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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CHARLES ELWELL,

Plaintiff,

v.

DISTRICT OF MAINE COURT, SOUTH
PORTLAND POLICE, et al.

Defendants.

Case No.: 21-cv-1944-CAB-MDD

**ORDER DISMISSING CIVIL
ACTION AS FRIVOLOUS AND FOR
FAILING TO STATE A CLAIM
PURSUANT TO 28 U.S.C. §
1915(e)(2)(B)(i)-(iii)**

On November 15, 2021, Plaintiff filed a pro se complaint listing “All” as the defendant in the caption and stating in the text that he “would like to sue 7 officers of the Maine State Police, The DA who emailed me, alot [sic] of South Portland Police officers, South Portland city Council, Boston Police, State of Massachusetts, DCF of Mass, the FBI in Washington, State of Maine, Cumberland County courts in Maine, and Suffolk, and Worcester county courts in Mass.” [Doc. No. 1 at 3.] Plaintiff did not prepay the civil filing fees required by 28 U.S.C. § 1914(a) at the time of filing; instead, he has filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a). [Doc. No. 2.]

I. Screening Pursuant to 28 U.S.C. § 1915(e)(2)(B)

A complaint filed by any person seeking to proceed IFP pursuant to 28 U.S.C. § 1915(a) is subject to *sua sponte* dismissal if it “(i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief from a defendant

1 who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B); *Calhoun v. Stahl*, 254 F.3d
2 845, 845 (9th Cir. 2001) (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited
3 to prisoners.”); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (“[S]ection
4 1915(e) not only permits, but requires a district court to dismiss an *in forma pauperis*
5 complaint that fails to state a claim.”). Congress enacted this safeguard because “a litigant
6 whose filing fees and court costs are assumed by the public, unlike a paying litigant, lacks
7 an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits.”
8 *Denton v. Hernandez*, 504 U.S. 25, 31 (1992) (quoting *Neitzke v. Williams*, 490 U.S. 319,
9 324 (1989)).

10 Complaints must also comply with Federal Rule of Civil Procedure 8, which requires
11 that each pleading include a “short and plain statement of the claim,” FED. R. CIV. P.
12 8(a)(2), and that each allegation “be simple, concise, and direct.” FED. R. CIV. P. 8(d)(1).
13 See *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009). In addition to the grounds for *sua*
14 *sponte* dismissal set out in § 1915(e)(2)(B), the district court may also dismiss a complaint
15 for failure to comply with Rule 8 if it fails to provide the defendant fair notice of the wrongs
16 allegedly committed. See *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d
17 1047, 1059 (9th Cir. 2011) (citing cases upholding Rule 8 dismissals where pleadings were
18 “verbose,” “confusing,” “distracting, ambiguous, and unintelligible,” “highly repetitious,”
19 and comprised of “incomprehensible rambling”).

20 Here, Plaintiff’s complaint fails to comply with Rule 8 and fails to state a claim upon
21 which relief can be granted. The complaint appears to arise out of Plaintiff’s belief that he
22 was falsely arrested in Maine and/or Massachusetts and mistreated by various government
23 entities and officials in those states. The complaint, however, is largely incomprehensible
24 and rambling, does not provide a plain statement of a claim, and alleges few facts.
25 Moreover, the only thing that is clear from the complaint is that it concerns events in Maine
26 and Massachusetts that have no relation to this district, and that it purports to be against
27 only citizens or governmental entities in Maine and Massachusetts over whom courts in
28 California do not have personal jurisdiction, and many of whom likely qualify for some

1 sort of immunity from suit. Indeed, the complaint even refers to Plaintiff's civil suits
2 against these defendants in Maine or Massachusetts courts, which is where Plaintiff's
3 claims belong. In sum, the complaint is frivolous and fails to state a claim, and even if it
4 did state a claim, the complaint would be subject to dismissal or transfer for improper venue
5 and lack of personal jurisdiction over the defendants.

6 Accordingly, even if Plaintiff is entitled to proceed IFP, the complaint must be
7 dismissed as frivolous. *Anderson v. Sy*, 486 Fed. Appx. 644 (9th Cir. 2012) ("The district
8 court properly dismissed [the lawsuit] as frivolous because the complaint contains
9 indecipherable facts and unsupported legal assertions."); *Cato v. United States*, 70 F.3d
10 1103, 1105 (9th Cir. 1995) ("There is no abuse of discretion where a district court dismisses
11 under § 1915(d) a complaint "that merely repeats pending or previously litigated claims.").
12 Moreover, "[w]hen a case may be classified as frivolous or malicious, there is, by
13 definition, no merit to the underlying action and so no reason to grant leave to amend."
14 *Lopez*, 203 F.3d at 1128, n.8.

15 **II. Conclusion**

16 For the foregoing reasons, it is hereby **ORDERED** as follows:

- 17 1. The complaint is **DISMISSED** without prejudice to refile in the appropriate
18 court;
- 19 2. Plaintiff's Application to Proceed IFP [Doc. No. 2] is **DENIED AS MOOT**;
- 20 3. The Court **CERTIFIES** that an IFP appeal from this order would be frivolous
21 and therefore would not be taken in good faith pursuant to 28 U.S.C. §
22 1915(a)(3); and
- 23 4. The Clerk of Court shall **CLOSE** this case.

24 It is **SO ORDERED**.

25 Dated: November 19, 2021

26 
27 _____
28 Hon. Cathy Ann Bencivengo
United States District Judge