

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 Here, the complaint concerns plaintiff's "OLD case: 2-16-CV-1447 JAM AC PS and 2:18
12 CV-0203 TLN EFB PS" stemming from events occurring on "1/4/2013 and 12/16/2014."

13 (Compl. (ECF No. 1) at 5, 8.¹) Although the allegations found in the complaint are difficult to
14 decipher, the complaint alleges that after an "accident . . . [a]ll CEO Insurance" and "health
15 insurance unite[d] together" to "torture" plaintiff and plaintiff's family. (Id. at 5-6.)

16 Plaintiff allegedly received "no feed back from any Judge of US" and seeks \$200 million in
17 compensation requested in "case 2:18cv-0203 TLN EFB PS." (Id. at 6.) Named as defendants
18 are individuals employed as court personnel. (Id. at 1-3.)

19 Although the Federal Rules of Civil Procedure adopt a flexible pleading policy, a
20 complaint must give the defendant fair notice of the plaintiff's claims and must allege facts that
21 state the elements of each claim plainly and succinctly. Fed. R. Civ. P. 8(a)(2); Jones v.
22 Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). "A pleading that offers 'labels
23 and conclusions' or 'a formulaic recitation of the elements of cause of action will not do.' Nor
24 does a complaint suffice if it tenders 'naked assertions' devoid of 'further factual
25 enhancements.'" Ashcroft v. Iqbal, 556 U.S.662, 678 (2009) (quoting Twombly, 550 U.S. at 555,

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28 ¹ Page number citations such as this are to the page number reflected on the court's CM/ECF
system and not to the page numbers assigned by the parties.

1 557). A plaintiff must allege with at least some degree of particularity overt acts which the
2 defendants engaged in that support the plaintiff's claims. Jones, 733 F.2d at 649.

3 Moreover, the court's records reveal that on June 27, 2016, plaintiff filed a federal action
4 in this court concerning an accident occurring on January 4, 2013.² See HELEN LE, et al., v.
5 KENNETH EDWARD AZNOE, RICHARD EDWARD McGREEVY, et al., No. 2:16-cv-1447
6 JAM AC PS, ("Le I"), (ECF No. 1). That action was dismissed for lack of subject matter
7 jurisdiction. (Le I, ECF No. 14, 18). The Ninth Circuit affirmed on appeal, holding that "[t]he
8 district court properly dismissed [the] action for lack of subject matter jurisdiction because the
9 federal claims were too insubstantial to confer jurisdiction." Le v. McGreevy, 692 Fed. Appx.
10 378, 379 (9th Cir. 2017).

11 On January 30, 2018, plaintiff commenced a second action in this court, ("Le II"),
12 "seeking to challenge the dismissal of Le I and the adverse rulings on appeal." Le v. United
13 States, No. 2:18-cv-0203 TLN EFB PS, 2018 WL 2010497, at *3 (E.D. Cal. Apr. 30, 2018). Le
14 II was also "dismissed for lack of jurisdiction and failure to state a claim." Id. at *1.

15 As was true of Le I and Le II, this action must be dismissed for lack of jurisdiction and
16 failure to state a claim. As stated by the court in Le II, "it is clear that the instant action seeks to
17 challenge the dismissal of Le I, [Le II], and the adverse rulings on appeal. This court lacks
18 jurisdiction to review or overturn those decisions." Le II, 2018 WL 2010497, at *3; see also
19 Dhalluin v. McKibben, 682 F.Supp. 1096, 1097 (D. Nev. 1988) ("The structure of the federal
20 courts does not allow one judge of a district court to rule directly on the legality of another district
21 judge's judicial acts or to deny another district judge his or her lawful jurisdiction.").

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24 ² The court may take judicial notice of its own files and of documents filed in other courts. Reyn's
25 Pasta Bella, LLC v. Visa USA, Inc., 442 F.3d 741, 746 n. 6 (9th Cir. 2006) (taking judicial notice
26 of documents related to a settlement in another case that bore on whether the plaintiff was still
27 able to assert its claims in the pending case); Burbank–Glendale–Pasadena Airport Auth. v. City
28 of Burbank, 136 F.3d 1360, 1364 (9th Cir. 1998) (taking judicial notice of court filings in a state
court case where the same plaintiff asserted similar and related claims); Hott v. City of San Jose,
92 F.Supp.2d 996, 998 (N.D. Cal. 2000) (taking judicial notice of relevant memoranda and orders
filed in state court cases).

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 **IV. Plaintiff's Motions**

12 On September 19, 2019, plaintiff filed a motion for emergency relief "to solve
13 compensation." (ECF No. 7 at 1.) On September 23, 2019, plaintiff filed a motion "to open
14 TRIAL[.]" (ECF No. 8 at 1.) However, the undersigned has recommended that plaintiff's
15 complaint be dismissed without leave to amend. Plaintiff's motions, therefore, will be dismissed
16 without prejudice pending resolution of these findings and recommendations.

17 **CONCLUSION**

18 Accordingly, for the reasons stated above, IT IS HEREBY ORDERED that:

19 1. Plaintiff's September 19, 2019 motion for emergency relief (ECF No. 7) is denied
20 without prejudice to renewal; and

21 2. Plaintiff's September 23, 2019 motion for jury trial (ECF No. 8) is denied without
22 prejudice to renewal.

23 Also, IT IS HEREBY RECOMMENDED that:

24 1. Plaintiff's March 7, 2019 application to proceed in forma pauperis (ECF No. 2) be
25 denied;


26 2. Plaintiff's March 7, 2019 complaint (ECF No. 1) be dismissed without prejudice; and

27 3. This action be dismissed.

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1 These findings and recommendations will be 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 fourteen (14)
3 days after being served with these findings and recommendations, plaintiffs may file written
4 objections with the court. A document containing objections should be titled “Objections to
5 Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file
6 objections within the specified time may, under certain circumstances, waive the right to appeal
7 the District Court’s order. See *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

8 Dated: October 4, 2019

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12 DEBORAH BARNES
13 UNITED STATES MAGISTRATE JUDGE
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