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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WESLEY PEDEN; BRUNO BERRY,
Plaintiffs,
v.
GEORGE BERNARD, et al.,
Defendants.

No. 2:23-cv-0524 TLN DB PS

FINDINGS AND RECOMMENDATIONS

Plaintiff Wesley Peden is proceeding in this action pro se.¹ 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 & 2.) The complaint alleges that the defendants are engaging in “threats, intimidation, and harassment[.]” (Compl. (ECF No. 1) at 2.)

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 leave to amend and this action be closed.

¹ Although the complaint purports to be on behalf of plaintiffs Wesley Peden and Bruno Berry, only plaintiff Wesley Peden has signed the complaint.

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

2 Plaintiff Wesley Peden's in forma pauperis application makes the financial showing
3 required by 28 U.S.C. § 1915(a)(1). However, plaintiff Bruno Berry has not filed an in forma
4 pauperis application. Filing fees must be paid unless each plaintiff applies for and is granted
5 leave to proceed in forma pauperis.

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

18 The court must dismiss an in forma pauperis case at any time if the allegation of poverty is
19 found to be untrue or if it is determined that the action is frivolous or malicious, fails to state a
20 claim on which relief may be granted, or seeks monetary relief against an immune defendant. See
21 28 U.S.C. § 1915(e)(2). A complaint is legally frivolous when it lacks an arguable basis in law or
22 in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221,
23 1227-28 (9th Cir. 1984). Under this standard, a court must dismiss a complaint as frivolous
24 where it is based on an indisputably meritless legal theory or where the factual contentions are
25 clearly baseless. Neitzke, 490 U.S. at 327; 28 U.S.C. § 1915(e).

26 To state a claim on which relief may be granted, the plaintiff must allege "enough facts to
27 state a claim to relief that is plausible on its face." Bell Atlantic Corp. v. Twombly, 550 U.S. 544,
28 570 (2007). In considering whether a complaint states a cognizable claim, the court accepts as

1 true the material allegations in the complaint and construes the allegations in the light most
2 favorable to the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Hosp. Bldg. Co. v.
3 Trustees of Rex Hosp., 425 U.S. 738, 740 (1976); Love v. United States, 915 F.2d 1242, 1245
4 (9th Cir. 1989). Pro se pleadings are held to a less stringent standard than those drafted by
5 lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). However, the court need not accept as true
6 conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. Western
7 Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

8 The minimum requirements for a civil complaint in federal court, as explained by Rule 8
9 of the Federal Rules of Civil Procedure (“Rules”), are as follows:

10 A pleading which sets forth a claim for relief . . . shall contain (1) a
11 short and plain statement of the grounds upon which the court’s
12 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.

13 Fed. R. Civ. P. 8(a).

14 **II. Plaintiff’s Complaint**

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

21 Here, the complaint alleges that the defendants, to whom plaintiff pays monthly rent, are
22 threatening plaintiff because plaintiff is “currently working with the Department of Justice, in
23 Washington D.C., to provide information, evidence, and intelligence concerning the
24 defendants[.]” (Compl. (ECF No. 1) at 1-2.) The defendants are allegedly “working in concert
25 with . . . Agents of the Federal Government, and a Federally licensed Non Profit Organization, in
26 the commission of numerous Federal Felonies.” (Id. at 1.)

27 In this regard, the complaint’s allegations are delusional and frivolous. See Denton, 504
28 U.S. at 33 (“a finding of factual frivolousness is appropriate when the facts alleged rise to the

1 level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts
2 available to contradict them”).

3 **III. Leave to Amend**

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

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

13 **CONCLUSION**

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

- 15 1. Plaintiff’s March 20, 2023 complaint (ECF No. 1) be dismissed without leave to
16 amend;
- 17 2. Plaintiff’s March 20, 2023 application to proceed in forma pauperis (ECF No. 2) be
18 denied; and
- 19 3. This action be closed.

20 These findings and recommendations will be submitted to the United States District Judge
21 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
22 after being served with these findings and recommendations, plaintiff may file written objections
23 with the court. A document containing objections should be titled “Objections to Magistrate
24 Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections within

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1 the 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: May 10, 2023

/s/ DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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