

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

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JEAN MARC VAN DEN HEUVEL,  
Plaintiff,  
v.  
KASSIE LYNNE CARDULLO, et al.,  
Defendants.

No. 2:23-cv-1024 DJC AC PS

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Plaintiff, a prolific filer in this district<sup>1</sup>, is proceeding in this action pro se. This matter was referred to the undersigned by E.D. Cal. R. 302(c)(21). Plaintiff has filed a request for leave to proceed in forma pauperis (“IFP”) pursuant to 28 U.S.C. § 1915, and has submitted the affidavit required by that statute. See 28 U.S.C. § 1915(a)(1). The motion to proceed IFP will therefore be granted.

<sup>1</sup> Plaintiff filed approximately 26 civil cases between 2016 and 2022, and just within the first half of 2023 he has already filed 5 cases in addition to this one: Van den Heuvel v. Barbour, 2:23-cv-00021-DAD-JDP (PS), (filed 01/05/23); Van den Heuvel v. Sooth, 2:23-cv-00361-TLN-KJN (PS) (filed 02/27/23); Van den Heuvel v. Pesce et al, 2:23-cv-00546-TLN-CKD (PS) (filed 03/22/23); Van den Heuvel v. A.M.P.M. Mini Mart, 2:23-cv-00752-TLN-AC (PS)(filed 04/20/23); Van den Heuvel v. Johnson et al, 2:23-cv-00777-DJC-CKD (PS)(filed 04/25/23). Many, if not most, of plaintiff’s cases have been dismissed for lack of merit. Plaintiff is warned that continued abuse of the court’s process could result in the entry of a vexatious litigant order against him, which would restrict his ability to file cases in this court. Plaintiff is likely aware of this mechanism, as other California courts have entered similar orders against him.

1 I. SCREENING

2 A determination that a plaintiff qualifies financially for in forma pauperis status does not  
3 complete the inquiry required by the statute. The federal IFP statute requires federal courts to  
4 dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which  
5 relief may be granted, or seeks monetary relief from a defendant who is immune from such relief.  
6 28 U.S.C. § 1915(e)(2). Plaintiff must assist the court in determining whether the complaint is  
7 frivolous, by drafting the complaint so that it complies with the Federal Rules of Civil Procedure  
8 (“Fed. R. Civ. P.”). Under the Federal Rules of Civil Procedure, the complaint must contain (1) a  
9 “short and plain statement” of the basis for federal jurisdiction (that is, the reason the case is filed  
10 in this court, rather than in a state court), (2) a short and plain statement showing that plaintiff is  
11 entitled to relief (that is, who harmed the plaintiff, and in what way), and (3) a demand for the  
12 relief sought. Fed. R. Civ. P. 8(a). Plaintiff’s claims must be set forth simply, concisely and  
13 directly. Fed. R. Civ. P. 8(d)(1).

14 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
15 Neitzke v. Williams, 490 U.S. 319, 325 (1989). In reviewing a complaint under this standard, the  
16 court will (1) accept as true all the factual allegations contained in the complaint, unless they are  
17 clearly baseless or fanciful, (2) construe those allegations in the light most favorable to the  
18 plaintiff, and (3) resolve all doubts in the plaintiff’s favor. See Neitzke, 490 U.S. at 327; Von  
19 Saher v. Norton Simon Museum of Art at Pasadena, 592 F.3d 954, 960 (9th Cir. 2010), cert.  
20 denied, 564 U.S. 1037 (2011).

21 The court applies the same rules of construction in determining whether the complaint  
22 states a claim on which relief can be granted. Erickson v. Pardus, 551 U.S. 89, 94 (2007) (court  
23 must accept the allegations as true); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974) (court must  
24 construe the complaint in the light most favorable to the plaintiff). Pro se pleadings are held to a  
25 less stringent standard than those drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520  
26 (1972). However, the court need not accept as true conclusory allegations, unreasonable  
27 inferences, or unwarranted deductions of fact. Western Mining Council v. Watt, 643 F.2d 618,  
28 624 (9th Cir. 1981). A formulaic recitation of the elements of a cause of action does not suffice

1 to state a claim. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57 (2007); Ashcroft v. Iqbal,  
2 556 U.S. 662, 678 (2009). To state a claim on which relief may be granted, the plaintiff must  
3 allege enough facts “to state a claim to relief that is plausible on its face.” Twombly, 550 U.S. at  
4 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the  
5 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”  
6 Iqbal, 556 U.S. at 678.

