

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

Mitchell v. U.C. Davis, et al.

Mitchell · No. 2:25-cv-01869-DC-CSK · Decided September 3, 2025

OPINION

(PS) Mitchell v. U.C. Davis Senior Connections

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 PHYLLIS MITCHELL, Case No. 2:25-cv-01869-DC-CSK 12 Plaintiff, ORDER AND
FINDINGS AND

RECOMMENDATIONS

13 v. 14 U.C. DAVIS, et al., (ECF Nos. 1-3) 15 Defendants. 16 17 Plaintiff Phyllis Mitchell is
representing herself 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 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 she receives \$1,700 in gross wages but 11 does not disclose
the specific pay period. ECF No. 2 ¶ 2. Plaintiff also does not disclose 12 whether she receives

income from the following sources: “[b]usiness, profession, or 13 other self-employment,” “[r]ent payments, interest, or dividends,” “pension, annuity, or life 14 insurance payments,” “[d]isability, or worker’s compensation payments,” “[g]ifts, or 15 inheritances,” and “[a]ny other sources.” *Id.* ¶ 3. When asked to describe each source of 16 money and amount received, Plaintiff does not answer. *Id.* In its current form, the Court 17 cannot make a determination whether Plaintiff has made the required showing under 18 28 U.S.C. § 1915(a). Despite Plaintiff’s deficient IFP application, the Court finds 19 Plaintiff’s IFP application should be denied because the action is facially frivolous or is 20 without merit. “A district court may deny leave to proceed in forma pauperis at the outset 21 if it appears from the face of the proposed complaint that the action is frivolous or without 22 merit.” *Minetti v. Port of Seattle*, 152 F.3d 1113, 1115 (9th Cir. 1998) (quoting *Tripati v. 23 First Nat. Bank & Tr.*, 821 F.2d 1368, 1370 (9th Cir. 1987)); see also *McGee v. Dep’t of 24 Child Support Servs.*, 584 Fed. App’x. 638 (9th Cir. 2014) (“the district court did not 25 abuse its discretion by denying McGee’s request to proceed IFP because it appears 26 from the face of the amended complaint that McGee’s action is frivolous or without 27 merit”); *Smart v. Heinze*, 347 F.2d 114, 116 (9th Cir. 1965) (“It is the duty of the District 28 Court to examine any application for leave to proceed in forma pauperis to determine 1 whether the proposed proceeding has merit and if it appears that the proceeding is 2 without merit, the court is bound to deny a motion seeking leave to proceed in forma 3 pauperis.”). Because it appears from the face of Plaintiff’s Complaint that this action is 4 frivolous or is without merit as discussed in more detail below, the Court recommends 5 Plaintiff’s IFP motion be denied.

6 II. SCREENING REQUIREMENT

7 Even if the Court were to grant Plaintiff’s IFP application, Plaintiff’s Complaint 8 warrants dismissal pursuant to 28 U.S.C. § 1915(e)’s required pre-answer screening. 9 Pursuant to 28 U.S.C. § 1915(e), the court must screen every in forma pauperis 10 proceeding, and must order dismissal of the case if it is “frivolous or malicious,” “fails to 11 state a claim on which relief may be granted,” or “seeks monetary relief against a 12 defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B); *Lopez v. Smith*, 13 203 F.3d 1122, 1126-27 (2000) (en banc). A claim is legally frivolous when it lacks an 14 arguable basis either in law or in fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). In 15 reviewing a complaint under this standard, the court accepts as true the factual 16 allegations contained in the complaint, unless they are clearly baseless or fanciful, and 17 construes those allegations in the light most favorable to the plaintiff. See *id.* at 326-27; 18 *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960 (9th Cir. 19 2010), cert. denied, 564 U.S. 1037 (2011). 20 Pleadings by self-represented litigants are liberally construed. *Hebbe v. Pliler*, 627 21 F.3d 338, 342 & n.7 (9th Cir. 2010) (liberal construction appropriate even post-*Iqbal*). 22 However, the court need not accept as true conclusory allegations, unreasonable 23 inferences, or unwarranted deductions of fact. *Western Mining Council v. Watt*, 643 F.2d 24 618, 624 (9th Cir. 1981). A formulaic recitation of the elements of a cause of action does 25 not suffice to state a claim. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544,

