U.S.C. § 1983.
2 (Compl. (ECF No. 1) at 3-4.) Title 42 U.S.C. § 1983 provides that,

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

8 The allegations of plaintiff's complaint, however, fail to allege that any defendant acted
9 under the color of state law. In this regard, the defendants are identified as private individuals,
10 not state actors. (Compl. (ECF No. 1) at 2.) Moreover, plaintiff and every defendant are alleged
11 to be citizens of the same state—California. (*Id.*) Accordingly, plaintiff's complaint fails to
12 allege a basis for subject matter jurisdiction over this action.

13 **III. Leave to Amend**

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

21 However, when evaluating the failure to state a claim, the complaint of a pro se plaintiff
22 may be dismissed "only where 'it appears beyond doubt that the plaintiff can prove no set of facts
23 in support of his claim which would entitle him to relief.'" Franklin v. Murphy, 745 F.2d 1221,
24 1228 (9th Cir. 1984) (quoting Haines v. Kerner, 404 U.S. 519, 521 (1972)); see also Weilburg v.
25 Shapiro, 488 F.3d 1202, 1205 (9th Cir. 2007) ("Dismissal of a pro se complaint without leave to
26 amend is proper only if it is absolutely clear that the deficiencies of the complaint could not be
27 cured by amendment.") (quoting Schucker v. Rockwood, 846 F.2d 1202, 1203-04 (9th Cir.
28 1988)).

Here, the undersigned cannot yet say that it appears beyond doubt that leave to amend
would be futile. Plaintiff's complaint will therefore be dismissed, and plaintiff will be granted

1 leave to file an amended complaint. Plaintiff is cautioned, however, that if plaintiff elects to file
2 an amended complaint “the tenet that a court must accept as true all of the allegations contained
3 in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause
4 of action, supported by mere conclusory statements, do not suffice.” Ashcroft, 556 U.S. at 678.
5 “While legal conclusions can provide the complaint’s framework, they must be supported by
6 factual allegations.” Id. at 679. Those facts must be sufficient to push the claims “across the line
7 from conceivable to plausible[.]” Id. at 680 (quoting Twombly, 550 U.S. at 557).

8 Plaintiff is also reminded that the court cannot refer to a prior pleading in order to make an
9 amended complaint complete. Local Rule 220 requires that any amended complaint be complete
10 in itself without reference to prior pleadings. The amended complaint will supersede the original
11 complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Thus, in an amended complaint,
12 just as if it were the initial complaint filed in the case, each defendant must be listed in the caption
13 and identified in the body of the complaint, and each claim and the involvement of each
14 defendant must be sufficiently alleged. Any amended complaint which plaintiff may elect to file
15 must also include concise but complete factual allegations describing the conduct and events
16 which underlie plaintiff’s claims.

17 **IV. Conclusion**

18 Accordingly, IT IS HEREBY ORDERED that:

19 1. The complaint filed March 21, 2017 (ECF No. 1) is dismissed with leave to
20 amend.¹

21 2. Within twenty-eight days from the date of this order, an amended complaint shall be
22 filed that cures the defects noted in this order and complies with the Federal Rules of Civil
23 Procedure and the Local Rules of Practice.² The amended complaint must bear the case number
24 assigned to this action and must be titled “Amended Complaint.”

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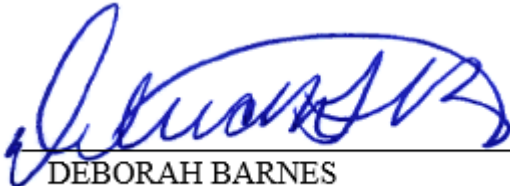
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27 ¹ Plaintiff need not file another application to proceed in forma pauperis at this time unless
28 plaintiff’s financial condition has improved since the last such application was submitted.

² Alternatively, if plaintiff no longer wishes to pursue this action plaintiff may file a notice of
voluntary dismissal of this action pursuant to Rule 41 of the Federal Rules of Civil Procedure.

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3. Failure to comply with this order in a timely manner may result in a recommendation that this action be dismissed.

Dated: September 27, 2017



DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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