

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Swartz v. State of California

Swartz · No. 2:25-cv-00902-DC-CSK PS · Decided June 20, 2025

SUMMARY

The United States District Court for the Eastern District of California recommends denying Jesse F. Swartz’s application to proceed in forma pauperis and dismissing his Second Amended Complaint without leave to amend. The court concludes that the complaint fails to establish subject-matter jurisdiction, does not satisfy Federal Rule of Civil Procedure 8, and asserts claims against the State of California that are barred by Eleventh Amendment immunity. The document also orders certain docket corrections and recommends that related motions be denied as moot.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Chi Soo Kim
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	June 20, 2025
DOCKET	2:25-cv-00902-DC-CSK PS
DISPOSITION	dismissed
PROCEDURAL POSTURE	A pro se plaintiff sought leave to proceed in forma pauperis and filed successive pleadings asserting constitutional and RICO claims. The magistrate judge construed the second amended complaint as the operative complaint and issued findings and recommendations recommending denial of in forma pauperis status and dismissal without leave to amend.
STANDARD OF REVIEW	Under 28 U.S.C. § 1915(e)(2), an in forma pauperis action must be dismissed if it is frivolous or malicious, fails to state a claim, or seeks monetary relief from an immune defendant. The court accepts factual allegations as true unless clearly baseless or fanciful, construes them in the plaintiff’s favor, and liberally construes pro se pleadings, but need not accept conclusory allegations, unreasonable inferences, or unwarranted deductions. Subject-matter jurisdiction must also be considered sua sponte.

PRECEDENTIAL VALUE	nonprecedential
PARTIES	Jesse F. Swartz v. State of California

TOPICS

[subject matter jurisdiction](#)
[section 1983](#)
[eleventh amendment immunity](#)
[pleadings](#)
[motion for judgment on the pleadings](#)

PRACTICE AREAS

[civil procedure](#)
[civil rights](#)
[constitutional law](#)
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[remedies](#)

QUESTIONS PRESENTED

1. Whether the plaintiff's in forma pauperis application should be denied because the proposed action was facially frivolous, lacked subject-matter jurisdiction, and failed to state a claim.
2. Whether the second amended complaint established federal-question or diversity jurisdiction.
3. Whether the second amended complaint complied with Federal Rule of Civil Procedure 8.
4. Whether the claims against the State of California were barred by Eleventh Amendment immunity and the requirement that a § 1983 defendant be a person.
5. Whether the second amended complaint should be dismissed without leave to amend as futile.

HOLDINGS

1. A court may deny leave to proceed in forma pauperis at the outset when the proposed complaint is facially frivolous or without merit, including when it fails to state a claim or lacks subject-matter jurisdiction.
2. The second amended complaint did not establish federal-question jurisdiction or diversity jurisdiction, so the court lacked subject-matter jurisdiction.
3. The second amended complaint failed to comply with Rule 8 because it did not provide a short and plain statement identifying specific defendants, actionable conduct, and the legal grounds for the claims.
4. The claims against the State of California were barred because a state is not a person subject to suit under § 1983 and is immune from such suit under the Eleventh Amendment.
5. Leave to amend should be denied because amendment would be futile in light of the lack of subject-matter jurisdiction, Eleventh Amendment immunity, and the fundamental deficiencies in the pleading.

KEY QUOTATIONS

“Subject-matter jurisdiction can never be waived or forfeited,” (at 6)

“A formulaic recitation of the elements of a cause of action does not suffice to state a claim.” (at 8)

FACTUAL BACKGROUND

Swartz filed a pro se federal action seeking declaratory and monetary relief against the State of California, later adding the Democratic Party and Governor Gavin Newsom. His operative second amended complaint alleged that unidentified entities or persons conducted a campaign of harassment and harm against him, including interference with employment, reputational harm, physical alteration, assaults, monitoring, and entrapment. He asserted claims under 42 U.S.C. § 1983, the Eighth and Fourteenth Amendments, and RICO, but the court found the allegations conclusory and insufficient to establish either a federal claim or diversity jurisdiction.

PROCEDURAL HISTORY

Plaintiff filed the action on March 20, 2025, followed by a supplement, a first amended complaint, and a second amended complaint. The court excused the untimely filing of the second amended complaint and construed it as operative, disregarded later exhibits that purported to add claims, granted in part and denied in part a request to correct the docket, and recommended dismissal without leave to amend. The recommendations were submitted to the assigned district judge under 28 U.S.C. § 636(b)(1), subject to objections.

