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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

AKIKA PARKER,

Plaintiff,

v.

STATE OF CALIFORNIA, et al.,

Defendants.

No. 2:18-cv-1992 JAM DB PS

FINDINGS AND RECOMMENDATIONS

Plaintiff, Akika Parker, 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 second amended complaint and motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. (ECF Nos. 2 & 4.) Therein, plaintiff complains generally about an inheritance.

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 second amended complaint is deficient. Accordingly, for the reasons stated below, the undersigned recommends that plaintiff's second amended 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 is incomplete. In this regard, the application
3 indicates that plaintiff is employed by "The Fashion Forbes, Inc.," but does not state plaintiff's
4 take-home salary per pay period. (ECF No. 2 at 1.) Moreover, a determination that a plaintiff
5 qualifies financially for in forma pauperis status does not complete the inquiry required by the
6 statute.

7 "A district court may deny leave to proceed in forma pauperis at the outset if it appears
8 from the face of the proposed complaint that the action is frivolous or without merit." Minetti v.
9 Port of Seattle, 152 F.3d 1113, 1115 (9th Cir. 1998) (quoting Tripati v. First Nat. Bank & Trust,
10 821 F.2d 1368, 1370 (9th Cir. 1987)); see also McGee v. Department of Child Support Services,
11 584 Fed. Appx. 638 (9th Cir. 2014) ("the district court did not abuse its discretion by denying
12 McGee's request to proceed IFP because it appears from the face of the amended complaint that
13 McGee's action is frivolous or without merit"); Smart v. Heinze, 347 F.2d 114, 116 (9th Cir.
14 1965) ("It is the duty of the District Court to examine any application for leave to proceed in
15 forma pauperis to determine whether the proposed proceeding has merit and if it appears that the
16 proceeding is without merit, the court is bound to deny a motion seeking leave to proceed in
17 forma pauperis.").

18 The court must dismiss an in forma pauperis case at any time if the allegation of poverty is
19 found to be untrue or if it is determined that the action is frivolous or malicious, fails to state a
20 claim on which relief may be granted, or seeks monetary relief against an immune defendant. See
21 28 U.S.C. § 1915(e)(2). A complaint is legally frivolous when it lacks an arguable basis in law or
22 in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221,
23 1227-28 (9th Cir. 1984). Under this standard, a court must dismiss a complaint as frivolous
24 where it is based on an indisputably meritless legal theory or where the factual contentions are
25 clearly baseless. Neitzke, 490 U.S. at 327; 28 U.S.C. § 1915(e).

26 To state a claim on which relief may be granted, the plaintiff must allege "enough facts to
27 state a claim to relief that is plausible on its face." Bell Atlantic Corp. v. Twombly, 550 U.S. 544,
28 570 (2007). In considering whether a complaint states a cognizable claim, the court accepts as

1 true the material allegations in the complaint and construes the allegations in the light most
2 favorable to the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Hosp. Bldg. Co. v.
3 Trustees of Rex Hosp., 425 U.S. 738, 740 (1976); Love v. United States, 915 F.2d 1242, 1245
4 (9th Cir. 1989). Pro se pleadings are held to a less stringent standard than those drafted by
5 lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). However, the court need not accept as true
6 conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. Western
7 Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

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

9 A pleading which sets forth a claim for relief . . . shall contain (1) a
10 short and plain statement of the grounds upon which the court's
11 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.

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

13 **II. Plaintiff's Second Amended Complaint**

14 “[T]he in forma pauperis statute . . . ‘accords judges not only the authority to dismiss a
15 claim based on an indisputably meritless legal theory, but also the unusual power to pierce the
16 veil of the complaint’s factual allegations and dismiss those claims whose factual contentions are
17 clearly baseless.’” Denton v. Hernandez, 504 U.S. 25, 32 (1992) (quoting Neitzke, 490 U.S. at
18 327). “Examples of the latter class are claims describing fantastic or delusional scenarios, claims
19 with which federal district judges are all too familiar.” Neitzke, 490 U.S. at 328.

20 Here, the only allegations found in the second amended complaint are that defendant
21 “Campbells Soup & Sugar Cane” are “inheritance ‘stalkers’ or people that stalk” plaintiff and that
22 have “staged a sale for their invasion, as they did her house.”¹ (Sec. Am. Compl. (ECF No. 5) at
23 2.) Thus, not only does the second amended complaint fail to state a claim, but the second
24 amended complaint’s allegations are also delusional and frivolous. See Denton, 504 U.S. at 33

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26 ¹ Plaintiff’s amended complaint alleged that in two prior actions in this court—Akika Parker v.
27 Sacramento County Police Department, et al., No. 2:16-cv-1926 GEB KJN PS, and Akika Parker
28 v. District Attorney’s Office of Sacramento, CA, No. 2:16-cv-2140 TLN AC PS—plaintiff was
granted “a right to be excluded from jail or imprisonment in totality.” (Am. Compl. (ECF No. 4)
at 7.)

1 (“a finding of factual frivolousness is appropriate when the facts alleged rise to the level of the
2 irrational or the wholly incredible, whether or not there are judicially noticeable facts available to
3 contradict them”).

4 **III. Leave to Amend**

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

12 Here, given the defects noted above, the undersigned finds that granting plaintiff further
13 leave to amend would be futile.

14 **CONCLUSION**

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

- 16 1. Plaintiff’s July 19, 2018 application to proceed in forma pauperis (ECF No. 2) be
17 denied;
- 18 2. Plaintiff’s October 19, 2018 second amended complaint (ECF No. 5) be dismissed
19 without prejudice; and
- 20 3. This action be dismissed.

21 These findings and recommendations will be submitted to the United States District Judge
22 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
23 days after being served with these findings and recommendations, plaintiffs may file written
24 objections with the court. A document containing objections should be titled “Objections to
25 Magistrate Judge’s Findings and Recommendations.”

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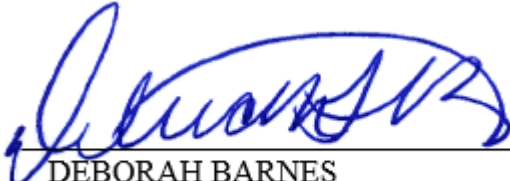
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Plaintiff is advised that failure to file objections within the specified time may, under certain circumstances, waive the right to appeal the District Court's order. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: October 29, 2018



DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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