1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 No. 2:22-cv-943-TLN-KJN PS MARTIN LEE FOSTER, FINDINGS AND RECOMMENDATIONS TO 12 Plaintiff. **DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION** 13 v. 14 (ECF No. 1.) ROSEVILLE FBI, 15 Defendant. 16 17 Plaintiff, who is proceeding without counsel in this action, requests leave to proceed in forma pauperis ("IFP").1 (ECF No. 2.) See 28 U.S.C. § 1915 (authorizing the commencement of 18 19 an action "without prepayment of fees or security" by a person who is unable to pay such fees). 20 The court finds that it lacks federal subject matter jurisdiction over the action. See United 21 Investors Life Ins. Co. v. Waddell & Reed Inc., 360 F.3d 960, 967 (9th Cir. 2004) (noting the 22 federal court's independent duty to ensure it has subject matter jurisdiction in the case). 23 Accordingly, the court recommends that the action be dismissed, and that plaintiff's application to proceed in forma pauperis in this court be denied as moot. 24 25 /// 26 Actions where a party proceeds without counsel are referred to a magistrate judge pursuant to E.D. Cal. L.R. 302(c)(21). See 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72. Resolution of 27 dispositive matters by a magistrate judge are to be filed as findings and recommendations. See 28 Local Rule 304. 1

## **Legal Standards**

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

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

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

## **Analysis**

Here, plaintiff's complaint is vague and at times unintelligible. Nevertheless, liberally construed, the complaint alleges that the sole named defendant, The Roseville Department of the FBI, failed to investigate claims plaintiff made while incarcerated concerning the current 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); <u>Hagans</u> , 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	<u>RECOMMENDATIONS</u>
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	Ferdal P. Newman
23	KENDALL J. NEWMAN
24	fost.943 UNITED STATES MAGISTRATE JUDGE
25	