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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 TAIFUSIN CHIU,

12 Plaintiff,

13 v.

14 CONSUMES RIVER COLLEGE et. al.,

15 Defendants.
16

No. 2:23-cv-00096-TLN-CKD PS

ORDER GRANTING IFP REQUEST AND
FINDINGS AND RECOMMENDATIONS TO
DISMISS

17 Plaintiff, who is proceeding without counsel in this action, requests leave to proceed in
18 forma pauperis (“IFP”).¹ (ECF No. 2.) See 28 U.S.C. § 1915 (authorizing the commencement of
19 an action “without prepayment of fees or security” by a person who is unable to pay such fees).
20 Plaintiff’s affidavit makes the required financial showing, and so plaintiff’s request is granted.

21 However, the determination that a plaintiff may proceed without payment of fees does not
22 complete the inquiry. Under the IFP statute, the court must screen the complaint and dismiss any
23 claims that are “frivolous or malicious,” fail to state a claim on which relief may be granted, or
24 seek monetary relief against an immune defendant. 28 U.S.C. § 1915(e)(2). Further, the federal
25 court has an independent duty to ensure it has subject matter jurisdiction in the case. See United
26 Investors Life Ins. Co. v. Waddell & Reed Inc., 360 F.3d 960, 967 (9th Cir. 2004).

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28 ¹ 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.

1 **Legal Standards**

2 Pro se pleadings are to be liberally construed. Hebbe v. Pliler, 627 F.3d 338, 342 & n.7
3 (9th Cir. 2010) (liberal construction appropriate even post-Iqbal). Prior to dismissal, the court is
4 to tell the plaintiff of deficiencies in the complaint and provide an opportunity to cure—if it
5 appears at all possible the defects can be corrected. See Lopez v. Smith, 203 F.3d 1122, 1130-31
6 (9th Cir. 2000) (en banc). However, if amendment would be futile, no leave to amend need be
7 given. Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 339 (9th Cir. 1996).

8 **i. Subject Matter Jurisdiction and Frivolity**

9 The court must dismiss a case if, at any time, it determines that it lacks subject matter
10 jurisdiction. Rule 12(h)(3).² A federal district court generally has original jurisdiction over a
11 civil action when: (1) a federal question is presented in an action “arising under the Constitution,
12 laws, or treaties of the United States” or (2) there is complete diversity of citizenship and the
13 amount in controversy exceeds \$75,000. See 28 U.S.C. §§ 1331, 1332(a). Further, a plaintiff
14 must have standing to assert a claim, which requires an injury in fact caused by defendant(s) that
15 may be redressed in court. Harrison v. Kernan, 971 F.3d 1069, 1073 (9th Cir. 2020). Under the
16 well-pleaded complaint rule, “federal jurisdiction exists only when a federal question is presented
17 on the face of the plaintiff’s properly pleaded complaint.” Caterpillar Inc. v. Williams, 482 U.S.
18 386, 392 (1987).

19 Federal courts lack subject matter jurisdiction to consider claims that are “so insubstantial,
20 implausible, foreclosed by prior decisions of this court, or otherwise completely devoid of merit
21 as not to involve a federal controversy.” Steel Co. v. Citizens for a Better Environment, 523 U.S.
22 83, 89 (1998); Hagans v. Lavine, 415 U.S. 528, 537 (1974) (court lacks subject matter jurisdiction
23 over claims that are “essentially fictitious,” “obviously frivolous” or “obviously without merit”);
24 see also Grancare, LLC v. Thrower by & through Mills, 889 F.3d 543, 549-50 (9th Cir. 2018)
25 (noting that the “wholly insubstantial and frivolous” standard for dismissing claims operates
26 under Rule 12(b)(1) for lack of federal question jurisdiction). A claim is legally frivolous when it
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28 ² Citation to the “Rule(s)” are to the Federal Rules of Civil Procedure, unless otherwise noted.

1 lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989). A
2 court may dismiss a claim as frivolous where it is based on an indisputably meritless legal theory
3 or where the factual contentions are clearly baseless. Id. at 327; Rule 12(h)(3).

4 **Analysis**

5 Plaintiff's complaint is incoherent and does not assert any plausible facts or legal claims.
6 The first page of the complaint contains a screenshot of a web browser. (ECF No. 1 at 2.) The
7 remaining three pages of the complaint consist entirely of nonsensical phrases. (Id. at 2-6.) The
8 complaint begins, "I had call numerous. I call never remove the hold. I see you in court and
9 appear on court as visual and above and beyond and infinite bond of white diamond..." (Id. at 2.)
10 The complaint continues in this manner for over three single-spaced pages without stating any
11 facts from which the court can infer a legal claim.³ The undersigned therefore finds the
12 complaint is legally frivolous and recommends dismissal. See Neitzke, 490 U.S. at 325; Rule
13 12(h)(3).

14 Based on the contents of the complaint, it is clear that further amendment would be
15 futile. Therefore, the undersigned recommends that this action be dismissed with prejudice.
16 California Architectural Bldg. Prod., 818 F.2d at 1472 (stating futility of amendment is a valid
17 reason to deny leave to amend).

18 **ORDER AND RECOMMENDATIONS**

19 Accordingly, IT IS HEREBY ORDERED that:

- 20 1. Plaintiff's IFP application is GRANTED; and
- 21 2. In light of the above, all pleading, discovery, and motion practice in this action are
22 STAYED pending resolution of these findings and recommendations. Other than
23 objections to the findings and recommendations or non-frivolous motions for
24 emergency relief, the court will not entertain or respond to any pleadings or motions
25 until the findings and recommendations are resolved.


26
27 ³ Plaintiff's complaint is similar to other complaints he has filed in this court, at least five of
28 which have been deemed frivolous and dismissed without leave to amend. See e.g., Chiu v.
Trump, 22-cv-00764-KJM-AC; Chiu v. President of the United States, 22-cv-00809-TLN-DB.

Further, it is RECOMMENDED that:

1. The action be DISMISSED WITH PREJUDICE;
2. The Clerk of Court be directed to CLOSE this case.

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

Dated: May 15, 2023


CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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