

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

Havea v. C.R. England

No. 25-cv-01406-DMR, United States District Court for the Northern District of California (June 24, 2025)

OPINION

Havea v. C.R. England

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 SOSAIA HAVEA, Case No. 25-cv-01406-DMR 8 Plaintiff, ORDER DISMISSING
AMENDED

COMPLAINT PURSUANT TO

9 v. 28 U.S.C. § 1915(E), DENYING

MOTION TO DISMISS AS MOOT,

10 C.R. ENGLAND, AND DENYING MOTION FOR

LEAVE TO PROCEED IN FORMA

11 Defendant. PAUPERIS 12 Self-represented Plaintiff Sosaia Havea filed a Complaint
("Compl.") and an application for 13 leave to proceed in forma pauperis ("IFP"). [Docket Nos. 1,
2.] The court granted the IFP 14 application, but dismissed the Complaint pursuant to 28 U.S.C. §
1915(e) for failure to state a claim 15 on which relief may be granted. [Docket No. 16, "Screening
Order."] Plaintiff has since filed a 16 first amended complaint on June 16, 2025. [Docket No. 17,
"FAC".] All parties have consented to 17 the jurisdiction of a magistrate judge pursuant to 28
U.S.C. § 636(c). [Docket Nos. 10, 14.] 18 Having reviewed the FAC pursuant to 28 U.S.C. §
1915(e), the court finds that it again fails 19 to state a claim on which relief may be granted.
Plaintiff was already given an opportunity to address 20 the deficiencies identified in the
Screening Order by filing a FAC, but as discussed below, the FAC 21 remains deficient. This case
is therefore dismissed without further leave to amend. Defendant C.R. 22 England's motion to
dismiss (Docket No. 18) is denied as moot. 23 In addition, on June 23, 2025, Plaintiff filed a
notice of appeal (Docket No. 25) and motion 24 for leave to proceed in forma pauperis (Docket
No. 26, "IFP Motion"). For the reasons stated below, 25 the court denies the IFP Motion and
certifies that any appeal would not be taken "in good faith" 26 pursuant to 28 U.S.C. § 1915(a)(3).
27

I. DISCUSSION

1 A. FAC Screening 2 Although the court previously granted Plaintiff's application to proceed in

forma pauperis, 3 the court is under a continuing duty to dismiss a case filed without the payment of the filing fee 4 whenever it determines that the action “(i) is frivolous or malicious; (ii) fails to state a claim on 5 which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from 6 such relief.” 28 U.S.C. § 1915(e)(2)(B)(i)-(iii). If the court dismisses a case pursuant to 7 §1915(e)(2)(B), the plaintiff may still file the same complaint by paying the filing fee. This is 8 because the court’s § 1915(e)(2)(B) dismissal is not on the merits, but rather an exercise of the 9 court’s discretion under the IFP statute. *Denton v. Hernandez*, 504 U.S. 25, 32 (1992). 10 To make the determination under 28 U.S.C. § 1915(e)(2)(B), courts assess whether there is 11 an arguable factual and legal basis for the asserted wrong, “however inartfully pleaded.” *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th Cir. 1984). Courts have the authority to dismiss complaints 13 founded on “wholly fanciful” factual allegations for lack of subject matter jurisdiction. *Id.* at 1228. 14 A court can also dismiss a complaint where it is based solely on conclusory statements, naked 15 assertions without any factual basis, or allegations that are not plausible on their face. *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009); see also *Erickson v. Pardus*, 551 U.S. 89 (2007) (per curiam). 17 Although pro se pleadings are liberally construed and held to a less stringent standard than 18 those drafted by lawyers, see *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972), a complaint, or portion 19 thereof, should be dismissed for failure to state a claim if it fails to set forth “enough facts to state a 20 claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554 (2007); 21 see also Fed. R. Civ. P. 12(b)(6). “[A] district court should not dismiss a pro se complaint without 22 leave to amend unless it is absolutely clear that the deficiencies of the complaint could not be cured 23 by amendment.” *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012) (quotations omitted). 24 The FAC states a single claim under 18 U.S.C. § 242. Section 242 is a “criminal statute[], 25 and it is well-settled that ‘a private citizen lacks a judicially cognizable interest in the prosecution 26 or non-prosecution of another.’” *L.R. v. Mueller*, No. 23-CV-03421-PHK, 2025 WL 1635505, at 27 *2 (N.D. Cal. June 9, 2025) (quoting *Carey v. Torres*, No. 24-cv-09534-TSH, 2025 WL 277399, at 1 *5 (N.D. Cal. Jan. 23, 2025); and collecting cases). “‘Individuals cannot file criminal charges in the 2 United States District Court. Rather, criminal proceedings in federal court are initiated by the 3 government, usually through the United States Attorney’s Office.’” *Id.* (quoting *Casey*, 2025 WL 4 277399, at *5). Plaintiff therefore lacks standing to assert a claim under § 242, and the court 5 dismisses the FAC pursuant to 28 U.S.C. § 1915(e)(2)(B)(i).1 6 Although Plaintiff has had an opportunity to address the issues raised in the Screening Order, 7 the FAC still fails to allege a basis for subject matter jurisdiction. For that reason, the dismissal is 8 without leave to amend, and Defendant’s motion to dismiss is denied as moot. 9 B. Motion for Leave to Proceed In Forma Pauperis 10 Plaintiff also seeks to proceed in forma pauperis in her recently-filed appeal. “A party who 11 was permitted to proceed in forma pauperis in the district-court action . . . may proceed on appeal 12 in forma pauperis without further authorization, unless: . . . the district court--before or after the 13 notice of appeal is filed--certifies that the appeal is not taken in good faith or finds that

