

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

Neher v. Davis

No. 2:25-cv-00482-DC-CSK (E.D. Cal. May 20, 2025) · No. 2:25-cv-00482-DC-CSK · Decided May 21, 2025

OPINION

(PS) Neher v. Davis

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 TIMOTHY NEHER, Case No. 2:25-cv-00482-DC-CSK 12 Plaintiff,

13 v. FINDINGS AND RECOMMENDATIONS

14 SCOTT DAVIS, et al., 15 Defendants. (ECF Nos. 2, 6) 16 17 Plaintiff Timothy Neher is
representing himself in this action and seeks leave to 18 proceed in forma pauperis (“IFP”)
pursuant to 28 U.S.C. § 1915.1 (ECF No. 2.) For the 19 reasons that follow, the Court
recommends Plaintiff’s IFP application be denied, and the 20 First Amended Complaint be
dismissed without leave to amend.

21 I. MOTION TO PROCEED IN FORMA PAUPERIS

22 28 U.S.C. § 1915(a) provides that the court may authorize the commencement, 23 prosecution
or defense of any suit without prepayment of fees or security “by a person 24 who submits an
affidavit stating the person is “unable to pay such fees or give security 25 therefor.” This affidavit
is to include, among other things, a statement of all assets the 26 person possesses. *Id.* The IFP
statute does not itself define what constitutes insufficient 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 assets.
See *Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th Cir. 2015). In *Escobedo*, 2 the Ninth Circuit
stated that an affidavit in support of an IFP application is sufficient 3 where it alleges that the
affiant cannot pay court costs and still afford the necessities of 4 life. *Id.* “One need not be
absolutely destitute to obtain benefits of the in forma pauperis 5 statute.” *Id.* Nonetheless, a party
seeking IFP status must allege poverty “with some 6 particularity, definiteness and certainty.” *Id.*
According to the United States Department 7 of Health and Human Services, the current poverty
guideline for a household of one (not 8 residing in Alaska or Hawaii) is \$15,650.00. See U.S. Dpt.
Health & Human Service 9 (available at <https://aspe.hhs.gov/poverty-guidelines>). 10 Here,
Plaintiff’s IFP application indicates he receives “sporadic[ally]” between \$0 11 to \$1,000 a month
in pay/wages. ECF No. 2 at 1 ¶ 2. Plaintiff further avers he pays 12 \$1,800 a month for rent and
\$143 for utilities. *Id.* at 2 ¶ 6. Plaintiff has made the required 13 showing under 28 U.S.C. §

1915(a). See generally ECF No. 2. The Court, however, will 14 recommend Plaintiff's IFP application be denied because the action is facially frivolous 15 and without merit because it fails to state a claim and lacks subject matter jurisdiction. 16 "A district court may deny leave to proceed in forma pauperis at the outset if it appears 17 from the face of the proposed complaint that the action is frivolous or without merit." 18 *Minetti v. Port of Seattle*, 152 F.3d 1113, 1115 (9th Cir. 1998) (quoting *Tripati v. First Nat. Bank & Tr.*, 821 F.2d 1368, 1370 (9th Cir. 1987)); see also *McGee v. Dep't of Child Support Servs.*, 584 Fed. App'x 638 (9th Cir. 2014) ("the district court did not abuse its 21 discretion by denying McGee's request to proceed IFP because it appears from the face 22 of the amended complaint that McGee's action is frivolous or without merit"); *Smart v. Heinze*, 347 F.2d 114, 116 (9th Cir. 1965) ("It is the duty of the District Court to examine 24 any application for leave to proceed in forma pauperis to determine whether the 25 proposed proceeding has merit and if it appears that the proceeding is without merit, the 26 court is bound to deny a motion seeking leave to proceed in forma pauperis."). Because 27 it appears from the face of the First Amended Complaint that this action is frivolous and 28 is without merit as discussed in more detail below, the Court recommends denying 1 Plaintiff's IFP motion.