555-57 (2007); 26 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). 27 To state a claim on which relief may be granted, the plaintiff must allege enough 28 facts “to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. “A 1 claim has facial plausibility when the plaintiff pleads factual content that allows the court 2 to draw the reasonable inference that the defendant is liable for the misconduct alleged.” 3 *Iqbal*, 556 U.S. at 678. A pro se litigant is entitled to notice of the deficiencies in the 4 complaint and an opportunity to amend unless the complaint’s deficiencies could not be 5 cured by amendment. See *Lopez*, 203 F.3d at 1130-31; *Cahill v. Liberty Mut. Ins. Co.*, 80 6 F.3d 336, 339 (9th Cir. 1996).

7 III. THE COMPLAINT

8 Plaintiff’s Complaint uses the fillable complaint form and names U.C. Davis, 9 Sacramento Police, Mercy San Juan, Anthem Insurance, Sacramento County Clinic, 10 Sentry Storage, Sacramento Dental, VOA, S.G. Homecare, Synchron (BCI), and 11 Walmart as defendants. Compl. 2-3, 7-8. Plaintiff alleges she is “a victim of human 12 trafficking [and] each of the name[d] defendants has interfered in [her] quest of getting 13 justice for [her] injuries.” Compl. at 5. As a basis for federal question jurisdiction, Plaintiff 14 asserts “human trafficking, medical ghosting, non-given of essential medical 15 device/services, police not directing of issues regarding sexual abuse.” *Id.* at 4. For 16 relief, Plaintiff seek an “insertion of audiobes devices for purpose of isolation and 17 fetished online and physical abuse.” *Id.* at 6.

18 IV. DISCUSSION

19 A. Lack of Subject Matter Jurisdiction 20 Federal courts are courts of limited jurisdiction and may hear only those cases 21 authorized by federal law. *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994). 22 Jurisdiction is a threshold inquiry, and “[f]ederal courts are presumed to lack jurisdiction, 23 ‘unless the contrary appears affirmatively from the record.’” *Casey v. Lewis*, 4 F.3d 1516, 24 1519 (9th Cir. 1993) (quoting *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 546 25 (1986)); see *Morongo Band of Mission Indians v. Cal. State Bd. of Equalization*, 858 26 F.2d 1376, 1380 (9th Cir. 1988). Without jurisdiction, the district court cannot decide the 27 merits of a case or order any relief and must dismiss the case. See *Morongo*, 858 F.2d 28 at 1380. A federal court’s jurisdiction may be established in one of two ways: actions 1 arising under federal law or those between citizens of different states in which the 2 alleged damages exceed \$75,000. 28 U.S.C. §§ 1331, 1332. “Subject-matter jurisdiction 3 can never be waived or forfeited,” and “courts are obligated to consider sua sponte” 4 subject matter jurisdiction even when not raised by the parties. *Gonzalez v. Thaler*, 565 5 U.S. 134, 141 (2012). 6 The Complaint does not establish the Court’s subject matter jurisdiction. See 7 Compl. The Complaint asserts federal question as the basis for federal court jurisdiction. 8 See *Id.* at 4. However, no federal civil cause of action is pled, and no federal civil claims 9 are suggested by the facts, to the extent the facts are discernible. The Complaint also 10 fails to establish diversity jurisdiction. Plaintiff does not state an amount in controversy 11 and Plaintiff does not establish complete diversity of citizenship. On the face of the 12 Complaint, Plaintiff and most Defendants appear to be citizens