the party is 14 not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the 15 certification or finding[.]” Fed. R. App. P. 24(a)(3). An appeal is in “good faith” where it seeks 16 review of any issue that is “nonfrivolous.” *Hooker v. Am. Airlines*, 302 F.3d 1091, 1092 (9th

17 Cir. 2002). An issue is “frivolous” if it has “no arguable basis in fact or law.” See *O’Loughlin v.*

18 Doe, 920 F.2d 614, 617 (9th Cir. 1990). 19 Plaintiff’s appeal is frivolous, as she identifies no appealable order or judgment. In her 20 notice of appeal, Plaintiff lists the “[d]ate of judgment or order you are appealing” as “6/16/2025.” 21 [Docket No. 25 at 1.] The court did not issue any orders or judgments on June 16, 2025.2 For the 22 “[d]ocket entry of judgment or order you are appealing,” she lists “3:25-cv-02860.” Id. Plaintiff 23 24 1 Because the court dismisses the FAC for lack of standing, it does not address whether Plaintiff’s 25 allegation regarding her mental state (FAC at 4) is sufficient to toll the statute of limitations. See Screening Order at 3 (noting that “the alleged incident took place in September 2017 and any legal 26 claim based on the incident would likely be barred by the applicable statute of limitations.”). 27 2 Defendant filed its motion to dismiss on June 16, 2025. [Docket No. 18.] As stated above, the 1 also is not a party to, and the undersigned is not presiding over, case number “3:25-cv-02860”3 2 pending in the Northern District of California. As Plaintiff’s notice of appeal has “no arguable basis 3 in fact or law,” *O’Loughlin*, 920 F.2d at 617, her appeal is frivolous. 4 Furthermore, Plaintiff’s Complaint and FAC attempted to assert constitutional and criminal 5 claims that are indisputably unavailable to Plaintiff, a private citizen, and against Defendant, a 6 private company. See § I(A), supra; Screening Order at 2-3 (“Havea sues Defendant C.R. England 7 for violation of the ‘14th Amendment right to equal protection under the law.’ Havea cannot 8 assert a constitutional claim against Defendant because it is a private company.”). Any appeal, 9 therefore, would be frivolous and not in good faith.

10 II. CONCLUSION

11 For the reasons above, the court orders the following: 12 1. The FAC fails to state a claim pursuant to 28 U.S.C. § 1915(e) and is dismissed 13 without leave to amend. 14 2. Defendant’s motion to dismiss is denied as moot. 15 3. Plaintiff’s IFP Motion is denied. 16 The court further certifies that any in forma pauperis appeal taken from this order, or the 17 Screening Order, would not be taken in good faith pursuant to 28 U.S.C. § 1915(a)(3). 18 The Clerk of Court shall close this action. 19 20 IT IS SO ORDERED. 21 Dated: June 24, 2025 22

DONNA M. RYU

23 Chief Magistrate Judge 24 25 26 27