2 II. SCREENING REQUIREMENT

3 Pursuant to 28 U.S.C. § 1915(e), the court must screen every in forma pauperis 4 proceeding, and must order dismissal of the case if it is "frivolous or malicious," "fails to 5 state a claim on which relief may be granted," or "seeks monetary relief against a 6 defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B); *Lopez v. Smith*, 7 203 F.3d 1122, 1126-27 (2000) (en banc). A claim is legally frivolous when it lacks an 8 arguable basis either in law or in fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). In 9 reviewing a complaint under this standard, the court accepts as true the factual 10 allegations contained in the complaint, unless they are clearly baseless or fanciful, and 11 construes those allegations in the light most favorable to the plaintiff. See *id.* at 326-27; 12 *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960 (9th Cir. 13 2010), cert. denied, 564 U.S. 1037 (2011). 14 Pleadings by self-represented litigants are liberally construed. *Hebbe v. Pliler*, 627 15 F.3d 338, 342 & n.7 (9th Cir. 2010) (liberal construction appropriate even post-*Iqbal*). 16 However, the court need not accept as true conclusory allegations, unreasonable 17 inferences, or unwarranted deductions of fact. *Western Mining Council v. Watt*, 643 F.2d 18 618, 624 (9th Cir. 1981). A formulaic recitation of the elements of a cause of action does 19 not suffice to state a claim. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-57 (2007); 20 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). 21 To state a claim on which relief may be granted, the plaintiff must allege enough 22 facts "to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. "A 23 claim has facial plausibility when the plaintiff pleads factual content that allows the court 24 to draw the reasonable inference that the defendant is liable for the misconduct alleged." 25 *Iqbal*, 556 U.S. at 678. A pro se litigant is entitled to notice of the deficiencies in the 26 complaint and an opportunity to amend unless the complaint's deficiencies could not be 27 cured by amendment. See *Lopez*, 203 F.3d at 1130-31;

Cahill v. Liberty Mut. Ins. Co., 80 28 F.3d 336, 339 (9th Cir. 1996).

1 III. THE FIRST AMENDED COMPLAINT

2 Plaintiff brings his First Amended Complaint against Defendants Scott Davis and 3 Terry Davis alleging the following two causes of action under 42 U.S.C. § 1983: 4 (1) Fourteenth Amendment due process violation; and (2) “Expanded” Fourteenth 5 Amendment due process violation. See FAC ¶¶ 1-18 (ECF No. 6). Plaintiff alleges an 6 unlawful detainer action was initiated in Butte County Superior Court against “a non- 7 existent entity, Vintage Steel Speed, LLC, rather than [Plaintiff], the lawful tenant of the 8 property.” Id. ¶¶ 7-8. Plaintiff alleges the Butte County Superior Court issued a default 9 judgment and a writ of possession in favor of Defendants in Case No. 24UD03432 on

10 January 30, 2025. Id. ¶¶ 7, 9. Plaintiff alleges he attempted to intervene in the state court 11 action but was blocked in participating by the Butte County Superior Court when it 12 denied Plaintiff’s ex parte application without a hearing. Id. ¶ 10. As a result, Plaintiff 13 alleges he was deprived of proper notice and an opportunity to respond, thereby 14 violating his procedural due process rights. Id. ¶¶ 14-16, 18. For relief, Plaintiff seeks 15 injunctive relief.² Id. at 8.

