

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

**Shannon O. Murphy Esq. Sr. dba Sheetmetal & Associates v. U.S.
Department of Veterans Affairs**

Murphy v. U.S. Department of Veterans Affairs · No. 2:25-cv-1887-TLN-CSK · Decided September 16, 2025

SUMMARY

The document contains findings and recommendations by a magistrate judge in the Eastern District of California concerning a pro se plaintiff's claims against the U.S. Department of Veterans Affairs. The court recommends denying the plaintiff's application to proceed in forma pauperis and dismissing the complaint without leave to amend based on sovereign immunity, failure to name the proper defendant under the Federal Tort Claims Act, inadequate pleading, and the plaintiff's inability to represent a business entity. The court also recommends closing the case.

OPINION

Shannon O. Murphy Esq. Sr. dba Sheetmetal & Associates v. U.S. Department of Veterans Affairs
PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 SHANNON O. MURPHY ESQ. SR. Case No. 2:25-cv-1887-TLN-CSK

DBA SHEETMETAL & ASSOCIATES,

12 Plaintiff,

13 FINDINGS AND RECOMMENDATIONS

v. 14

U.S. DEPARTMENT OF VETERANS

15 AFFAIRS, (ECF Nos. 1, 2) 16 Defendant. 17 18 Plaintiff Shannon O. Murphy Sr. is
representing himself in this action and seeks 19 leave to proceed in forma pauperis ("IFP")
pursuant to 28 U.S.C. § 1915.1 (ECF No. 2.) 20 For the reasons that follow, the Court
recommends Plaintiff's IFP application be denied, 21 and the Complaint be dismissed without
leave to amend.

22 I. MOTION TO PROCEED IN FORMA PAUPERIS

23 28 U.S.C. § 1915(a) provides that the court may authorize the commencement, 24 prosecution
or defense of any suit without prepayment of fees or security "by a person 25 who submits an
affidavit stating the person is "unable to pay such fees or give security 26 therefor." This affidavit
is to include, among other things, a statement of all assets the 27 1 This matter proceeds before the

undersigned pursuant to 28 U.S.C. § 636, Fed. R. 28 Civ. P. 72, and Local Rule 302(c). 1 person possesses. Id. The IFP statute does not itself define what constitutes insufficient 2 assets. See *Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th Cir. 2015). In *Escobedo*, 3 the Ninth Circuit stated that an affidavit in support of an IFP application is sufficient 4 where it alleges that the affiant cannot pay court costs and still afford the necessities of 5 life. Id. “One need not be absolutely destitute to obtain benefits of the in forma pauperis 6 statute.” Id. Nonetheless, a party seeking IFP status must allege poverty “with some 7 particularity, definiteness and certainty.” Id. According to the United States Department 8 of Health and Human Services, the current poverty guideline for a household of one (not 9 residing in Alaska or Hawaii) is \$15,060.00. See U.S. Dpt. Health & Human Service 10 (available at <https://aspe.hhs.gov/poverty-guidelines>). 11 Here, Plaintiff has made the required showing under 28 U.S.C. § 1915(a). See 12 ECF No. 2. However, the Court will recommend Plaintiff’s IFP application be denied 13 because the action is facially frivolous or without merit because it fails to state a claim. 14 ““A district court may deny leave to proceed in forma pauperis at the outset if it appears 15 from the face of the proposed complaint that the action is frivolous or without merit.”” 16 *Minetti v. Port of Seattle*, 152 F.3d 1113, 1115 (9th Cir. 1998) (quoting *Tripati v. First 17 Nat. Bank & Tr.*, 821 F.2d 1368, 1370 (9th Cir. 1987)); see also *McGee v. Dep’t of Child 18 Support Servs.*, 584 Fed. App’x. 638 (9th Cir. 2014) (“the district court did not abuse its 19 discretion by denying McGee’s request to proceed IFP because it appears from the face 20 of the amended complaint that McGee’s action is frivolous or without merit”); *Smart v. 21 Heinze*, 347 F.2d 114, 116 (9th Cir. 1965) (“It is the duty of the District Court to examine 22 any application for leave to proceed in forma pauperis to determine whether the 23 proposed proceeding has merit and if it appears that the proceeding is without merit, the 24 court is bound to deny a motion seeking leave to proceed in forma pauperis.”). Because 25 it appears from the face of Plaintiff’s Complaint that this action is frivolous or is without 26 merit as discussed in more detail below, the Court recommends Plaintiff’s IFP motion be 27 denied. 28 / / /

