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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID JAMES EGGMAN,
Plaintiff,
v.
RUSS MILLER, ESQ,
Defendant.

No. 2:20-cv-0323 KJM DB PS

FINDINGS AND RECOMMENDATIONS

Plaintiff David James Eggman is a prisoner 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 & 6.) Therein, plaintiff complains that the defendant committed legal malpractice while representing plaintiff.

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 complaint be dismissed without prejudice.

I. Plaintiff’s Application to Proceed In Forma Pauperis

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.

1 2000) (en banc). Plaintiff’s in forma pauperis application makes the financial showing required
2 by 28 U.S.C. § 1915(a)(1). However, a determination that a plaintiff qualifies financially for in
3 forma pauperis status does not complete the inquiry required by the statute.

4 ““A district court may deny leave to proceed in forma pauperis at the outset if it appears
5 from the face of the proposed complaint that the action is frivolous or without merit.”” Minetti v.
6 Port of Seattle, 152 F.3d 1113, 1115 (9th Cir. 1998) (quoting Tripati v. First Nat. Bank & Trust,
7 821 F.2d 1368, 1370 (9th Cir. 1987)); see also McGee v. Department of Child Support Services,
8 584 Fed. Appx. 638 (9th Cir. 2014) (“the district court did not abuse its discretion by denying
9 McGee’s request to proceed IFP because it appears from the face of the amended complaint that
10 McGee’s action is frivolous or without merit”); Smart v. Heinze, 347 F.2d 114, 116 (9th Cir.
11 1965) (“It is the duty of the District Court to examine any application for leave to proceed in
12 forma pauperis to determine whether the proposed proceeding has merit and if it appears that the
13 proceeding is without merit, the court is bound to deny a motion seeking leave to proceed in
14 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 Jurisdiction is a threshold inquiry that must precede the adjudication of any case before
12 the district court. Morongo Band of Mission Indians v. Cal. State Bd. of Equalization, 858 F.2d
13 1376, 1380 (9th Cir. 1988). Federal courts are courts of limited jurisdiction and may adjudicate
14 only those cases authorized by federal law. Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375,
15 377 (1994); Willy v. Coastal Corp., 503 U.S. 131, 136-37 (1992). "Federal courts are presumed
16 to lack jurisdiction, 'unless the contrary appears affirmatively from the record.'" Casey v. Lewis,
17 4 F.3d 1516, 1519 (9th Cir. 1993) (quoting Bender v. Williamsport Area Sch. Dist., 475 U.S. 534,
18 546 (1986)).

19 Lack of subject matter jurisdiction may be raised by the court at any time during the
20 proceedings. Attorneys Trust v. Videotape Computer Prods., Inc., 93 F.3d 593, 594-95 (9th Cir.
21 1996). A federal court "ha[s] an independent obligation to address sua sponte whether [it] has
22 subject-matter jurisdiction." Dittman v. California, 191 F.3d 1020, 1025 (9th Cir. 1999). It is the
23 obligation of the district court "to be alert to jurisdictional requirements." Grupo Dataflux v.
24 Atlas Global Group, L.P., 541 U.S. 567, 593 (2004). Without jurisdiction, the district court
25 cannot decide the merits of a case or order any relief. See Morongo, 858 F.2d at 1380.

26 The basic federal jurisdiction statutes are 28 U.S.C. §§ 1331 and 1332, which confer
27 "federal question" and "diversity" jurisdiction, respectively. Federal jurisdiction may also be
28 conferred by federal statutes regulating specific subject matter. "[T]he existence of federal

1 jurisdiction depends solely on the plaintiff's claims for relief and not on anticipated defenses to
2 those claims." ARCO Env'tl. Remediation, LLC v. Dep't of Health & Env'tl. Quality, 213 F.3d
3 1108, 1113 (9th Cir. 2000).