16 IV. DISCUSSION

17 A. Subject Matter Jurisdiction 18 The Court lacks subject matter jurisdiction over this action. Federal courts are 19 courts of limited jurisdiction and may hear only those cases authorized by federal law. 20 Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 377 (1994). Jurisdiction is a threshold 21 inquiry, and “[f]ederal courts are presumed to lack jurisdiction, ‘unless the contrary 22 appears affirmatively from the record.’” Casey v. Lewis, 4 F.3d 1516, 1519 (9th Cir. 23 1993) (quoting Bender v. Williamsport Area Sch. Dist., 475 U.S. 534, 546 (1986)); see 24 Morongo Band of Mission Indians v. Cal. State Bd. of Equalization, 858 F.2d 1376, 1380 25 (9th Cir. 1988). Without jurisdiction, the district court cannot decide the merits of a case 26 2 Along with his initial complaint, Plaintiff filed a motion for temporary restraining order 27 on February 7, 2025, which was denied by the district court on February 10, 2025. (ECF Nos. 3, 4.) Plaintiff filed a renewed motion for temporary restraining order on February 28 11, 2025, which was denied the same day. (ECF Nos. 5, 8.) 1 or order any relief and must dismiss the case. See Morongo, 858 F.2d at 1380. A federal 2 court’s jurisdiction may be established in one of two ways: actions arising under federal 3 law or those between citizens of different states in which the alleged damages exceed 4 \$75,000. 28 U.S.C. §§ 1331, 1332. “Subject-matter jurisdiction can never be waived or 5 forfeited,” and “courts are obligated to consider sua sponte” subject matter jurisdiction 6 even when not raised by the parties. Gonzalez v. Thaler, 565 U.S. 134, 141 (2012). 7 The First Amended Complaint does not establish the Court’s subject matter 8 jurisdiction. See FAC. Although the First Amended Complaint raises Fourteenth 9 Amendment violations pursuant to 42 U.S.C. § 1983, Plaintiff does not allege that the 10 Defendants, acting under color of state law, deprived Plaintiff of his constitutional rights. 11 See Gibson v. United States, 781 F.2d 1334, 1338 (9th Cir. 1986). Rather, Plaintiff’s 12 First Amended Complaint centers on the state court’s

actions in the unlawful detainer 13 proceedings. See generally FAC. The First Amended Complaint is devoid of allegations 14 showing Defendants, as private parties, acted under color of state law. See *Price v. State of Hawaii*, 939 F.2d 702, 707-08 (9th Cir. 1991) (“private parties are not generally 16 acting under color of state law, and we have stated that conclusionary allegations, 17 unsupported by facts, will be rejected as insufficient to state a claim under the Civil 18 Rights Act.”) (internal quotation marks and citation omitted). It appears that Plaintiff 19 brings this action against Defendants based only on their involvement in bringing the 20 unlawful detainer action in state court. FAC ¶ 6 (Defendants “are individuals who initiated 21 the unlawful detainer action in the Superior Court of California, County of Butte.”). 22 However, the Defendants’ pursuit of an unlawful detainer action in state court cannot 23 form the basis of a constitutional violation pursuant to 42 U.S.C. § 1983 because no 24 state action is implicated by Defendants’ conduct. See *Haw v. Washington Mut. Bank*, 25 2010 WL 728200, at *1 (E.D. Cal. Mar. 1, 2010) (“Use of the unlawful detainer process 26 standing alone does not transform acts by a private party into acts under color of law for 27 purposes of § 1983.”); see also *Damian v. N. Neon Operations, LLC*, 2012 WL 1438705, 28 at *4 (N.D. Cal. Apr. 25, 2012) (“an unlawful detainer suit does not constitute state action 1 for purposes of Section 1983.”); *Ohno v. Yasuma*, 723 F.3d 984, 996 (9th Cir. 2013) 2 (finding private actors do not become state actors merely by engaging in litigation in 3 state court). Therefore, the First Amended Complaint provides no basis for federal 4 question jurisdiction. 5 The First Amended Complaint also fails to establish diversity jurisdiction. First, 6 Plaintiff does not satisfy the amount in controversy requirement because he does state 7 an amount in monetary damages for relief. See generally FAC. Second, Plaintiff also 8 does not establish complete diversity of citizenship. See *Morris v. Princess Cruises, 9 Inc.*, 236 F.3d 1061, 1067 (9th Cir. 2001) (“Section 1332 requires complete diversity of 10 citizenship; each of the plaintiffs must be a citizen of a different state than each of the 11 defendants.”). Plaintiff states he is a resident of Chico, California but does not allege the 12 citizenship of Defendants. See FAC ¶¶ 6-7; see also *Kanter v. Warner-Lambert Co.*, 265 13 F.3d 853, 857 (9th Cir. 2001) (“a party seeking to invoke diversity jurisdiction should be 14 able to allege affirmatively the actual citizenship of the relevant parties.”) Because there 15 is no diversity of citizenship established here, the Court finds that it also lacks subject 16 matter jurisdiction based on diversity jurisdiction. Therefore, the Court recommends this 17 action be dismissed without leave to amend because the Court lacks subject matter 18 jurisdiction over this action and amendment would be futile. 19 B. Federal Rule of Civil Procedure 8 20 Plaintiff’s First Amended Complaint also does not contain a short and plain 21 statement of a claim as required by Federal Rule of Civil Procedure 8. In order to give 22 fair notice of the claims and the grounds on which they rest, a plaintiff must allege with at 23 least some degree of particularity overt acts by specific defendants which support the 24 claims. See *Kimes v. Stone*, 84 F.3d 1121, 1129 (9th Cir. 1996). Here, the First 25 Amended Complaint does not contain facts supporting any cognizable legal claim 26 against Defendants. The First Amended Complaint consists of vague and conclusory 27 allegations that fail to