DISPOSITION

dismissed

CASES CITED

- Escobedo v. Applebees, 787 F.3d 1226, 1234 (9th Cir. 2015)
- Minetti v. Port of Seattle, 152 F.3d 1113, 1115 (9th Cir. 1998)
- Tripati v. First National Bank & Trust, 821 F.2d 1368, 1370 (9th Cir. 1987)
- McGee v. Department of Child Support Services, 584 Fed. App'x 638 (9th Cir. 2014)
- Smart v. Heinze, 347 F.2d 114, 116 (9th Cir. 1965)
- Lopez v. Smith, 203 F.3d 1122, 1126-27, 1130-31 (9th Cir. 2000) (en banc)
- Neitzke v. Williams, 490 U.S. 319, 325, 327 (1989)
- Von Saher v. Norton Simon Museum of Art at Pasadena, 592 F.3d 954, 960 (9th Cir. 2010), cert. denied, 564 U.S. 1037 (2011)
- Hebbe v. Pliler, 627 F.3d 338, 342 & n.7 (9th Cir. 2010)
- Western Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57, 570 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Cahill v. Liberty Mutual Insurance Co., 80 F.3d 336, 339 (9th Cir. 1996)
- Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1051-52 (9th Cir. 2003)
- Forman v. Davis, 371 U.S. 178, 182 (1962)
- Kokkonen v. Guardian Life Insurance Co., 511 U.S. 375, 377 (1994)
- Casey v. Lewis, 4 F.3d 1516, 1519 (9th Cir. 1993)
- Bender v. Williamsport Area School District, 475 U.S. 534, 546 (1986)

- *Morongo Band of Mission Indians v. California State Board of Equalization*, 858 F.2d 1376, 1380 (9th Cir. 1988)
- *Gonzalez v. Thaler*, 565 U.S. 134, 141 (2012)
- *Kimes v. Stone*, 84 F.3d 1121, 1129 (9th Cir. 1996)
- *Jones v. Community Redevelopment Agency*, 733 F.2d 646, 649 (9th Cir. 1984)
- *McHenry v. Renne*, 84 F.3d 1172, 1178-80 (9th Cir. 1996)
- *Cortez v. County of Los Angeles*, 294 F.3d 1186, 1188 (9th Cir. 2002)
- *Will v. Michigan Department of State Police*, 491 U.S. 58, 70-71 (1989)
- *Swartz v. Alsup*, No. 2:24-cv-02112-DC-CSK PS, 2025 WL 82133 (E.D. Cal. Jan. 13, 2025)
- *Cato v. United States*, 70 F.3d 1103, 1105-06 (9th Cir. 1995)
- *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998)
- *Martinez v. Yist*, 951 F.2d 1153, 1156-57 (9th Cir. 1991)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
 CALIFORNIA 10 11 JESSE F. SWARTZ, Case No. 2:25-cv-00902-DC-CSK PS 12 Plaintiff, 13 v.
 ORDER, AND FINDINGS AND RECOMMENDATIONS 14 STATE OF CALIFORNIA, (ECF
 Nos. 1, 2, 9, 11, 13-18) 15 Defendant. 16 17 Plaintiff Jesse F. Swartz 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 \$15,060.00.

See U.S. Dpt. Health & Human Service 9 (available at <https://aspe.hhs.gov/poverty-guidelines>). 10 Here, Plaintiff's IFP shows that he has a monthly income of \$400. See ECF No. 2. 11 Plaintiff has made the required showing under 28 U.S.C. § 1915(a). See *id.* However, 12 the Court will recommend Plaintiff's IFP application be denied because the action is 13 facially frivolous and without merit because it fails to state a claim and lacks subject 14 matter jurisdiction. "A district court may deny leave to proceed in forma pauperis at the 15 outset if it appears from the face of the proposed complaint that the action is frivolous or 16 without merit." *Minetti v. Port of Seattle*, 152 F.3d 1113, 1115 (9th Cir.

1998) (quoting 17 *Tripati v. First Nat. Bank & Tr.*, 821 F.2d 1368, 1370 (9th Cir. 1987)); see also *McGee v. 18 Dep't of Child Support Servs.*, 584 Fed. App'x. 638 (9th Cir. 2014) ("the district court did 19 not abuse its discretion by denying McGee's request to proceed IFP because it appears 20 from the face of the amended complaint that McGee's action is frivolous or without 21 merit"); *Smart v. Heinze*, 347 F.2d 114, 116 (9th Cir.

