



1                   **Legal Standards**

2                   The court must dismiss a case if, at any time, it determines that it lacks subject matter  
3 jurisdiction. Fed. R. Civ. P. 12(h)(3). A federal district court generally has jurisdiction over a  
4 civil action when: (1) a federal question is presented in an action “arising under the Constitution,  
5 laws, or treaties of the United States” or (2) there is complete diversity of citizenship and the  
6 amount in controversy exceeds \$75,000. See 28 U.S.C. §§ 1331, 1332(a). However, federal  
7 courts lack subject matter jurisdiction to consider claims that are “so insubstantial, implausible,  
8 foreclosed by prior decisions of this court, or otherwise completely devoid of merit as not to  
9 involve a federal controversy.” Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 89  
10 (1998); Hagans v. Lavine, 415 U.S. 528, 537 (1974) (court lacks subject matter jurisdiction over  
11 claims that are “essentially fictitious,” “obviously frivolous” or “obviously without merit”); see  
12 also Grancare, LLC v. Thrower by & through Mills, 889 F.3d 543, 549-50 (9th Cir. 2018) (noting  
13 that the “wholly insubstantial and frivolous” standard for dismissing claims operates under Rule  
14 12(b)(1) for lack of federal question jurisdiction). A claim is legally frivolous when it lacks an  
15 arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989). A court  
16 may dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or  
17 where the factual contentions are clearly baseless. Id. at 327; Rule 12(h)(3).

18                   Pro se pleadings are to be liberally construed. Hebbe v. Pliler, 627 F.3d 338, 342 & fn. 7  
19 (9th Cir. 2010) (liberal construction appropriate even post-Iqbal). Prior to dismissal, the court is  
20 to tell the plaintiff of deficiencies in the complaint and provide an opportunity to cure—if it  
21 appears at all possible the defects can be corrected. See Lopez v. Smith, 203 F.3d 1122, 1130-31  
22 (9th Cir. 2000) (en banc). However, if amendment would be futile, no leave to amend need be  
23 given. Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 339 (9th Cir. 1996).

24                   **Analysis**

25                   Here, plaintiff’s complaint is vague and at times unintelligible. Nevertheless, liberally  
26 construed, the complaint alleges that the sole named defendant, The Roseville Department of the  
27 FBI, failed to investigate claims plaintiff made while incarcerated concerning the current  
28 governor’s alleged involvement in a “children’s sex operation.” Plaintiff claims he witnessed

1 fantastical events while visiting the capitol building, which caused him distress. He brings suit  
2 under 42 U.S.C. § 1983 and Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971) for  
3 alleged violations of his Constitutional rights. (ECF No. 1.) The court recommends dismissal on  
4 the basis of frivolity. Steel Co., 523 U.S. at 89 (no subject matter jurisdiction over claims  
5 completely devoid of merit as not to involve a federal controversy); Hagans, 415 U.S. at 537  
6 (court lacks subject matter jurisdiction over claims that are “essentially fictitious,” “obviously  
7 frivolous” or “obviously without merit”); Neitzke, 490 U.S. at 325 (a claim is legally frivolous  
8 when it lacks an arguable basis either in law or in fact); see also Grancare, 889 F.3d at 549-50.


9 **RECOMMENDATIONS**

10 Accordingly, IT IS HEREBY RECOMMENDED that:

- 11 1. Plaintiff’s motion to proceed in forma pauperis (ECF No. 2) be DENIED AS MOOT;  
12 2. The action be DISMISSED for lack of subject matter jurisdiction as frivolous; and  
13 3. The Clerk of Court be directed to CLOSE this case.

14 These findings and recommendations are submitted to the United States District Judge assigned to  
15 the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14) days after  
16 being served with these findings and recommendations, plaintiff may file written objections with  
17 the court. Such a document should be captioned “Objections to Magistrate Judge’s Findings and  
18 Recommendations.” Plaintiff is advised that failure to file objections within the specified time  
19 may waive the right to appeal the District Court’s order. Turner v. Duncan, 158 F.3d 449, 455  
20 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

21 Dated: June 9, 2022

22   
23 \_\_\_\_\_  
KENDALL J. NEWMAN  
24 UNITED STATES MAGISTRATE JUDGE

25 fost.943