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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TERESA Y. SMITH,
Plaintiff,
v.
HERB THOMAS & ASSOCIATES,
Defendant.

No. 2:17-cv-1652 MCE DB PS

FINDINGS AND RECOMMENDATIONS

Plaintiff, Teresa Smith, 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 are plaintiff’s complaint and motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. (ECF Nos. 1 & 2.) The complaint asserts that defendant manages “a trust account” and has unfairly treated plaintiff. (Compl. (ECF No. 1) at 5.)

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 that plaintiff’s complaint be dismissed without leave to amend.

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

2 Plaintiff’s in forma pauperis application makes the showing required by 28 U.S.C. §
3 1915(a)(1). However, a determination that a plaintiff qualifies financially for in forma pauperis
4 status does not complete the inquiry required by the statute. ““A district court may deny leave to
5 proceed in forma pauperis at the outset if it appears from the face of the proposed complaint that
6 the action is frivolous or without merit.”” Minetti v. Port of Seattle, 152 F.3d 1113, 1115 (9th
7 Cir. 1998) (quoting Tripati v. First Nat. Bank & Trust, 821 F.2d 1368, 1370 (9th Cir. 1987)); see
8 also McGee v. Department of Child Support Services, 584 Fed. Appx. 638 (9th Cir. 2014) (“the
9 district court did not abuse its discretion by denying McGee’s request to proceed IFP because it
10 appears from the face of the amended complaint that McGee’s action is frivolous or without
11 merit”); Smart v. Heinze, 347 F.2d 114, 116 (9th Cir. 1965) (“It is the duty of the District Court
12 to examine any application for leave to proceed in forma pauperis to determine whether the
13 proposed proceeding has merit and if it appears that the proceeding is without merit, the court is
14 bound to deny a motion seeking leave to 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 To state a claim on which relief may be granted, the plaintiff must allege “enough facts to
24 state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544,
25 570 (2007). In considering whether a complaint states a cognizable claim, the court accepts as
26 true the material allegations in the complaint and construes the allegations in the light most
27 favorable to the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Hosp. Bldg. Co. v.
28 Trustees of Rex Hosp., 425 U.S. 738, 740 (1976); Love v. United States, 915 F.2d 1242, 1245

1 (9th Cir. 1989). Pro se pleadings are held to a less stringent standard than those drafted by
2 lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). However, the court need not accept as true
3 conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. Western
4 Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

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

6 A pleading which sets forth a claim for relief . . . shall contain (1) a
7 short and plain statement of the grounds upon which the court's
8 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.

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

10 **II. Plaintiff's Complaint**

11 Plaintiff's complaint fails to set forth a short and plain statement of the grounds upon
12 which the court's jurisdiction depends or a statement of a claim showing that plaintiff is entitled
13 to relief. In this regard, the complaint alleges that plaintiff's son was awarded a settlement in
14 "case number 2:15-cv-2511 MCE AC," and that the settlement was put into a trust account
15 managed by the defendant. (Compl. (ECF No. 1) at 5.) Plaintiff asserts that was "a big mistake"
16 as plaintiff and her son are "treated unfair," and have not been able to "enjoy" the settlement
17 since defendant was appointed to manage the trust. (Id.) The complaint also alleges that there is
18 a "conflict of interest" between plaintiff and the defendant, as plaintiff does not "get along with"
19 defendant's staff, and that plaintiff's son has "no communication with Herb Thomas at all." (Id.
20 at 6.)

21 Even accepting these allegations as true, they neither provide a basis for this court's
22 jurisdiction over this newly filed action nor state a claim upon which relief can be granted.¹

23 Although the Federal Rules of Civil Procedure adopt a flexible pleading policy, a complaint must
24 give the defendant fair notice of the plaintiff's claims and must allege facts that state the elements
25 of each claim plainly and succinctly. Fed. R. Civ. P. 8(a)(2); Jones v. Community Redev.

