UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DONALD RAY BLACKSHER, II, CDCR #AV-1847,

Plaintiff,

v.

DONALD J. TRUMP; GAVIN NEWSOM; ALL CDCR MENTAL AND MEDICAL HEALTH; ALL LAW ENFORCEMENT AGENCIES,

Defendants.

Case No.: 3:21-cv-0206-MMA-MDD

ORDER DISMISSING CIVIL ACTION PURSUANT TO 28 U.S.C. § 1915A(b)(1), DENYING LEAVE TO PROCEED IN FORMA PAUPERIS, AND DENYING MOTION TO APPOINT COUNSEL AS MOOT

[Doc. No. 2]

Plaintiff Donald Ray Blacksher, II, a California inmate currently incarcerated at the Richard J. Donovan Correctional Facility ("RJD") located in San Diego, California, and proceeding pro se, has filed a civil rights complaint pursuant to 42 U.S.C. § 1983. *See* Doc. No. 1. Plaintiff did not pay the filing fee required by 28 U.S.C. § 1914(a) to commence a civil action when he filed his complaint; instead, he has filed a copy of his inmate trust account statement which the Court liberally construes to be a request for leave to proceed in forma pauperis ("IFP") pursuant to 28 U.S.C. § 1915(a). *See* Doc. No. 3. In addition, Plaintiff has filed a motion to appoint counsel. *See* Doc. No. 2.

I. Sua Sponte Screening Pursuant to 28 U.S.C. § 1915A(b)

The Prison Litigation Reform Act ("PLRA"), 28 U.S.C. § 1915A, obligates the Court to review complaints filed by anyone "incarcerated or detained in any facility who is accused of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or conditions of parole, probation, pretrial release, or diversionary program," "as soon as practicable after docketing" and regardless of whether the prisoner prepays filing fees or moves to proceed IFP. *See* 28 U.S.C. § 1915A(a), (c). Pursuant to this provision of the PLRA, the Court is required to review prisoner complaints which "seek[] redress from a governmental entity or officer or employee of a government entity," and to dismiss those, or any portion of those, which are "frivolous, malicious, or fail[] to state a claim upon which relief may be granted," or which "seek monetary relief from a defendant who is immune." 28 U.S.C. § 1915A(b)(1)-(2); *Resnick v. Hayes*, 213 F.3d 443, 446-47 (9th Cir. 2000); *Hamilton v. Brown*, 630 F.3d 889, 892 n.3 (9th Cir. 2011). "The purpose of § 1915A is 'to ensure that the targets of frivolous or malicious suits need not bear the expense of responding.'" *Nordstrom v. Ryan*, 762 F.3d 903, 920 n.1 (9th Cir. 2014) (quoting *Wheeler v. Wexford Health Sources, Inc.*, 689 F.3d 680, 681 (7th Cir. 2012)).

The Court finds Plaintiff's entire complaint is patently frivolous. There are no coherent factual allegations contained within the complaint. A pleading is "factual[ly] frivolous[]" if "the facts alleged rise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts available to contradict them." *Denton v. Hernandez*, 504 U.S. 25, 25-26 (1992).

"[A] complaint, containing as it does both factual allegations and legal conclusions, is frivolous where it lacks an arguable basis either in law or in fact. . . . [The] term 'frivolous,' when applied to a complaint, embraces not only the inarguable legal conclusion, but also the fanciful factual allegation." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). When determining whether a complaint is frivolous, the court need not accept the allegations as true, but must "pierce the veil of the complaint's factual

allegations," *id.* at 327, to determine whether they are "'fanciful,' 'fantastic,' [or] 'delusional,'" *Denton*, 504 U.S. at 33 (quoting *Neitzke*, 490 U.S. at 328).

Here, the Court finds that Plaintiff's claims "rise to the level of the irrational or the wholly incredible," *Denton,* 504 U.S. at 33, and as such, his Complaint requires dismissal as frivolous and without leave to amend. *See Lopez v. Smith*, 203 F.3d 1122, 1127 n.8 (9th Cir. 2000) (en banc) (noting that if a claim is classified as frivolous, "there is by definition no merit to the underlying action and so no reason to grant leave to amend.").

II. Conclusion and Order

Good cause appearing, the Court:

1. **DISMISSES** Plaintiff's complaint as frivolous pursuant to 28 U.S.C. § 1915A and without leave to amend;
2. **DENIES AS MOOT** Plaintiff's request for leave to proceed IFP and motion to appoint counsel (Doc. Nos. 2, 3);
3. **CERTIFIES** that an IFP appeal from this Order would also be frivolous and therefore, could not be taken in good faith pursuant to 28 U.S.C. § 1915(a)(3). *See Coppedge v. United States*, 369 U.S. 438, 445 (1962); *Gardner v. Pogue*, 558 F.2d 548, 550 (9th Cir. 1977) (indigent appellant is permitted to proceed IFP on appeal only if appeal would not be frivolous); and,
4. **DIRECTS** the Clerk of Court to enter judgment accordingly and close the case.

IT IS SO ORDERED.

DATE: February 16, 2021

HON. MICHAEL M. ANELLO
United States District Judge