of California. Compl. at 2- 13 3, 7-8; see *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9th Cir. 14 2001) (“Section 1332 requires complete diversity of citizenship; each of the plaintiffs 15 must be a citizen of a different state than each of the defendants.”). Because there is no 16 amount in controversy alleged and no diversity of citizenship established here, the Court 17 finds that it also lacks subject matter jurisdiction based on diversity jurisdiction. 18 Therefore, the Court recommends this action be dismissed because the Court lacks 19 subject matter jurisdiction over this action. 20 B. Failure to Comply with Federal Rule of Civil Procedure 8 21 The Complaint also does not contain a short and plain statement of a claim as 22 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). Although the Federal Rules adopt a flexible 26 pleading policy, even a pro se litigant’s complaint must give fair notice and state the 27 elements of a claim plainly and succinctly. *Jones v. Community Redev. Agency*, 733 28 F.2d 646, 649 (9th Cir. 1984). Here, the Complaint does not contain facts supporting any 1 cognizable legal claim against any defendant. The Complaint therefore fails to state a 2 claim on which relief may be granted and is subject to dismissal. See *McHenry v. Renne*, 3 84 F.3d 1172, 1178-80 (9th Cir. 1996) (affirming dismissal of complaint where “one 4 cannot determine from the complaint who is being sued, for what relief, and on what 5 theory, with enough detail to guide discovery”). 6 C. Leave to Amend 7 The Complaint does not present a cogent, non-frivolous claim, and includes 8 allegations that appear fanciful. In light of the Court’s lack of subject matter jurisdiction 9 and the Complaint’s deficiencies, it appears granting leave to amend would be futile. The 10 Complaint should therefore be dismissed without leave to amend. See *Lopez*, 203 F.3d 11 at 1130-31; *Cato v. United States*, 70 F.3d 1103, 1105-06 (9th Cir. 1995).

12 V. MOTION TO APPOINT COUNSEL

13 On August 12, 2025, Plaintiff filed a motion to appoint counsel. (ECF No. 3.) In 14 civil cases, a pro se litigant's right to counsel “is a privilege and not a right.” *United 15 States ex Rel. Gardner v. Madden*, 352 F.2d 792, 793 (9th Cir. 1965) (citation omitted). 16 “Appointment of counsel should be allowed only in exceptional cases.” *Id.* When 17 determining whether “exceptional circumstances” exist, the court must consider the 18 likelihood of success on the merits as well as the ability of the plaintiff to articulate her 19 claims pro se in light of the complexity of the legal issues involved. *Palmer v. Valdez*, 20 560 F.3d 965, 970 (9th Cir. 2009). Here, Plaintiff argues this matter contains complex 21 issues and that Plaintiff has gone to multiple organizations in different states for the past 22 10 years to address the issues in this matter. (ECF No. 3 at 1.) There are no exceptional 23 circumstances warranting the appointment of counsel in this case. Therefore, Plaintiff’s 24 motion for appointment of counsel (ECF No. 3) is DENIED.

25 VI. CONCLUSION

26 Based upon the above, IT IS HEREBY ORDERED that Plaintiff’s motion for 27 appointment

of counsel (ECF No. 3) is DENIED. 28 / / / 1 Based upon the findings above, it is RECOMMENDED that: 2 1. Plaintiff's motion to proceed in forma pauperis (ECF No. 2) be DENIED; 3 2. Plaintiffs Complaint (ECF No. 1) be DISMISSED without leave to amend; 4 and 5 3. The Clerk of the Court be directed to CLOSE this case. 6 These findings and recommendations are submitted to the United States District 7 || Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 8 | 14 days after being served with these findings and recommendations, any party may file 9 | written objections with the Court and serve a copy on all parties. This document should 10 | be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any 11 || reply to the objections shall be served on all parties and filed with the Court within 14 12 || days after service of the objections. Failure to file objections within the specified time 13 || may waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 14 | 455 (9th Cir. 1998); Martinez v. Yist, 951 F.2d 1153, 1156-57 (9th Cir. 1991). 15 16 | Dated: September 3, 2025 C iy S \U
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18 UNITED STATES MAGISTRATE JUDGE
19 || 4, mitc1869.25 20 21 22 23 24 25 26 27 28