1965) ("It is the duty of the District 22 Court to examine any application for leave to proceed in forma pauperis to determine 23 whether the proposed proceeding has merit and if it appears that the proceeding is 24 without merit, the court is bound to deny a motion seeking leave to proceed in forma 25 pauperis.").

Because it appears from the face of the Second Amended Complaint 26 ("SAC") that this action is frivolous and is without merit as discussed in more detail 27 below, the Court recommends denying Plaintiff's IFP motion. 28 / / / 1 II. SCREENING REQUIREMENT 2 Pursuant to 28 U.S.C. § 1915(e), the court must screen every in forma pauperis 3 proceeding, and must order dismissal of the case if it is "frivolous or malicious," "fails to 4 state a claim on which relief may be granted," or "seeks monetary relief against a 5 defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B); *Lopez v. Smith*, 6 203 F.3d 1122, 1126-27 (2000) (*en banc*).

A claim is legally frivolous when it lacks an 7 arguable basis either in law or in fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). In 8 reviewing a complaint under this standard, the court accepts as true the factual 9 allegations contained in the complaint, unless they are clearly baseless or fanciful, and 10 construes those allegations in the light most favorable to the plaintiff.

See *Neitzke*, 490 11 U.S. at 327; *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960 12 (9th Cir. 2010), cert. denied, 564 U.S. 1037 (2011). 13 Pleadings by self-represented litigants are liberally construed. *Hebbe v. Pliler*, 627 14 F.3d 338, 342 & n.7 (9th Cir. 2010) (liberal construction appropriate even post-*Iqbal*). 15 However, the court need not accept as true conclusory allegations, unreasonable 16 inferences, or unwarranted deductions of fact.

Western Mining Council v. Watt, 643 F.2d 17 618, 624 (9th Cir. 1981). A formulaic recitation of the elements of a cause of action does 18 not suffice to state a claim. *Bell Atlantic Corp. v.*

Twombly, 550 U.S. 544, 555-57 (2007); 19 Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). 20 To state a claim on which relief may be granted, the plaintiff must allege enough 21 facts “to state a claim to relief that is plausible on its face.” Twombly, 550 U.S. at 570. “A 22 claim has facial plausibility when the plaintiff pleads factual content that allows the court 23 to draw the reasonable inference that the defendant is liable for the misconduct alleged.” 24 Iqbal, 556 U.S. at 678.

A pro se litigant is entitled to notice of the deficiencies in the 25 complaint and an opportunity to amend unless the complaint’s deficiencies could not be 26 cured by amendment. See Lopez, 203 F.3d at 1130-31; Cahill v. Liberty Mut. Ins. Co., 80 27 F.3d 336, 339 (9th Cir. 1996). 28 / / / 1 III. COMPLAINTS 2 Plaintiff filed his Complaint on March 20, 2025.

Plaintiff’s initial Complaint is titled 3 “petition for declaratory remedy” and “seeks only interpretation” of whether Plaintiff has 4 complied with California’s Government Claims Act and if he can bring suit under 42 5 U.S.C. § 1983. Compl. at 2 (ECF No. 1). Plaintiff lists the State of California as the 6 Defendant. Plaintiff states that if the Court finds Plaintiff has complied with the Act, 7 Plaintiff “seeks to translate the case into a complaint against the State of California and, 8 most likely,” the Democratic Party.

Id. Plaintiff states that he “will suggest” that the 9 Democratic Party “sought to destroy [Plaintiff’s] physical form, earning power, life 10 enjoyment prospects and reputation.” Id. at 2-3. Plaintiff attaches 20 pages of “claim 11 letters.” Id. at 5-28.

On April 4, 2025, Plaintiff filed a “supplement” of exhibits supporting 12 his Complaint. (ECF No. 8.) 13 On April 16, 2025, Plaintiff filed a First Amended Complaint (“FAC”). (ECF No. 14 11.) Plaintiff lists both the State of California and the Democratic Party as Defendants. 15 Id. at 1.

In the FAC, Plaintiff states that he is following the “petition” he filed with this 16 action for damages under 42 U.S.C. § 1983. Id. at 2. Plaintiff is attempting to bring 17 claims for violations of the Eighth and Fourteenth Amendments. Id. Plaintiff appears to 18 bring a claim for cruel and unusual punishment arguing that “[e]vidence is presented” 19 that “some entity... probably a subsection of the Democratic Party in California,” has 20 “marked [Plaintiff] as an enemy and conducted what is referred to as a ‘Tear Down 21 Project’ against him.” Id. at 2.