1 II. SCREENING REQUIREMENT

2 Even if the Court were to grant Plaintiff’s IFP application, Plaintiff’s Complaint 3 warrants dismissal pursuant to 28 U.S.C. § 1915(e)’s required pre-answer screening. 4 Pursuant to 28 U.S.C. § 1915(e), the court must screen every in forma pauperis 5 proceeding, and must order dismissal of the case if it is “frivolous or malicious,” “fails to 6 state a claim on which relief may be granted,” or “seeks monetary relief against a 7 defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B); *Lopez v. Smith*, 8 203 F.3d 1122, 1126-27 (2000) (en banc). A claim is legally frivolous when it lacks an 9 arguable basis either in law or in fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). In 10 reviewing a complaint under this standard, the court accepts as true the factual 11 allegations contained in the complaint, unless they are clearly baseless or fanciful, and 12 construes those allegations in the light most favorable to the plaintiff. See *id.* at 326-27; 13 *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960 (9th Cir. 14 2010), cert. denied, 564 U.S. 1037 (2011). 15 Pleadings by self-represented litigants are liberally

construed. *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (liberal construction appropriate even post-*Iqbal*). 17 However, the court need not accept as true conclusory allegations, unreasonable 18 inferences, or unwarranted deductions of fact. *Western Mining Council v. Watt*, 643 F.2d 19 618, 624 (9th Cir. 1981). A formulaic recitation of the elements of a cause of action does 20 not suffice to state a claim. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-57 (2007); 21 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). 22 To state a claim on which relief may be granted, the plaintiff must allege enough 23 facts “to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. “A 24 claim has facial plausibility when the plaintiff pleads factual content that allows the court 25 to draw the reasonable inference that the defendant is liable for the misconduct alleged.” 26 *Iqbal*, 556 U.S. at 678. A pro se litigant is entitled to notice of the deficiencies in the 27 complaint and an opportunity to amend unless the complaint’s deficiencies could not be 28 cured by amendment. See *Lopez*, 203 F.3d at 1130-31; *Cahill v. Liberty Mut. Ins. Co.*, 801 F.3d 336, 339 (9th Cir. 1996).

2 III. THE COMPLAINT

3 Plaintiff brings this action against Defendant U.S. Department of Veterans Affairs. 4 See Compl. at 1 (ECF No. 1). Plaintiff brings this action on behalf of himself and d/b/a 5 Sheetmetal & Associates. Id. Plaintiff lists the following five (5) causes of action against 6 Defendant: (1) “Tort-Negligence;” (2) breach of contract; (3) discrimination; 7 (4) harassment; and (5) assault. Id. at 2. The allegations of the Complaint are difficult to 8 understand. See generally Compl. As best as the Court can tell, Plaintiff’s allegations 9 seem to stem from a letter sent from Defendant in May 2020 notifying Plaintiff the results 10 of a class action and the impact of the class action on Plaintiff’s prior claim for 11 reimbursement of health care costs. See id. at 5. For each cause of action, Plaintiff 12 alleges the following: (1) “Tort-Negligence: Defendants, and after attorney’s jurisdiction, 13 failed proper reply attends, fair recovery of money lost, after defendant admit fail proper 14 claims process...failed their appropriate to an correct remedy, include for at even beyond 15 standard injury claim applies;” (2) “Breach of Contract: Defendant jurisdiction, did breach 16 relative contract, occurs by law, applies of government agent, implies paralegal, to allow 17 ‘standard, about injury claim disposition’, as it has in fact continue, at failed;” 18 (3) “Discrimination: Defendants, at applies plaintiff, then, when was their claimant, 19 Murphy, detoured fair due-process protocol jurisdiction, where acts of negligence occur, 20 include loss, since defendant, VA agent(s) arranged remedy letter, notify plaintiff...VA 21 malfunction, cause plaintiff illness;” (4) “Harassment: Defendant, VA agent(s), tort claim 22 agents, did in fact commit acts continuous, to of negligence reply theirs at of letter sent 23 to me by them, dated May 2020; Plaintiff appealed, when result, issued to standard type 24 claim for injury admin., since he was cause suffer, irritation, occur further, to more pro- 25 business loss;” and (5) “Assault: is concerns here relevant case defendants, did reply, 26 they at jurisdiction did act, and to apply unfair delay tactics, in order detour fair due- 27 process regards priority matters to plaintiff Murphys legal professional business, they 28 continue to act covet, a protocol fair due-process

regard reply responsible injury claim, at 1 compensation.” Id. at 2. Plaintiff further alleges Defendant caused Plaintiff injury 2 including to “suffer relative occur panic-attack, upset Bipolar disorder.” Id. For relief, 3 Plaintiff is seeking \$350,000 in damages and other forms of relief. Id. at 3.

