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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAN L. SHACKELFORD,
Plaintiff,
v.
DAVID KAUTTER, IRS,
Defendant.

No. 2:18-cv-0502 JAM DB PS

FINDINGS AND RECOMMENDATIONS

Plaintiff, Dan Shackelford, 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.) Therein, plaintiff seeks “disclosure of tax and banking records.” (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 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 financial showing required by 28
3 U.S.C. § 1915(a)(1). However, a determination that a plaintiff qualifies financially for in forma
4 pauperis status does not complete the inquiry required by the statute. "A district court may deny
5 leave to proceed in forma pauperis at the outset if it appears from the face of the proposed
6 complaint that the action is frivolous or without merit." Minetti v. Port of Seattle, 152 F.3d
7 1113, 1115 (9th Cir. 1998) (quoting Tripati v. First Nat. Bank & Trust, 821 F.2d 1368, 1370 (9th
8 Cir. 1987)); see also McGee v. Department of Child Support Services, 584 Fed. Appx. 638 (9th
9 Cir. 2014) ("the district court did not abuse its discretion by denying McGee's request to proceed
10 IFP because it appears from the face of the amended complaint that McGee's action is frivolous
11 or without merit"); Smart v. Heinze, 347 F.2d 114, 116 (9th Cir. 1965) ("It is the duty of the
12 District Court to examine any application for leave to proceed in forma pauperis to determine
13 whether the proposed proceeding has merit and if it appears that the proceeding is without merit,
14 the court is 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 “[T]he in forma pauperis statute . . . ‘accords judges not only the authority to dismiss a
12 claim based on an indisputably meritless legal theory, but also the unusual power to pierce the
13 veil of the complaint’s factual allegations and dismiss those claims whose factual contentions are
14 clearly baseless.’” Denton v. Hernandez, 504 U.S. 25, 32 (1992) (quoting Neitzke, 490 U.S. at
15 327). “Examples of the latter class are claims describing fantastic or delusional scenarios, claims
16 with which federal district judges are all too familiar.” Neitzke, 490 U.S. at 328.

17 Here, the complaint alleges that plaintiff’s family “controlled the Pure Oil Co, up until
18 1963 when JFK ripped that off making it ‘Eastern Union 76 Oil Co.’” (Compl. (ECF No. 1) at 6.)
19 Plaintiff “asked in writing that . . . Pure Oil Co. marketing district be restored,” but “Regan”
20 engaged in “bribery,” and “‘forgot’ to pay” plaintiff. (Id. at 8-9.) In 1996, “Bill Clinton . . .
21 rigged a \$10 million Publisher’s Clearing House Contest or \$12 million Reader’s Digest contest
22 in” plaintiff’s favor. (Id. at 9.) Later, “Bill Clinton’s backers (Hollywood & ‘computers,’
23 ‘Jewish’ HEROIN)” planned to “stick” plaintiff with “an AIDS needle set-up at LA County
24 Mental Health.” (Id. at 12.)

25 In this regard, not only does the complaint fail to state a claim, but the complaint’s
26 allegations are also delusional and frivolous. See Denton, 504 U.S. at 33 (“a finding of factual
27 frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly
28 incredible, whether or not there are judicially noticeable facts available to contradict them”).

1 III. Leave to Amend

2 For the reasons stated above, plaintiff's complaint should be dismissed. The undersigned
3 has carefully considered whether plaintiff may amend the complaint to state a claim upon which
4 relief can be granted. "Valid reasons for denying leave to amend include undue delay, bad faith,
5 prejudice, and futility." California Architectural Bldg. Prod. v. Franciscan Ceramics, 818 F.2d
6 1466, 1472 (9th Cir. 1988); see also Klamath-Lake Pharm. Ass'n v. Klamath Med. Serv. Bureau,
7 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that while leave to amend shall be freely given, the
8 court does not have to allow futile amendments).

9 Here, given the defects noted above, the undersigned finds that granting plaintiff leave to
10 amend would be futile.

11 CONCLUSION


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

- 13 1. Plaintiff's March 8, 2018 application to proceed in forma pauperis (ECF No. 2) be
14 denied;
- 15 2. Plaintiff's March 8, 2018 complaint (ECF No. 1) be dismissed without prejudice; and
- 16 3. This action be dismissed.

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

24 Dated: June 6, 2018

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26 DLB:6
27 DB/orders/orders.pro se/shacking0501.dism.f&rs

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DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE