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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL DEAN
Plaintiff,
v.
ROMELDA RAUSSER,
Defendant.

No. 2:17-cv-01361 KJM GGH

ORDER

Plaintiff seeks to proceed pro se in an action stated to be a contract issue and has requested permission to proceed in forma pauperis. ECF No. 4. The court has reviewed the Motion and plaintiff’s filed affidavit and finds that plaintiff lacks the funds to pay the filing fees and costs in this matter. His Motion will therefore be granted.

The federal in forma pauperis statute authorizes federal courts to dismiss a case if the action is legally “frivolous or malicious. A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227–1228 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are “clearly baseless.” Neitzke, 490 U.S. at 327. Thus, the term “frivolous,” when applied to a complaint, “embraces not only the inarguable legal conclusion, but also the fanciful factual allegation.” *Id.* at 325.

1 *DISCUSSION*

2 A less stringent examination is afforded pro se pleadings, Haines v. Kerner, 404 U.S. 519,
3 520 (1972), but the pro se is still held to basic pleading requirements found in the Federal Rules
4 of Civil Procedure and case law. Avitts v. Amoco Prod. Co., 53 F.3d 690, 694 (5th Cir. 1995).
5 Subject-matter jurisdiction is created only by pleading a cause of action within the court's
6 original jurisdiction. Id. Here, diversity is not possible and plaintiff has not identified any federal
7 statute or constitutional provision that would establish jurisdiction. ECF No. 1.

8 Further, the complaint is largely illegible, and states no facts that state a clear cause of
9 action on any basis.

10 Having failed to identify properly plead a basis for jurisdiction in this court or to state
11 facts that would clearly identify the basis for his claim for relief, his case must, at this stage, be
12 dismissed as frivolous. Plaintiff is advised to review the Federal Rules of Civil Procedure and the
13 Local Rules of the Eastern District of California which are available both on line and in the office
14 of the Clerk of the Court located on the 4th Floor of the federal courthouse at 501 I Street,
15 Sacramento, CA 95814.

16 Accordingly, **IT IS HEREBY ORDERED** that:

- 17 1. Plaintiff's motion to proceed in forma pauperis is GRANTED;
- 18 2. The complaint currently on file is dismissed with leave to amend to state both a
19 basis for federal jurisdiction and facts sufficient to state a claim against defendant in conformity
20 with Federal Rule of Civil Procedure 8 within 45 days of this Order if he is able to do so.
- 21 3. Failure to comply with this order will result in a recommendation that this action
22 be dismissed.

23 **IT IS SO ORDERED.**

24 Dated: July 11, 2017

25 /s/ Gregory G. Hollows
26 UNITED STATES MAGISTRATE JUDGE