4 IV. DISCUSSION

5 A. Pro Se Plaintiff Cannot Represent an Entity 6 It appears Plaintiff also seeks to bring this action on behalf of an entity, 7 Sheetmetal & Associates. See Compl. at 1. However, a corporation or other entity must 8 be represented by an attorney and may not appear in this action without counsel. See 9 E.D. Cal. Local Rule 183(a) (“A corporation or other entity may appear only by an 10 attorney.”); see also *Caveman Foods, LLC v. JAnn Payne's Caveman Foods, LLC*, 2015 11 WL 6736801, at *2 (E.D. Cal. Nov. 4, 2015) (“While individuals may appear in propria 12 persona, corporations and other entities may appear only through an attorney; an 13 unrepresented entity cannot file any pleadings, make or oppose any motions, or present 14 any evidence to contest liability.”). Plaintiff may not bring this action on behalf of 15 Sheetmetal & Associates because Plaintiff is pro se. In addition, Plaintiff has been 16 informed in separate actions that he cannot represent an entity because he is pro se. 17 See *Murphy v. Colony Ins. Co.*, No. 2:20-cv-00303-JAM-CKD at 3 (E.D. Cal. Feb. 18, 18 2020) (“Plaintiff is also informed that he cannot represent his company, Sheetmetal & 19 Associates...the rules are clear that an entity may appear only by an attorney.”); *Murphy 20 v. First Republic Bank, N.A.*, 2:21-cv-0399-JAM-CKD PS at 5 (E.D. Cal. April 5, 2021) 21 (“As plaintiff has also been cautioned on several occasions, he cannot represent his 22 company [Sheetmetal & Associates] because he is not an attorney.”). As such, the Court 23 will disregard Sheetmetal & Associates in its review of the Complaint. 24 B. Sovereign Immunity 25 Defendant U.S. Department of Veterans Affairs is a federal agency. Plaintiff’s 26 claims against Defendant should be dismissed based on the doctrine of sovereign 27 immunity. “Suits against the federal government are barred for lack of subject matter 28 jurisdiction unless the government expressly and unequivocally waives its sovereign 1 immunity.” *Mills v. United States*, 742 F.3d 400, 404 (9th Cir. 2014). Without a waiver, 2 sovereign immunity bars both equitable and legal claims against the United States, its 3 agencies, and its officers acting in their official capacities. See *Assiniboine & Sioux 4 Tribes of Fort Peck Indian Reservation v. Bd. Of Oil & Gas Cons. Of State of Mont.*, 792 5 F.2d 782, 792 (9th Cir. 1986). Plaintiff does not allege any basis for waiver here. See 6 generally Compl. Accordingly, Defendant is immune from suit and should be dismissed. 7 C. Improper Defendant under the FTCA 8 Although Plaintiff does not allege anywhere in his Complaint that he is proceeding 9 under the Federal Tort Claims Act, Plaintiff attaches a letter from Defendant regarding an 10 “Administrative Tort Claim” filed pursuant to the Federal Tort Claims Act (“FTCA”), 11 28 U.S.C. §§ 1346(b). See Compl. at 6. To the extent Plaintiff is raising a FTCA claim, 12 Plaintiff has failed to name the correct defendant. The FTCA “gives federal district courts 13 exclusive jurisdiction over claims against the United States for ‘injury or loss of property, 14 or personal injury or death caused by the negligent or