Plaintiff alleges that this “entity” has delayed or prevented 22 employment, “alter[ed] [Plaintiff’s] physical self to make him less attractive and 23 presentable, prematurely age him, prevent his ability to have children..., destroy his 24 public reputation, have him beaten on the streets” and other claims. Id. at 2-3. Plaintiff 25 provides an explanation of his remedy demands describing “Plaintiff as valuable 26 property.” Id. at 3.

Plaintiff also describes how he moved to California from Ohio, was 27 allegedly assaulted at a Marriott Hotel, and describes other lawsuits he has filed. Id. at 4- 28 8. As a remedy, Plaintiff

seeks damages, “medical and dental repair,” “intellectual 1 property assessment,” “employment evaluation and placement,” “romantic pairing and 2 family planning,” “tax relief,” and injunctive relief.

Id. at 9-10. 3 Plaintiff filed a SAC on April 18, 2025 (ECF No. 13), and various exhibits 4 supporting the SAC (ECF Nos. 16, 17, 18). The SAC includes all the claims in the FAC, 5 and adds Governor Gavin Newsom as a Defendant, adds a claim for corruption under 6 the Racketeer Influenced and Corrupt Organizations Act (“RICO”), and seeks a federal 7 investigation into the matters in the SAC.

SAC at 9-10, 12. Plaintiff alleges that he 8 “concluded that San Francisco, and perhaps the State, operated a sort of Houthi-rebel 9 camp.” Id. at 9. He states that non-profits and City/County entities “employed ex-convicts 10 or uncaught criminals” who “would rob a store, beat down or harass a target and/or 11 defame plaintiff.” Id. Plaintiff alleges that he was monitored based on his monetary 12 expenditures and “entrapped” by San Francisco Law Library personnel.

Id. at 10. 13 Plaintiff has filed various other motions, including a motion for judicial 14 disqualification (ECF No. 4), which was denied by the District Judge (ECF No. 10); a 15 motion for judgment on the pleadings (ECF No. 9); and a motion to strike and reconsider 16 the order denying the motion for judicial disqualification, and a motion to stay the case 17 for 90 days (ECF No. 14).

18 IV. DISCUSSION 19 A. Plaintiff’s Complaints 20 Plaintiff initiated this action on March 20, 2025 with a document titled “petition for 21 declaratory relief.” See Compl. On March 31, 2025, Plaintiff filed a “proof of service” 22 indicating that he served the initial Complaint on March 21, 2025. (ECF No. 7 at 5.)

On 23 April 16, 2025, he filed a FAC (ECF No. 11), and a “proof of service” and request for 24 waiver of service of summons of the FAC (ECF No. 12). On April 18, 2025, he filed a 25 SAC. (ECF No. 13.) Plaintiff did not provide any information regarding service of the 26 SAC. 27 Under Federal Rule of Civil Procedure 15(a), a party may amend its pleading 28 once as a matter of course no later than 21 days after serving it.

In all other cases, a 1 party may amend its pleading only with the court’s leave, and the court should freely give 2 leave when justice so requires. Fed. R. Civ. P. 15(a)(2). Four factors commonly used by 3 courts to determine the propriety of a motion to amend are: bad faith, undue delay, 4 prejudice to the opposing party, and futility of the amendment. See *Eminence Capital, 5 LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051-52 (9th Cir.2003) (citing *Forman v. Davis*, 371 6 U.S. 178, 182 (1962)).

7 Here, it appears that Plaintiff attempted to serve the State of California with the 8 initial Complaint on March 21, 2025. (ECF No. 7 at 5). However, it is unclear whether 9 Plaintiff was

successful. Plaintiff also filed his FAC before the Court screened his 10 Complaint. 11 Plaintiff also filed a SAC two days after filing the FAC, which is both untimely and 12 without leave of court.

Because it is unclear whether service of any defendant has 13 actually occurred, and because it appears Plaintiff intends the SAC to be his operative 14 complaint, the Court will excuse the late filing of the SAC without leave of court and 15 construe the SAC as the operative complaint. 16 The Court further notes that Plaintiff separately and subsequently filed various 17 exhibits supporting the SAC.

(ECF Nos. 16-18.) To the extent Plaintiff attempts to add 18 additional claims or further amend the SAC through these separate exhibits, this is 19 improper. The filings at ECF Nos. 16-18 will be disregarded. 20 Plaintiff is warned that if these Findings and Recommendations are not adopted 21 and this case is still active, Plaintiff may not further amend the SAC without filing a 22 motion to amend and only after such a motion is granted by the Court.

