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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANDRE BAUTISTA,
Plaintiff,
v.
INTERNATIONAL MOVIE DATA BASE
and AMAZON, INC.,
Defendants.

No. 2:19-cv-00123 TLN AC (PS)

FINDINGS AND RECOMMENDATIONS

Plaintiff is proceeding in this action pro se. This matter was accordingly referred to the undersigned by E.D. Cal. 302(c)(21). Plaintiff has filed a request for leave to proceed in forma pauperis (“IFP”) pursuant to 28 U.S.C. § 1915, and has submitted the affidavit required by that statute. See 28 U.S.C. § 1915(a)(1). ECF No. 2. The motion to proceed IFP will therefore be GRANTED.

I. SCREENING

The federal IFP statute requires 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). Plaintiff must assist the court in determining whether or not the complaint is frivolous, by drafting the complaint so that it complies with the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”).

1 The Federal Rules of Civil Procedure are available online at [www.uscourts.gov/rules-](http://www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-civil-procedure)
2 [policies/current-rules-practice-procedure/federal-rules-civil-procedure](http://www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-civil-procedure). Under the Federal Rules
3 of Civil Procedure, the complaint must contain (1) a “short and plain statement” of the basis for
4 federal jurisdiction (that is, the reason the case is filed in this court, rather than in a state court),
5 (2) a short and plain statement showing that plaintiff is entitled to relief (that is, who harmed the
6 plaintiff, and in what way), and (3) a demand for the relief sought. Fed. R. Civ. P. 8(a).
7 Plaintiff’s claims must be set forth simply, concisely and directly. Fed. R. Civ. P. 8(d)(1). Forms
8 are available to help pro se plaintiffs organize their complaint in the proper way. They are
9 available at the Clerk’s Office, 501 I Street, 4th Floor (Rm. 4-200), Sacramento, CA 95814, or
10 online at www.uscourts.gov/forms/pro-se-forms.

11 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
12 Neitzke v. Williams, 490 U.S. 319, 325 (1989). In reviewing a complaint under this standard, the
13 court will (1) accept as true all of the factual allegations contained in the complaint, unless they
14 are clearly baseless or fanciful, (2) construe those allegations in the light most favorable to the
15 plaintiff, and (3) resolve all doubts in the plaintiff’s favor. See Neitzke, 490 U.S. at 327; Von
16 Saher v. Norton Simon Museum of Art at Pasadena, 592 F.3d 954, 960 (9th Cir. 2010), cert.
17 denied, 564 U.S. 1037 (2011).

18 The court applies the same rules of construction in determining whether the complaint
19 states a claim on which relief can be granted. Erickson v. Pardus, 551 U.S. 89, 94 (2007) (court
20 must accept the allegations as true); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974) (court must
21 construe the complaint in the light most favorable to the plaintiff). Pro se pleadings are held to a
22 less stringent standard than those drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520
23 (1972). However, the court need not accept as true conclusory allegations, unreasonable
24 inferences, or unwarranted deductions of fact. Western Mining Council v. Watt, 643 F.2d 618,
25 624 (9th Cir. 1981). A formulaic recitation of the elements of a cause of action does not suffice
26 to state a claim. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57 (2007); Ashcroft v. Iqbal,
27 556 U.S. 662, 678 (2009).

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1 To state a claim on which relief may be granted, the plaintiff must allege enough facts “to
2 state a claim to relief that is plausible on its face.” Twombly, 550 U.S. at 570. “A claim has
3 facial plausibility when the plaintiff pleads factual content that allows the court to draw the
4 reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S. at
5 678. A pro se litigant is entitled to notice of the deficiencies in the complaint and an opportunity
6 to amend, unless the complaint’s deficiencies could not be cured by amendment. See Noll v.
7 Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987).

8 A. The Complaint

9 Plaintiff brings suit against Amazon, Inc. and International Movie Database (“IMDb”) for
10 “damages to the reputation (libel per se)” seeking damages of \$1,000,000.00. ECF No. 1 at 5.
11 Plaintiff asserts that defendants published on the IMDb website that he committed a murder, but
12 that plaintiff is still challenging the conviction in his criminal case and never pled guilty to the
13 charges. Id. Plaintiff states he is a citizen of the State of California. ECF No. 1 at 3. Plaintiff
14 states that IMDb is incorporated under the laws of the State of Washington and has its principal
15 place of business in the State of California and online. Id.