establish Plaintiff's causes of action. Because the First Amended 28 Complaint is unintelligible, granting leave to amend in this case would not be fruitful. 1 Although the Federal Rules adopt a flexible pleading policy, even a pro se litigant's 2 complaint must give fair notice and state the elements of a claim plainly and succinctly. 3 *Jones v. Community Redev. Agency*, 733 F.2d 646, 649 (9th Cir. 1984). The First 4 Amended Complaint therefore fails to state a claim on which relief may be granted and is 5 subject to dismissal. See *McHenry v. Renne*, 84 F.3d 1172, 1178-80 (9th Cir. 1996) 6 (affirming dismissal of complaint where "one cannot determine from the complaint who is 7 being sued, for what relief, and on what theory, with enough detail to guide discovery"). 8 C. Leave to Amend 9 In considering whether leave to amend should be granted, the Court finds that the 10 First Amended Complaint is without merit and consists entirely of allegations with no 11 basis in law. See generally FAC. The First Amended Complaint does not contain facts 12 supporting any cognizable legal claim against Defendants. In light of the Court's lack of 13 subject matter jurisdiction and the First Amended Complaint's deficiencies, granting 14 leave to amend would be futile. The First Amended Complaint should therefore be 15 dismissed without leave to amend. See *Lopez*, 203 F.3d at 1130-31; *Cato v. United 16 States*, 70 F.3d 1103, 1105-06 (9th Cir. 1995).

17 V. CONCLUSION

18 Based upon the findings above, it is RECOMMENDED that: 19 1. Plaintiff's motion to proceed in forma pauperis (ECF No. 2) be DENIED; 20 2. Plaintiff's First Amended Complaint (ECF No. 6) be DISMISSED without 21 leave to amend; and 22 3. The Clerk of the Court be directed to CLOSE this case. 23 These findings and recommendations are submitted to the United States District 24 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 25 14 days after being served with these findings and recommendations, any party may file 26 written objections with the Court and serve a copy on all parties. This document should 27 be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any 28 reply to the objections shall be served on all parties and filed with the Court within 14 1 | days after service of the objections. Failure to file objections within the specified time 2 || may waive the right to appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449, 3 || 455 (9th Cir. 1998); *Martinez v. Yist*, 951 F.2d 1153, 1156-57 (9th Cir. 1991). 4 5 | Dated: May 20, 2025 C iy s □□

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7 UNITED STATES MAGISTRATE JUDGE

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