Plaintiff has 23 already exhausted amending as of right under Rule 15(a). 24 B. Plaintiff's Request to Correct the Docket 25 Plaintiff has filed a request to correct the Docket, stating that ECF No. 11 should 26 be titled "Complaint" not "First Amended Complaint," and that ECF No. 13 is the "First 27 Amended Complaint." (ECF No. 15.) Plaintiff also states that the Democratic Party and 28 Governor Gavin Newsom should be added as Defendants.

Id. 1 The Court denies the request to change the titles of ECF Nos. 11 and 13. The 2 Court grants the request to add the Democratic Party and Governor Gavin Newsom as 3 defendants on the Docket as listed in the SAC.

The Clerk of Court is directed to update 4 the Docket accordingly. 5 C. Lack of Subject Matter Jurisdiction 6 Federal courts are courts of limited jurisdiction and may hear only those cases 7 authorized by federal law. *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994). 8 Jurisdiction is a threshold inquiry, and "[f]ederal courts are presumed to lack jurisdiction, 9 'unless the contrary appears affirmatively from the record.'" *Casey v. Lewis*, 4 F.3d 1516, 10 1519 (9th Cir.

1993) (quoting *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 546 11 (1986)); see *Morongo Band of Mission Indians v. Cal. State Bd. of Equalization*, 858 F.2d 1376, 1380 (9th Cir. 1988). Without jurisdiction, the district court cannot decide the 13 merits of a case or order any relief and must dismiss the case. See *Morongo*, 858 F.2d 14 at 1380. A federal court's jurisdiction may be established in one of two ways: actions 15 arising under federal law or those between citizens of different states in which the 16 alleged damages exceed \$75,000.

28 U.S.C. §§ 1331, 1332. "Subject-matter jurisdiction 17 can never be waived or forfeited," and "courts are obligated to consider sua sponte" 18 subject matter jurisdiction even when not raised

by the parties. *Gonzalez v. Thaler*, 565 U.S. 134, 141 (2012). 20 The SAC fails to establish the Court's subject matter jurisdiction. See SAC.

The 21 SAC attempts to bring claims under 42 U.S.C. § 1983 and RICO. SAC at 2. However, 22 the SAC does not adequately present any federal question. Plaintiff makes conclusory 23 statements about how some "entity" has "marked [Plaintiff] as an enemy" and has sought 24 to harm Plaintiff in various ways. *Id.* at 2-3. Plaintiff also describes his perceived "value." 25 *Id.* at 3.

However, Plaintiff has not described how these allegations violate the Eighth or 26 Fourteenth Amendments. Further, Plaintiff makes conclusory statements about how non- 27 profit organizations and "City-County entities" employ ex-convicts who "harass a target 28 and/or defame plaintiff," and how Plaintiff was monitored based on his monetary 1 expenditures and "entrapped" by law library personnel.

Id. at 9-10. Plaintiff also does not 2 describe how these allegations violate the RICO Act. 3 Further, the SAC does not allege that there is diversity of citizenship between the 4 parties where it alleges that Plaintiff is a California citizen, and identifies the Defendants 5 as the State of California, California Governor Newsom, and the Democratic Party. SAC 6 at 1.

Therefore, the Court lacks subject matter jurisdiction. 7 D. Failure to Comply with Federal Rule of Civil Procedure 8 8 The SAC does not contain a short and plain statement of a claim as required by 9 Federal Rule of Civil Procedure 8.

In order to give fair notice of the claims and the 10 grounds on which they rest, a plaintiff must allege with at least some degree of 11 particularity overt acts by specific defendants which support the claims. See *Kimes v. 12 Stone*, 84 F.3d 1121, 1129 (9th Cir. 1996). Plaintiff states that he is attempting to bring 13 claims under the Eighth and Fourteenth Amendments, and the RICO Act, but he does 14 not provide any specific facts supporting his claims.

He only provides conclusory 15 allegations of harm that allegedly occurred against him. Much of the SAC is devoted to 16 describing Plaintiff's perceived personal value and other cases he has filed. SAC at 3-8. 17 Plaintiff's allegations are conclusory and are not supported by sufficient facts.

Although 18 the Federal Rules adopt a flexible pleading policy, even a pro se litigant's complaint must 19 give fair notice and state the elements of a claim plainly and succinctly. *Jones v. 20 Community Redev. Agency*, 733 F.2d 646, 649 (9th Cir. 1984). 21 The SAC is subject to dismissal. See *McHenry v. Renne*, 84 F.3d 1172, 1178-80 22 (9th Cir. 1996) (affirming dismissal of complaint where "one cannot determine from the 23 complaint who is being sued, for what relief, and on what theory, with enough detail to 24 guide discovery").

