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UNITED STATES DISTRICT COURT DISTRICT OF NEVADA

JOHANES ODIN SKYWALKER TROYE,

Case No. 3:17-cv-00292-MMD-WGC

Plaintiff,

REPORT & RECOMMENDATION OF U.S. MAGISTRATE JUDGE

FEDERAL GOVERNMENT, et al.,

v.

Defendants.

This Report and Recommendation is made to the Honorable Miranda M. Du, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR 1B 1-4.

Before the court is Plaintiff's Application to Proceed in Forma Pauperis (IFP) (ECF No. 1) and pro se Complaint (ECF No. 1-1).

I. IFP APPLICATION

A person may be granted permission to proceed IFP if the person "submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress." 28 U.S.C. § 1915(a)(1); Lopez v. Smith, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (stating that 28 U.S.C. § 1915 applies to all actions filed IFP, not just prisoner actions).

In addition, the Local Rules of Practice for the District of Nevada provide: "Any person who is unable to prepay the fees in a civil case may apply to the court for authority to proceed [IFP]. The application must be made on the form provided by the court and must include a financial affidavit disclosing the applicant's income, assets, expenses, and liabilities." LSR 1-1.

"[T]he supporting affidavits [must] state the facts as to [the] affiant's poverty with some particularity, definiteness and certainty." *U.S. v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981) (quoting *Jefferson v. United States*, 277 F.2d 723, 725 (9th Cir. 1960)). A litigant need not "be absolutely destitute to enjoy the benefits of the statute." *Adkins v. E.I. Du Pont de Nemours & Co.*, 335 U.S. 331, 339 (1948).

A review of the application to proceed IFP reveals Plaintiff cannot pay the filing fee; therefore, the application should be granted.

II. SCREENING

A. Standard

"The court shall dismiss the case at any time if the court determines that ... the action or appeal (i) is frivolous or malicious; (ii) fails to state a claim upon which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B)(i)-(iii). This provision applies to all actions filed IFP, whether or not the plaintiff is incarcerated. *See Lopez*, 203 F.3d at 1129; *see also Calhoun v. Stahl*, 254 F.3d 845 (9th Cir. 2001) (per curiam).

Dismissal of a complaint for failure to state a claim upon which relief may be granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and 28 U.S.C. § 1915(e)(2)(B)(ii) tracks that language. Thus, when reviewing the adequacy of a complaint under 28 U.S.C. § 1915(e)(2)(B)(ii), the court applies the same standard as is applied under Rule 12(b)(6). *See Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012) ("The standard for determining whether a plaintiff has failed to state a claim upon which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of Civil Procedure 12(b)(6) standard for failure to state a claim."). Review under 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000) (citation omitted).

In reviewing the complaint under this standard, the court must accept as true the allegations, construe the pleadings in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969) (citations omitted). Allegations in pro se complaints are "held to less stringent standards than formal

pleadings drafted by lawyers[.]" *Hughes v. Rowe*, 449 U.S. 5, 9 (1980) (internal quotation marks and citation omitted).

A complaint must contain more than a "formulaic recitation of the elements of a cause of action," it must contain factual allegations sufficient to "raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "The pleading must contain something more ... than ... a statement of facts that merely creates a suspicion [of] a legally cognizable right of action." *Id.* (quoting 5 C. Wright & A. Miller, Federal Practice & Procedure § 1216, at 235-36 (3d ed. 2004)). At a minimum, a plaintiff should state "enough facts to state a claim to relief that is plausible on its face." *Id.* at 570; *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

A dismissal should not be without leave to amend unless it is clear from the face of the complaint that the action is frivolous and could not be amended to state a federal claim, or the district court lacks subject matter jurisdiction over the action. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995); *O'Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990).

B. Plaintiff's Complaint

Plaintiff brings this action against the federal government and California, Nevada and New Mexico. (ECF No. 1-1 at 1.) He asserts a single cause of action asserting that his country (Indian country) was stolen "by the cavalry" that murdered "mohekin" Indians. (*Id.*) He filed another document that states he is suing the federal government for murdering millions of innocent Indians and taking away Indian country. (ECF No. 1-2 at 1.) Among other things, he states that he is the "last Mohekin, Banshee Indian." (*Id.* at 2.)

Plaintiff's action should be dismissed for failure to state a claim upon which relief may be granted, and as frivolous, for several reasons. First, the court takes notice that this is not the first action Plaintiff has filed that has been dismissed as such. In case 3:17-cv-00079, Plaintiff sued Joe Conforte (Conforte was the owner of Nevada's first legal brothel, the Mustang Ranch). That complaint, like this one, was difficult to read and decipher. The court's analysis in that case applies equally here.

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Next, the Plaintiff sues the federal government and states for serious atrocities that, while bearing some vague semblance to historical events, do not contain a plausible basis in fact. For instance, Plaintiff repeatedly calls himself the last "Mohekin," a title which resembles that of a popular film. Not only are the allegations fanciful and implausible, they state no cognizable claim for relief under § 1983.

As the Supreme Court has noted, "a litigant whose filing fees and court costs are assumed by the public, unlike a paying litigant, lacks an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). "To prevent such abusive or captious litigation, § 1915(d) [now § 1915(e)(2)(B)(i)] authorizes federal courts to dismiss a claim filed [IFP] 'if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious." *Id.* "Dismissals on these grounds are often made *sua sponte* prior to the issuance of process, so as to spare prospective defendants the inconvenience and expense of answering such complaints." *Id.* (citation omitted). A complaint is frivolous "where it lacks an arguable basis either in law or in fact." *Id.* This term "embraces not only the inarguable legal conclusion, but also the fanciful factual allegation." *Id.*

§ 1915(e)(2)(B)(i) "accords judges not only the authority to dismiss a claim based on an indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless." *Id.* at 327. This includes "claims of infringement of a legal interest which clearly does not exist" and "claims describing fantastic and delusional scenarios." *Id.* at 327-28.

To the extent the court can decipher the complaint, it lacks an arguable basis in law or fact. Therefore, it should be dismissed with prejudice as failing to state a claim and as frivolous.

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III. RECOMMENDATION

IT IS HEREBY RECOMMENDED that the District Judge enter an order as follows:

- (1) **GRANTING** Plaintiff's IFP application (ECF No. 1);
- (2) Directing the Clerk to **FILE** the Complaint (ECF No. 1-1); and
- (3) **DISMISSING** the Complaint WITH PREJUDICE.

Plaintiff should be aware of the following:

- 1. That she may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to this Report and Recommendation within fourteen days of receipt. These objections should be titled "Objections to Magistrate Judge's Report and Recommendation" and should be accompanied by points and authorities for consideration by the district judge.
- 2. That this Report and Recommendation is not an appealable order and that any notice of appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed until entry of judgment by the district court.

DATED: June 29, 2017.

WILLIAM G. COBB

UNITED STATES MAGISTRATE JUDGE

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