wrongful act or omission’ of 15 federal employees acting within the scope of their employment.” Levin v. United States, 16 568 U.S. 503, 506 (2013) (quoting 28 U.S.C. § 1346(b)(1)). The only proper defendant in 17 a FTCA claim is the United States. Lance v. United States, 70 F.3d 1093, 1095 (9th Cir. 18 1995) (citing Woods v. United States, 720 F.2d 1451, 1452 n.1 (9th Cir. 1983)). Here, 19 Plaintiff has not named the United States as a defendant to this action. See Compl. at 1. 20 D. Failure to Comply with Federal Rule of Civil Procedure 8 21 Plaintiff’s Complaint also does not contain a short and plain statement of a claim 22 as required by Federal Rule of Civil Procedure 8. In order to give fair notice of the claims 23 and the grounds on which they rest, a plaintiff must allege with at least some degree of 24 particularity overt acts by specific defendants which support the claims. See Kimes v. 25 Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Here, the Complaint does not contain facts 26 supporting any cognizable legal claim against Defendants. The Complaint consists of 27 vague and conclusory allegations that fail to establish Plaintiff’s causes of action. 28 Because the Complaint is unintelligible, granting leave to amend in this case would not 1 be fruitful. In addition, Plaintiff has repeatedly raised the same claims in other actions 2 despite being told how to adequately plead the elements of each of the claims he 3 repeatedly asserts. See Murphy v. First Republic Bank, N.A., 2:21-cv-0399-JAM-CKD 4 (PS) (E.D. Cal. Apr. 5, 2021) (recommending dismissal for failure to state a claim and 5 identifying Plaintiff’s prior complaints that were dismissed for failure to state a claim for 6 negligence, breach of contract, and assault), report and recommendation adopted, 2:21- 7 cv-0399-JAM-CKD (PS) (E.D. Cal. May 21, 2021); Murphy v. Nation’s Giant 8 Hamburgers, 2024 WL 267857, at *2 (E.D. Cal. Jan. 24, 2024) (recommending dismissal 9 for failure to state a claim and identifying Plaintiff’s prior complaints that were dismissed 10 for failure to state a claim or lack of subject matter jurisdiction), report and 11 recommendation adopted, 2024 WL 1019959 (E.D. Cal. Mar. 8, 2024). Although the 12 Federal Rules adopt a flexible pleading policy, even a pro se litigant’s complaint must 13 give fair notice and state the elements of a claim plainly and succinctly. Jones v. 14 Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). The Complaint therefore 15 fails to state a claim on which relief may be granted and is subject to dismissal. See 16 McHenry v. Renne, 84 F.3d 1172, 1178-80 (9th Cir. 1996) (affirming dismissal of 17 complaint where “one cannot determine from the complaint who is being sued, for what 18 relief, and on what theory, with enough detail to guide discovery”). 19 E. Leave to Amend 20 In considering whether leave to amend should be granted, the Court finds that the 21 Complaint consists entirely of minimal allegations with no discernible basis in law. See 22 generally Compl. The Complaint does not contain facts supporting any cognizable legal 23 claim against Defendant. In light of the Complaint’s deficiencies, granting leave to 24 amend would be futile. The Court further notes that Plaintiff has filed several complaints 25 in this district court that were dismissed for failure to state a claim and/or for lack of 26 subject matter jurisdiction. See Murphy v. Travelers Insurance Company, No. 24-cv- 27 2589-TLN-CSK (PS) (E.D. Cal. 2024) (dismissed for failure to state a claim and lack of 28 subject matter jurisdiction); Murphy v Nation’s Giant Burgers, No. 23-cv-

0852-DJC-JDP 1 | (PS) (E.D. Cal. 2024) (dismissed for failure to state a claim without leave to amend); 2 || Murphy v. First Republic Bank, N.A., No. 2:21-cv-00399-JAM-CKD (PS) (E.D. Cal. 3 || 2021) (discussing plaintiff's repeated failure to establish subject matter jurisdiction and 4 | satisfy the pleading standard); Murphy v. Federal Express Corp., No. 2:21-cv-00142- 5 || KJM-KJN (PS) (dismissed for failure to state a claim and "for being wholly frivolous") 6 | (E.D. Cal. Jan. 28, 2021). The Complaint should therefore be dismissed without leave to 7 | amend. See Lopez, 203 F.3d at 1130-31; Cato v. United States, 70 F.3d 1103, 1105-06 8 | (9th Cir. 1995).

9] V. CONCLUSION

10 Based upon the findings above, it is RECOMMENDED that: 11 1. Plaintiff's motion to proceed in forma pauperis (ECF No. 2) be DENIED; 12 2. Plaintiffs Complaint (ECF No. 1) be DISMISSED without leave to amend; 13 and 14 3. The Clerk of the Court be directed to CLOSE this case. 15 These findings and recommendations are submitted to the United States District 16 | Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 17 | 14 days after being served with these findings and recommendations, any party may file 18 | written objections with the Court and serve a copy on all parties. This document should 19 | be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any 20 | reply to the objections shall be served on all parties and filed with the Court within 14 21 | days after service of the objections. Failure to file objections within the specified time 22 | may waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 23 | 455 (9th Cir. 1998); Martinez v. Yist, 951 F.2d 1153, 1156-57 (9th Cir. 1991). 24 25 || Dated: September 16, 2025 C iy S \U

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7 UNITED STATES MAGISTRATE JUDGE

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