26 ¹ Moreover, it appears from documents filed in Smith v. City of Stockton, No. 2:15-cv-2511
27 MCE AC, that the Alameda County Probate court may maintain jurisdiction over the trust
28 account. Whether plaintiff can obtain relief in either the earlier filed action, No. 2:15-cv-2511
MCE AC, or before the Alameda County Probate court, is unclear to the undersigned.

1 Agency, 733 F.2d 646, 649 (9th Cir. 1984). “A pleading that offers ‘labels and conclusions’ or ‘a
2 formulaic recitation of the elements of cause of action will not do.’ Nor does a complaint suffice
3 if it tenders ‘naked assertions’ devoid of ‘further factual enhancements.’” Ashcroft v. Iqbal, 556
4 U.S.662, 678 (2009) (quoting Twombly, 550 U.S. at 555, 557). A plaintiff must allege with at
5 least some degree of particularity overt acts which the defendants engaged in that support the
6 plaintiff’s claims. Jones, 733 F.2d at 649.

7 Moreover, jurisdiction is a threshold inquiry that must precede the adjudication of any
8 case before the district court. Morongo Band of Mission Indians v. Cal. State Bd. of
9 Equalization, 858 F.2d 1376, 1380 (9th Cir. 1988). Federal courts are courts of limited
10 jurisdiction and may adjudicate only those cases authorized by federal law. Kokkonen v.
11 Guardian Life Ins. Co., 511 U.S. 375, 377 (1994); Willy v. Coastal Corp., 503 U.S. 131, 136-37
12 (1992). “Federal courts are presumed to lack jurisdiction, ‘unless the contrary appears
13 affirmatively from the record.’” Casey v. Lewis, 4 F.3d 1516, 1519 (9th Cir. 1993) (quoting
14 Bender v. Williamsport Area Sch. Dist., 475 U.S. 534, 546 (1986)).

15 The basic federal jurisdiction statutes are 28 U.S.C. §§ 1331 and 1332, which confer
16 “federal question” and “diversity” jurisdiction, respectively. Federal jurisdiction may also be
17 conferred by federal statutes regulating specific subject matter. “[T]he existence of federal
18 jurisdiction depends solely on the plaintiff’s claims for relief and not on anticipated defenses to
19 those claims.” ARCO Env’tl. Remediation, LLC v. Dep’t of Health & Env’tl. Quality, 213 F.3d
20 1108, 1113 (9th Cir. 2000).

21 Accordingly, for the reasons stated above, plaintiff’s complaint should be dismissed for
22 lack of subject matter jurisdiction and for failure to state a claim upon which relief can be
23 granted.

24 **III. Leave to Amend**

25 The undersigned has carefully considered whether plaintiff may amend the complaint to
26 state a claim over which the court would have jurisdiction and upon which relief could be
27 granted. “Valid reasons for denying leave to amend include undue delay, bad faith, prejudice,
28 and futility.” California Architectural Bldg. Prod. v. Franciscan Ceramics, 818 F.2d 1466, 1472

1 (9th Cir. 1988); see also Klamath-Lake Pharm. Ass'n v. Klamath Med. Serv. Bureau, 701 F.2d
2 1276, 1293 (9th Cir. 1983) (holding that while leave to amend shall be freely given, the court
3 does not have to allow futile amendments). In light of the deficiencies noted above, the
4 undersigned finds that it would be futile to grant plaintiff leave to amend in this case.

5 **CONCLUSION**

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

- 7 1. Plaintiff's August 9, 2017 application to proceed in forma pauperis (ECF No. 1) be
8 denied;
- 9 2. Plaintiff's August 9, 2017 complaint (ECF No. 1) be dismissed without prejudice; and
- 10 3. This action be dismissed.

11 These findings and recommendations will be submitted to the United States District Judge
12 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
13 days after being served with these findings and recommendations, plaintiffs may file written
14 objections with the court. A document containing objections should be titled "Objections to
15 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
16 objections within the specified time may, under certain circumstances, waive the right to appeal
17 the District Court's order. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

18 Dated: November 6, 2017

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20 _____
21 DEBORAH BARNES
22 UNITED STATES MAGISTRATE JUDGE

23 DLB:6
24 DB/orders/orders.pro se/smith1652.ifp.den.f&rs