25 E. Eleventh Amendment Immunity 26 Plaintiff is attempting to bring his claims against the State of California under 27 42 U.S.C. § 1983. One of the requirements for stating a claim under § 1983 is that the 28 violation was committed by a “person” acting under the color of state law. *Cortez v. Cnty. 1 of Los Angeles*, 294 F.3d 1186, 1188 (9th Cir. 2002). A state is not considered a 2 “person” under § 1983 and is immune from suit under the Eleventh Amendment.

Id. 3 (citing *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 70-71 (1989)). Therefore, 4 Plaintiff’s claims against the State of California are barred by the Eleventh Amendment 5 and should be dismissed. 6 F. Plaintiff’s Other Filings 7 Plaintiff has filed a motion for judgment on the pleadings (ECF No. 9); and a 8 motion to strike and reconsider the order denying the motion for judicial disqualification, 9 and a motion to stay the case for 90 days (ECF No. 14).

Because the undersigned 10 recommends that the case be dismissed without leave to amend, the motion for 11 judgment on the pleadings and motion to stay should be DENIED as moot.² 12 G. Leave to Amend 13 In considering whether leave to amend should be granted, the Court considers 14 that this is not the first suit Plaintiff has initiated in this district court, and Plaintiff’s claims 15 were also dismissed without leave to amend.

See *Swartz v. Alsup*, No. 2:24-cv-02112- 16 DC-CSK PS, 2025 WL 82133 (E.D. Cal. Jan. 13, 2025), findings and recommendations 17 adopted by 2025 WL 1116586 (E.D. Cal. Apr. 15, 2025). 18 Like the complaint in the case cited above, Plaintiff’s current SAC does not 19 present a cogent, non-frivolous claim.

In light of the Court’s lack of subject matter 20 jurisdiction, Eleventh Amendment immunity, and the SAC’s deficiencies, it appears 21 granting leave to amend would be futile. The SAC should therefore be dismissed without 22 leave to amend. See *Lopez*, 203 F.3d at 1130-31; *Cato v. United States*, 70 F.3d 1103, 23 1105-06 (9th Cir. 1995). 24 / / / 25 / / / 26 2 Plaintiff’s filing at ECF No. 14 also moves to strike and reconsider the order issued by 27 the District Judge denying the motion for judicial disqualification (ECF No. 10).

This motion is not addressed here as it may be mooted if these findings and 28 recommendations are adopted. 1] V. CONCLUSION 2 In accordance with the above, IT |S ORDERED that: 3 1. Plaintiff’s filings at ECF Nos. 16, 17, and 18 will be disregarded; 4 2. Plaintiff’s request to correct the Docket (ECF No. 15) is GRANTED IN 5 PART and DENIED IN PART; and 6 3.

The Clerk of Court is directed to update the Docket to add the Democratic 7 Party and Governor Gavin Newsom as defendants on the Docket. 8 Further, in accordance with the above, IT |S RECOMMENDED that: 9 1. Plaintiff’s motion to proceed in forma pauperis (ECF No. 2) be DENIED; 10 2. Plaintiff’s SAC (ECF No. 13) be DISMISSED without leave to amend; 11 3. Plaintiff’s motion for judgment on the pleadings (ECF No. 9) be DENIED as 12 moot; 13 4.

The portion of ECF No. 14 related to Plaintiff's request to stay the case be 14 DENIED as moot; and 15 5. The Clerk of the Court be directed to CLOSE this case. 16 These findings and recommendations are submitted to the United States District 17 || Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 18 | 14 days after being served with these findings and recommendations, any party may file 19 | written objections with the Court and serve a copy on all parties.

This document should 20 | be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any 21 | reply to the objections shall be served on all parties and filed with the Court within 14 22 | days after service of the objections. Failure to file objections within the specified time 23 || may waive the right to appeal the District Court's order.

Turner v. Duncan, 158 F.3d 449, 24 | 455 (9th Cir. 1998); Martinez v. Yist, 951 F.2d 1153, 1156-57 (9th Cir. 1991). 25 26 || Dated: June 20, 2025 C (yi S\$ 27 CHI S00 KIM 28 | 5, swar.0902.25
UNITED STATES MAGISTRATE JUDGE 10