4 District courts have diversity jurisdiction only over "all civil actions where the matter in
5 controversy exceeds the sum or value of \$75,000, exclusive of interest and costs," and the action
6 is between: "(1) citizens of different States; (2) citizens of a State and citizens or subjects of a
7 foreign state; (3) citizens of different States and in which citizens or subjects of a foreign state are
8 additional parties; and (4) a foreign state . . . as plaintiff and citizens of a State or of different
9 States." 28 U.S.C. § 1332. "To demonstrate citizenship for diversity purposes a party must (a) be
10 a citizen of the United States, and (b) be domiciled in a state of the United States." Lew v. Moss,
11 797 F.2d 747, 749 (9th Cir. 1986). "Diversity jurisdiction requires complete diversity between
12 the parties-each defendant must be a citizen of a different state from each plaintiff." In re
13 Digimarc Corp. Derivative Litigation, 549 F.3d 1223, 1234 (9th Cir. 2008).

14 Here, the complaint alleges that this action is brought pursuant to 42 U.S.C. § 1983.
15 (Compl. (ECF No. 1) at 1.) In this regard, a litigant who complains of a violation of a
16 constitutional right does not have a cause of action directly under the United States Constitution.
17 Livadas v. Bradshaw, 512 U.S. 107, 132 (1994) (affirming that it is 42 U.S.C. § 1983 that
18 provides a federal cause of action for the deprivation of rights secured by the United States
19 Constitution); Chapman v. Houston Welfare Rights Org., 441 U.S. 600, 617 (1979) (explaining
20 that 42 U.S.C. § 1983 was enacted to create a private cause of action for violations of the United
21 States Constitution); Azul-Pacifico, Inc. v. City of Los Angeles, 973 F.2d 704, 705 (9th Cir.
22 1992) ("Plaintiff has no cause of action directly under the United States Constitution.").

23 42 U.S.C. § 1983 provides that,

24 [e]very person who, under color of [state law] ... subjects, or causes
25 to be subjected, any citizen of the United States ... to the deprivation
26 of any rights, privileges, or immunities secured by the Constitution
and laws, shall be liable to the party injured in an action at law, suit
in equity, or other proper proceeding for redress.

27 Here, the complaint alleges that the defendant committed legal malpractice in the course
28 of representing plaintiff. (Compl. (ECF No. 1) at 3.) However, "an attorney, whether retained or

1 appointed, does not act ‘under color of’ state law.” Szijarto v. Legeman, 466 F.2d 864, 864 (9th
2 Cir. 1972); see also Diaz v. Sheppard, 85 F.3d 1502, 1505 (11th Cir. 1996) (legal malpractice
3 claim presents “[n]o substantial question of federal law . . . and federal jurisdiction is lacking”).
4 Accordingly, “[t]he Court lacks jurisdiction over the subject matter of this apparent legal
5 malpractice lawsuit.” Garcia v. Martin, No. 1:11-cv-01656 AWI MJS, 2012 WL 218630, at *1
6 (E.D. Cal. Jan. 23, 2012).

7 **III. Leave to Amend**

8 For the reasons stated above, plaintiff’s complaint should be dismissed. The undersigned
9 has carefully considered whether plaintiff could amend the complaint to state a claim over which
10 the court would have jurisdiction. Valid reasons for denying leave to amend include undue delay,
11 bad faith, prejudice, and futility.” California Architectural Bldg. Prod. v. Franciscan Ceramics,
12 818 F.2d 1466, 1472 (9th Cir. 1988); see also Klamath-Lake Pharm. Ass’n v. Klamath Med. Serv.
13 Bureau, 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that while leave to amend shall be freely
14 given, the court does not have to allow futile amendments).

15 Here, given the deficiencies noted above, the undersigned finds that granting plaintiff
16 leave to amend would be futile.

17 **CONCLUSION**

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

- 19 1. Plaintiff’s November 18, 2019 application to proceed in forma pauperis (ECF No. 6)
20 be denied;
- 21 2. Plaintiff’s October 24, 2019 complaint (ECF No. 1) be dismissed without prejudice;
22 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 thirty days after
26 being served with these findings and recommendations, plaintiff may file written objections with
27 the court. A document containing objections should be titled “Objections to Magistrate Judge’s
28 Findings and Recommendations.” Plaintiff is advised that failure to file objections within the

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

3 Dated: April 8, 2020

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7 DEBORAH BARNES
8 UNITED STATES MAGISTRATE JUDGE

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