7 A pro se litigant is entitled to notice of the deficiencies in the complaint and an  
8 opportunity to amend, unless the complaint’s deficiencies could not be cured by amendment. See  
9 Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987), superseded on other grounds by statute as  
10 stated in Lopez v. Smith, 203 F.3d 1122 (9th Cir.2000)) (en banc).

## 11 II. THE COMPLAINT

12 The putative complaint is difficult to understand. It lists a single defendant, described as a  
13 “District Attorney Prosecutor violating immunities of guidelines :CA.” ECF No. 1 at 2. When  
14 asked to list the amount in controversy plaintiff writes, “for our choices of due respective  
15 balances from the God in our hearts. The wrongful, intentful actions of placing someone under  
16 such incredible destinies of jail custody is requested claims of \$30,000,000,000.00” and goes on  
17 to mention a “long history not investigated” related to a judge and a “journey of justified judicial  
18 mishaps and expensive learning convictions.” Id. at 4.

19 The statement of claim is drafted in such a manner that it is difficult to decipher even  
20 though it is typed. Id. Plaintiff refers to having served jail time and having experienced  
21 homelessness, and mentions “wrongfully the false gun convictions.” When asked to identify the  
22 relief sought, plaintiff mentions that he is waiting for renovations on a family home in  
23 Burlingame for two million dollars, mentions a home renovation business with “tools purchased  
24 over multiple years since starting a construction company in 1972,” and makes a reference to the  
25 U.S. Navy SEALS. Id. Plaintiff also attaches an even more unintelligible petition for habeas  
26 corpus as an apparent supplement to the civil complaint. ECF No. 1 at 6-13.

27 ///

28 ///

1 III. ANALYSIS

2 The complaint does not contain facts supporting any cognizable legal claim against any  
3 defendant. The court finds that the complaint has no basis in law and presents no plausible facts  
4 that could support a claim. See ECF No. 1.

5 Furthermore, “[f]ederal courts are courts of limited jurisdiction.” Kokkonen v. Guardian  
6 Life Ins. Co. of Am., 511 U.S. 375, 377, (1994). Congress has granted federal courts jurisdiction  
7 over two general types of cases: those that “arise under” federal law, 28 U.S.C. § 1331, and those  
8 in which the amount in controversy exceeds \$ 75,000 and there is diversity of citizenship among  
9 the parties, § 1332(a). Although plaintiff checked the box on the form complaint for federal  
10 question jurisdiction, ECF No. 1 at 3, the body of the complaint identifies no federal cause of  
11 action. Where the form complaint asks plaintiff to “[l]ist the specific federal statutes, federal  
12 treaties, and/or provisions of the United States Constitution that are at issue in this case,” he has  
13 written:

14 The Constitutional guidelines values ignored by a trusted placed  
15 proecutor, bound by performance guidelines of similar to judges,  
16 “canons” of due performances of “ethics” of Godly truth and  
17 deliverances of honor, absent prejudices, by personal hatreds or  
18 implied coersions by other coworkers in the relative fields of  
19 business. Whats expected is a truths, as the God within us impliments  
20 our dirrect actions to and for our fellows .

21 ECF No. 1 at 3.

22 Plaintiff has identified no federal cause of action, and his statement of claim (id. at 4)  
23 suggests none. Because there is no plausible allegation that any federal law or right was violated,  
24 as is required under 28 U.S.C. § 1331, and there is no other basis for jurisdiction, the court finds  
25 there is no jurisdiction here.

26 The contents of the complaint are sufficiently unintelligible to make it clear that leave to  
27 amend in this case would not be fruitful. The undersigned will therefore recommend that the  
28 complaint be dismissed with prejudice.

IV. PRO SE PLAINTIFF’S SUMMARY

It is being recommended that your case be dismissed because it does not make any legal  
claims: you do not tell the court what law you think was violated, and your facts do not show that

1 any law was violated. While the court can tell that you feel you were disrespected, you can only  
2 get relief from a court if you show a violation of your rights under a law that creates a right to  
3 sue. Also, federal courts cannot hear all types of cases. Your complaint does not include any  
4 information that shows this court has jurisdiction. For these reasons, the magistrate judge is  
5 recommending that your case be dismissed. You have 21 days to object to this recommendation.

6 V. CONCLUSION

7 In accordance with the above, IT IS HEREBY ORDERED that Plaintiff's application to  
8 proceed in forma pauperis (ECF No. 2), is GRANTED.

9 Further, IT IS HEREBY RECOMMENDED that all claims against all defendants should  
10 be summarily DISMISSED with prejudice.

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

18 IT IS SO ORDERED.

19 DATED: June 2, 2023

20   
21 ALLISON CLAIRE  
22 UNITED STATES MAGISTRATE JUDGE  
23  
24  
25  
26  
27  
28