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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JEROME A. CLAY,
Plaintiff,
v.
AT&T INTEGRATED DISABILITY
SERVICE CENTER, et al.,
Defendants.

No. 2:17-cv-00749 KJM GGH PS

ORDER

Plaintiff filed a Complaint seeking recovery of withheld disability payments from Defendant’s Disability Plan, ECF No. 1, together with a Motion to Proceed with the action in forma pauperis. This case was referred to this court pursuant to Eastern District of California Local Rule [hereafter referred to as “LR”] 302(c)(21).

The court, having reviewed the affidavit of plaintiff finds that it makes the showing required by 28 U.S.C. 1915(a)(1). Accordingly, the request to proceed in forma pauperis will be granted.

The determination whether plaintiff may proceed in forma pauperis does not complete the present inquiry. Title 28 U.S.C. § 1915(e)(2) directs the court to dismiss a case at any time if the allegation of poverty is untrue, or if the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against an immune defendant.

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1 In this regard, the undersigned observes that plaintiff does not allege a jurisdictional basis
2 to be in federal court. Plaintiff may be attempting to assert jurisdiction of this court under 28
3 U.S.C. section 1332, diversity jurisdiction. However, plaintiff sues several defendants, but
4 addresses the citizenship of only one defendant. Moreover, the claim does not presently meet the
5 jurisdictional threshold of damages in excess \$75,000 exclusive of interest and costs. 28 U.S.C.
6 §1332(a). The court further observes, however, that the action could be one for the recovery of
7 benefits under ERISA, 29 U.S.C. section 1132, a federal statute which gives ERISA plan
8 beneficiaries a right of action, section 1132(a), and which establishes concurrent jurisdiction in
9 federal and state courts for ERISA plan beneficiaries, section 1132(e).

10 The undersigned cannot fill in all the blanks for plaintiff. Lower federal courts are courts
11 of limited jurisdiction, i.e., they only have the jurisdiction to adjudicate disputes that Congress
12 has bestowed upon them. Plaintiff must assert the basis of jurisdiction which permits him to sue
13 in federal court, and then must allege facts which would make out a claim under that
14 jurisdictional basis.

15 In light of the foregoing and good cause appearing, IT IS ORDERED that:

16 Plaintiff must file an amended complaint within thirty days from the filed date of this
17 Order. Failure to file the amended complaint may result in a recommendation that the entire
18 action be dismissed with prejudice.

19 Dated: April 10, 2017

20 /s/ Gregory G. Hollows
21 UNITED STATES MAGISTRATE JUDGE
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