

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

PRENTICE C. SMITH, SR.,
Plaintiff,
v.
CVETICH ILIJA,
Defendant.

No. 2:19-cv-02506 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”), and has submitted the affidavit required by that statute. See 28 U.S.C. § 1915(a)(1). The motion to proceed IFP (ECF No. 2) 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). A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989). Additionally, the court must consider the presence or absence of jurisdiction; jurisdiction is a threshold inquiry that must precede the adjudication of any case before the district court. Morongo Band of Mission Indians v. Cal. State Bd. of

1 Equalization, 858 F.2d 1376, 1380 (9th Cir. 1988). Federal courts are courts of limited
2 jurisdiction and may adjudicate only those cases authorized by federal law. Kokkonen v.
3 Guardian Life Ins. Co., 511 U.S. 375, 377 (1994); Willy v. Coastal Corp., 503 U.S. 131, 136–37
4 (1992). “Federal courts are presumed to lack jurisdiction, ‘unless the contrary appears
5 affirmatively from the record.’” Casey v. Lewis, 4 F.3d 1516, 1519 (9th Cir. 1993) (quoting
6 Bender v. Williamsport Area Sch. Dist., 475 U.S. 534, 546 (1986)). Without jurisdiction, the
7 district court cannot decide the merits of a case or order any relief. See Morongo, 858 F.2d at
8 1380. The burden of establishing jurisdiction rests upon plaintiff as the party asserting
9 jurisdiction. Kokkonen, 511 U.S. at 377.

10 A. The Complaint

11 Plaintiff brings suit against Ilija Cvetich, attorney at law. ECF No. 1 at 2. Plaintiff alleges
12 that defendant breached a contract for a loan of money. Id. at 5. No other claim is alleged.
13 Plaintiff and defendant are both residents of California. Id. at 1, 4. On the form complaint,
14 plaintiff checks the “federal question” box as a basis for federal jurisdiction. Id. at 3.

15 B. Analysis

16 This complaint must be dismissed without leave to amend because there is no basis for
17 federal jurisdiction. “Congress granted federal courts jurisdiction over two general types of
18 cases: cases that ‘aris[e] under’ federal law, § 1331, and cases in which the amount in controversy
19 exceeds \$ 75,000 and there is diversity of citizenship among the parties, § 1332(a). These
20 jurisdictional grants are known as ‘federal-question jurisdiction’ and ‘diversity jurisdiction,’
21 respectively.” Home Depot U. S. A., Inc. v. Jackson, 139 S. Ct. 1743, 1746 (Aug. 5, 2019).
22 Here, plaintiff asserts jurisdiction based on a federal question. ECF No. 1 at 3. District courts
23 have original jurisdiction over “civil actions arising under the Constitution, laws, or treaties of the
24 United States.” 28 U.S.C. § 1331. “A case ‘arises under’ federal law either where federal law
25 creates the cause of action or ‘where the vindication of a right under state law necessarily turn[s]
26 on some construction of federal law.’” Republican Party of Guam v. Gutierrez, 277 F.3d 1086,
27 1088–89 (9th Cir. 2002) (modification in original) (citing Franchise Tax Bd. v. Constr. Laborers
28 Vacation Trust, 463 U.S. 1, 8–9 (1983)). In this case, the complaint does not identify any federal

1 laws or constitutional violations. The factual allegations support only a breach of contract claim.
2 There is therefore no basis for federal question jurisdiction.

3 Nor is there a basis for diversity jurisdiction. Plaintiff alleges that plaintiff a citizen of the
4 state of California. ECF No. 1 at 1. Defendant is also alleged to be a citizen of California. Id. at
5 4. Because both parties are citizens of the same state, diversity cannot be the basis for federal
6 jurisdiction. Because the court does not have jurisdiction over this case and this defect cannot be
7 cured, the complaint must be dismissed without leave to amend.

8 **II. Conclusion**

9 Accordingly, the undersigned recommends that plaintiff's request to proceed in forma
10 pauperis (ECF No. 2) be GRANTED but that the complaint (ECF No. 1) be DISMISSED without
11 leave to amend because this court lacks jurisdiction.

12 These findings and recommendations are submitted to the United States District Judge
13 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty one days
14 after being served with these findings and recommendations, plaintiff may file written objections
15 with the court and serve a copy on all parties. Id.; see also Local Rule 304(b). Such a document
16 should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Failure
17 to file objections within the specified time may waive the right to appeal the District Court's
18 order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153,
19 1156-57 (9th Cir. 1991).

20 DATED: December 30, 2019

21 
22 ALLISON CLAIRE
23 UNITED STATES MAGISTRATE JUDGE
24
25
26
27
28