16 B. Analysis

17 Federal courts have limited jurisdiction, and whether jurisdiction exists is a question that
18 must be answered before a case can move forward. Morongo Band of Mission Indians v. Cal.
19 State Bd. of Equalization, 858 F.2d 1376, 1380 (9th Cir. 1988). “Federal courts are presumed to
20 lack jurisdiction, ‘unless the contrary appears affirmatively from the record.’” Casey v. Lewis, 4
21 F.3d 1516, 1519 (9th Cir. 1993) (quoting Bender v. Williamsport Area Sch. Dist., 475 U.S. 534,
22 546 (1986)).

23 Lack of subject matter jurisdiction may be raised by the court at any time during the
24 proceedings. Attorneys Trust v. Videotape Computer Prods., Inc., 93 F.3d 593, 594-95 (9th Cir.
25 1996). A federal court “ha[s] an independent obligation to address sua sponte whether [it] has
26 subject-matter jurisdiction.” Dittman v. California, 191 F.3d 1020, 1025 (9th Cir. 1999). It is the
27 obligation of the district court “to be alert to jurisdictional requirements.” Grupo Dataflux v.
28 Atlas Global Group, L.P., 541 U.S. 567, 593 (2004). Without jurisdiction, the district court

1 cannot decide the merits of a case or order any relief. See Morongo, 858 F.2d at 1380.

2 The burden of establishing jurisdiction rests upon plaintiff as the party asserting
3 jurisdiction. Kokkonen, 511 U.S. at 377. Here, plaintiff's complaint alleges that the court has
4 subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332, and plaintiff brings only
5 state claims. (Compl. (ECF No. 1) at 1.) The diversity jurisdiction statute, 28 U.S.C. § 1332,
6 provides that district courts have diversity jurisdiction over "all civil actions where the matter in
7 controversy exceeds the sum or value of \$75,000, exclusive of interest and costs," and the action
8 is between: "(1) citizens of different States; (2) citizens of a State and citizens or subjects of a
9 foreign state; (3) citizens of different States and in which citizens or subjects of a foreign state are
10 additional parties; and (4) a foreign state...as plaintiff and citizens of a State or of different
11 States." "Diversity jurisdiction requires complete diversity between the parties—each defendant
12 must be a citizen of a different state from each plaintiff." In re Digimarc Corp. Derivative
13 Litigation, 549 F.3d 1223, 1234 (9th Cir. 2008).

14 Plaintiff's complaint states that he is a citizen of California, and that defendant IMDb
15 maintains its principal place of business in California. ECF No. 1 at 3. A corporation is "a
16 citizen of any State in which it has been incorporated and of the State where it has its principal
17 place of business." 28 U.S.C. § 1332(c)(1). The allegations of the complaint thus establish that
18 plaintiff and defendant IMDb are citizens of the same state. Accordingly, the complaint fails to
19 establish this court's jurisdiction over this action pursuant to 28 U.S.C. § 1332. To the contrary,
20 the allegations of the complaint defeat diversity. Accordingly, there is no federal jurisdiction and
21 this case must be dismissed. The undersigned further recommends that leave to amend not
22 granted in this instance because the facts alleged establish that there is no federal jurisdiction, and
23 therefore the complaint's deficiencies could not be cured by amendment. Noll, 809 F.2d at 1448.

24 II. CONCLUSION

25 Accordingly, the undersigned recommends that plaintiff's request to proceed in forma
26 pauperis (ECF No. 2) be GRANTED but that the complaint (ECF No. 1) be DISMISSED with
27 prejudice because it fails to state a claim upon which relief can be granted. It is further
28 recommended that leave to amend not be granted because amendment would be futile.

1 These findings and recommendations are submitted to the United States District Judge
2 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty one days
3 after being served with these findings and recommendations, plaintiff may file written objections
4 with the court and serve a copy on all parties. Id.; see also Local Rule 304(b). Such a document
5 should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Failure
6 to file objections within the specified time may waive the right to appeal the District Court’s
7 order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153,
8 1156-57 (9th Cir. 1991).

9 DATED: March 7, 2019

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12 ALLISON CLAIRE
13 UNITED STATES MAGISTRATE JUDGE
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