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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES L. BUTLER,
Plaintiff,
v.
RALPH MULLICAN, et al.,
Defendants.

No. 2:17-cv-01343 TLN CKD (PS)

ORDER

Plaintiff is proceeding in this action pro se. Plaintiff has requested authority pursuant to 28 U.S.C. § 1915 to proceed in forma pauperis. This proceeding was referred to this court by Local Rule 302(c)(21).

Plaintiff has submitted the affidavit required by § 1915(a) showing that plaintiff is unable to prepay fees and costs or give security for them. Accordingly, the request to proceed in forma pauperis will be granted. 28 U.S.C. § 1915(a).

The federal in forma pauperis statute authorizes federal courts to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). Here, plaintiff asserts federal question jurisdiction based on his claim that he received ineffective assistance of counsel in violation of the Sixth Amendment. Plaintiff alleges that his attorney swindled him out of the title to his property with the help of plaintiff’s friend,

1 such that plaintiff is now facing eviction. However, the Sixth Amendment right to effective
2 assistance of counsel applies only to criminal defendants. Further, as all parties reside in
3 California, there is no evident basis for diversity jurisdiction. Moreover, the conflict between the
4 parties appears to be the subject of an ongoing civil proceeding in state court.

5 The federal courts are courts of limited jurisdiction. In the absence of a basis for federal
6 jurisdiction, plaintiff's claims cannot proceed in this venue. Because there is no basis for federal
7 subject matter jurisdiction evident in the complaint, plaintiff will be ordered to show cause why
8 this action should not be dismissed. Failure to allege a proper basis for subject matter jurisdiction
9 will result in a recommendation that the action be dismissed.

10 Plaintiff has also filed a one-page motion for emergency injunction concerning his
11 impending eviction. As the court appears to have no jurisdiction in this matter, this motion will
12 be denied, subject to renewal if plaintiff is able to show this action should not be dismissed.

13 Accordingly, IT IS HEREBY ORDERED that:

- 14 1. Plaintiff's request to proceed in forma pauperis (ECF No. 2) is granted;
- 15 2. No later than July 21, 2017, plaintiff shall show cause why this action should not be
16 dismissed for lack of subject matter jurisdiction; and
- 17 3. Plaintiff's motion for emergency injunction (ECF No. 3) is denied for lack of
18 jurisdiction without prejudice to renewal if plaintiff asserts a basis for federal jurisdiction.

19 Dated: July 6, 2017

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22 CAROLYN K. DELANEY
23 UNITED STATES MAGISTRATE JUDGE
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