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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHARLES LEWIS BOBO,
Plaintiff,
v.
UNION GOSPEL MISSION,
Defendant.

No. 2:19-cv-0764 KJM DB PS

FINDINGS AND RECOMMENDATIONS

Plaintiff Charles Lewis Bobo 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 complains about defendant’s refusal to allow plaintiff to live at the mission.

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 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 Here, plaintiff's two-page complaint simply alleges:

12 Union Gospel Mission is emergency shelter should always have
13 bed had to sleep outside months on a bench[.]

14 Against law test anyone for drugs or alcohol can't sleep on cot to
(sic) hard for my health condition

15 First Rash was bad don't know was chemical rash or not had to stay
16 outside in rain waiting to go inside shelter[.]

17 Dog clinic in Union Gospel Mission every month two weekend of
the month could be outside in wet time. Plus my health condition.

18 (Compl. (ECF No. 1) at 1.) The complaint goes on to discuss a "second rash" and plaintiff "still
19 sleeping outside" in the snow in February of 2019. (Id. at 2.) Plaintiff seeks \$50,000,000 "for
20 my health condition." (Id.) In this regard, the complaint fails to allege with any specificity what
21 claim plaintiff is asserting against the defendant or the basis for the court's jurisdiction over this
22 action.

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

1 enhancements.” Ashcroft v. Iqbal, 556 U.S.662, 678 (2009) (quoting Twombly, 550 U.S. at 555,
2 557). A plaintiff must allege with at least some degree of particularity overt acts which the
3 defendants engaged in that support the plaintiff’s claims. Jones, 733 F.2d at 649.

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

12 Lack of subject matter jurisdiction may be raised by the court at any time during the
13 proceedings. Attorneys Trust v. Videotape Computer Prods., Inc., 93 F.3d 593, 594-95 (9th Cir.
14 1996). A federal court “ha[s] an independent obligation to address sua sponte whether [it] has
15 subject-matter jurisdiction.” Dittman v. California, 191 F.3d 1020, 1025 (9th Cir. 1999). It is the
16 obligation of the district court “to be alert to jurisdictional requirements.” Grupo Dataflux v.
17 Atlas Global Group, L.P., 541 U.S. 567, 593 (2004). Without jurisdiction, the district court
18 cannot decide the merits of a case or order any relief. See Morongo, 858 F.2d at 1380.

19 The basic federal jurisdiction statutes are 28 U.S.C. §§ 1331 and 1332, which confer
20 “federal question” and “diversity” jurisdiction, respectively. Federal jurisdiction may also be
21 conferred by federal statutes regulating specific subject matter. “[T]he existence of federal
22 jurisdiction depends solely on the plaintiff’s claims for relief and not on anticipated defenses to
23 those claims.” ARCO Env’tl. Remediation, LLC v. Dep’t of Health & Env’tl. Quality, 213 F.3d
24 1108, 1113 (9th Cir. 2000).

25 District courts have diversity jurisdiction only over “all civil actions where the matter in
26 controversy exceeds the sum or value of \$75,000, exclusive of interest and costs,” and the action
27 is between: “(1) citizens of different States; (2) citizens of a State and citizens or subjects of a
28 foreign state; (3) citizens of different States and in which citizens or subjects of a foreign state are

1 additional parties; and (4) a foreign state . . . as plaintiff and citizens of a State or of different
2 States.” 28 U.S.C. § 1332. “To demonstrate citizenship for diversity purposes a party must (a) be
3 a citizen of the United States, and (b) be domiciled in a state of the United States.” Lew v. Moss,
4 797 F.2d 747, 749 (9th Cir. 1986). “Diversity jurisdiction requires complete diversity between
5 the parties—each defendant must be a citizen of a different state from each plaintiff.” In re
6 Digimarc Corp. Derivative Litigation, 549 F.3d 1223, 1234 (9th Cir. 2008).

7 Here, the complaint fails to state a claim for relief and fails to allege a basis for subject
8 matter jurisdiction. Accordingly, plaintiff’s complaint should be dismissed.

9 **III. Leave to Amend**

10 The undersigned has carefully considered whether plaintiff may amend the complaint to
11 state a claim over which the court would have jurisdiction and upon which relief could be
12 granted. “Valid reasons for denying leave to amend include undue delay, bad faith, prejudice,
13 and futility.” California Architectural Bldg. Prod. v. Franciscan Ceramics, 818 F.2d 1466, 1472
14 (9th Cir. 1988); see also Klamath-Lake Pharm. Ass’n v. Klamath Med. Serv. Bureau, 701 F.2d
15 1276, 1293 (9th Cir. 1983) (holding that while leave to amend shall be freely given, the court
16 does not have to allow futile amendments). In light of the deficiencies noted above, the
17 undersigned finds that it would be futile to grant plaintiff leave to amend in this case.

18 **CONCLUSION**


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

- 20 1. Plaintiff’s May 2, 2019 application to proceed in forma pauperis (ECF No. 2) be
21 denied;
- 22 2. Plaintiff’s May 2, 2019 complaint (ECF No. 1) be dismissed without prejudice; and
- 23 3. This action be dismissed.

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

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

3 Dated: October 7, 2019

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6 DEBORAH BARNES
7 UNITED STATES MAGISTRATE JUDGE
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