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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN MARC VAN DEN HEUVEL,
Plaintiff,
v.
WITHERTON, et al.,
Defendants.

No. 2:22-cv-2280 DJC DB PS

FINDINGS AND RECOMMENDATIONS

Plaintiff, John Marc Van den Heuvel, is 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 amended complaint and motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. (ECF Nos. 2 & 4.) The amended complaint’s allegations are delusional and indecipherable.

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 amended complaint is deficient. Accordingly, for the reasons stated below, the undersigned will recommend that plaintiff’s amended complaint be dismissed without further leave to amend.

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1 **I. Plaintiff's Application to Proceed In Forma Pauperis**

2 Plaintiff's in forma pauperis application makes the financial showing required by 28
3 U.S.C. § 1915(a)(1). However, a determination that a plaintiff qualifies financially for in forma
4 pauperis status does not complete the inquiry required by the statute. "A district court may deny
5 leave to proceed in forma pauperis at the outset if it appears from the face of the proposed
6 complaint that the action is frivolous or without merit." Minetti v. Port of Seattle, 152 F.3d
7 1113, 1115 (9th Cir. 1998) (quoting Tripati v. First Nat. Bank & Trust, 821 F.2d 1368, 1370 (9th
8 Cir. 1987)); see also McGee v. Department of Child Support Services, 584 Fed. Appx. 638 (9th
9 Cir. 2014) ("the district court did not abuse its discretion by denying McGee's request to proceed
10 IFP because it appears from the face of the amended complaint that McGee's action is frivolous
11 or without merit"); Smart v. Heinze, 347 F.2d 114, 116 (9th Cir. 1965) ("It is the duty of the
12 District Court to examine any application for leave to proceed in forma pauperis to determine
13 whether the proposed proceeding has merit and if it appears that the proceeding is without merit,
14 the court is bound to deny a motion seeking leave to proceed in 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 Amended Complaint**

11 “[T]he in forma pauperis statute . . . ‘accords judges not only the authority to dismiss a
12 claim based on an indisputably meritless legal theory, but also the unusual power to pierce the
13 veil of the complaint’s factual allegations and dismiss those claims whose factual contentions are
14 clearly baseless.’” Denton v. Hernandez, 504 U.S. 25, 32 (1992) (quoting Neitzke, 490 U.S. at
15 327). “Examples of the latter class are claims describing fantastic or delusional scenarios, claims
16 with which federal district judges are all too familiar.” Neitzke, 490 U.S. at 328.

17 Here, plaintiff’s amended complaint alleges that “‘DUE’ defaults by the UNITED
18 STATES MAGISTRATES’ to acquire my own peace of mind, apply myself with higher life
19 living skills[.]” (Am. Compl. (ECF No. 4) at 4.) That “[d]iscovery has recently been made that
20 the opposite is a hidden facts . . . to ignorantly justify the acts of justified murder; hangings.”
21 (Id.) And that the “acting ‘Gate Keeper’ that has not provided a courteous replies to my personal
22 request[.]” (Id.) In this regard, the amended complaint’s factual allegations are clearly baseless
23 and delusional.

24 **III. Leave to Amend**

25 For the reasons stated above, plaintiff’s amended complaint should be dismissed. The
26 undersigned has carefully considered whether plaintiff may further amend the complaint to state a
27 claim upon which relief can be granted. “Valid reasons for denying leave to amend include
28 undue delay, bad faith, prejudice, and futility.” California Architectural Bldg. Prod. v. Franciscan

1 Ceramics, 818 F.2d 1466, 1472 (9th Cir. 1988); see also Klamath-Lake Pharm. Ass'n v. Klamath
2 Med. Serv. Bureau, 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that while leave to amend shall
3 be freely given, the court does not have to allow futile amendments).

4 Here, given the defects noted above, the undersigned finds that granting plaintiff leave to
5 amend would be futile.

6 **CONCLUSION**

7 Accordingly, IT IS HEREBY RECOMMENDED that:

- 8 1. Plaintiff's December 21, 2022 application to proceed in forma pauperis (ECF No. 2) be
9 denied;
- 10 2. The amended complaint filed on April 4, 2023, be dismissed without leave to amend;
11 and
- 12 3. This action be dismissed.

13 These findings and recommendations will be submitted to the United States District Judge
14 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
15 after being served with these findings and recommendations, plaintiff may file written objections
16 with the court. A document containing objections should be titled "Objections to Magistrate
17 Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections within
18 the specified time may, under certain circumstances, waive the right to appeal the District Court's
19 order. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

20 Dated: May 8, 2023

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22 _____
23 DEBORAH BARNES
24 UNITED STATES MAGISTRATE JUDGE

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