

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DONTA LADEAL KYLE,

Plaintiff,

v.

LOS ANGELES POLICE
DEPARTMENT, et al.,

Defendants.

No. 2:19-cv-1720 TLN AC P

FINDINGS AND RECOMMENDATIONS

Plaintiff, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

I. Application to Proceed In Forma Pauperis

Plaintiff has submitted an application to proceed in forma pauperis under 28 U.S.C. § 1915. “A district court may deny leave to proceed in forma pauperis at the outset if it appears from the face of the proposed complaint that the action is frivolous or without merit.” Tripati v. First Nat’l Bank & Tr., 821 F.2d 1368, 1370 (9th Cir. 1987) (citations omitted). As addressed below, the undersigned finds that the complaint is frivolous, and it will therefore be recommended that plaintiff’s request to proceed in forma pauperis be denied.

///
///

1 II. Statutory Screening of Prisoner Complaints

2 The court is required to screen complaints brought by prisoners seeking relief against a
3 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
4 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
5 “frivolous, malicious, or fail[] to state a claim upon which relief may be granted,” or that “seek[]
6 monetary relief from a defendant who is immune from such relief.” 28 U.S.C. § 1915A(b).

7 A claim “is [legally] frivolous where it lacks an arguable basis either in law or in fact.”
8 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
9 Cir. 1984). “[A] judge may dismiss . . . claims which are ‘based on indisputably meritless legal
10 theories’ or whose ‘factual contentions are clearly baseless.’” Jackson v. Arizona, 885 F.2d 639,
11 640 (9th Cir. 1989) (quoting Neitzke, 490 U.S. at 327), superseded by statute on other grounds as
12 stated in Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000). The critical inquiry is whether a
13 constitutional claim, however inartfully pleaded, has an arguable legal and factual basis.
14 Franklin, 745 F.2d at 1227-28 (citations omitted).

15 III. Complaint

16 Plaintiff alleges that the Los Angeles Police Department, City of Los Angeles, various
17 detectives and parole officers, paid informants, his ex-wife, Harris Corporation, and several other
18 individuals have violated his rights. ECF No. 1 at 2-8. Specifically, he alleges that the
19 defendants are using Stingray technology to spy on his calls with his attorney and to spoof his
20 identity by reading his thoughts and collecting his memories. Id. at 3, 5. He also claims that
21 defendants are using the technology to put thoughts in his head and dreams and are attempting to
22 get him to kill someone in order to keep him in prison. Id. at 4-5.

23 The allegations in plaintiff’s complaint are delusional and do not present facts or legally
24 coherent theories of liability establishing a claim for relief. These claims should therefore be
25 dismissed. Denton v. Hernandez, 504 U.S. 25, 32-33 (1992) (“[A] court may dismiss a claim as
26 factually frivolous only if the facts alleged are ‘clearly baseless,’ a category encompassing
27 allegations that are ‘fanciful,’ ‘fantastic,’ and ‘delusional.’” (internal citations omitted)).

28 ///
2

1 IV. No Leave to Amend

2 If the court finds that a complaint or claim should be dismissed for failure to state a claim,
3 the court has discretion to dismiss with or without leave to amend. Leave to amend should be
4 granted if it appears possible that the defects in the complaint could be corrected, especially if a
5 plaintiff is pro se. Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir. 2000) (en banc); Cato v.
6 United States, 70 F.3d 1103, 1106 (9th Cir. 1995) (“A pro se litigant must be given leave to
7 amend his or her complaint, and some notice of its deficiencies, unless it is absolutely clear that
8 the deficiencies of the complaint could not be cured by amendment.” (citing Noll v. Carlson, 809
9 F.2d 1446, 1448 (9th Cir. 1987))). However, if, after careful consideration, it is clear that a claim
10 cannot be cured by amendment, the Court may dismiss without leave to amend. Cato, 70 F.3d at
11 1105-06.

12 The undersigned finds that, as set forth above, plaintiff’s complaint is frivolous.
13 Moreover, given the nature of plaintiff’s claims, there is no way for plaintiff to amend the
14 complaint to state a claim for which relief can be granted. Leave to amend would thus be futile.
15 “A district court may deny leave to amend when amendment would be futile.” Hartmann v.
16 CDCR, 707 F.3d 1114, 1130 (9th Cir. 2013).

17 V. Plain Language Summary of this Order for a Pro Se Litigant

18 It is being recommended that your request to proceed in forma pauperis be denied because
19 your claims are frivolous. It is also being recommended that your complaint be dismissed
20 without leave to amend for the same reason.

21 Accordingly, IT IS HEREBY RECOMMENDED that:

- 22 1. Plaintiff’s request for leave to proceed in forma pauperis (ECF No. 2) be denied.
- 23 2. The complaint be dismissed as frivolous.

24 These findings and recommendations are 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 days
26 after being served with these findings and recommendations, plaintiff may file written objections
27 with the court. Such a document should be captioned “Objections to Magistrate Judge’s Findings

28 ///

1 and Recommendations.” Plaintiff is advised that failure to file objections within the specified
2 time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153
3 (9th Cir. 1991).

4 DATED: September 9, 2019

5 
6 ALLISON CLAIRE
7 UNITED STATES MAGISTRATE JUDGE
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28