

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

Lan Nguyen v. Itay Snof, et al.

No. 2:25-cv-01408-DJC-SCR · No. 2:25-cv-01408-DJC-SCR · Decided May 30, 2025

OPINION

(PS) Nguyen v. ITAY SNDF

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 LAN NGUYEN, No. 2:25-cv-01408-DJC-SCR 12 Plaintiff,

13 ITAY SNOF1, et al. ORDER AND FINDINGS AND

RECOMMENDATION

14 Defendants. 15

16 17 Plaintiff is proceeding pro se in this action. This matter was accordingly referred to the 18 undersigned pursuant to Local Rule 302(c)(21). Plaintiff has filed a motion for leave to proceed 19 in forma pauperis (“IFP”) and has submitted the affidavit required by that statute. See 28 U.S.C. 20 § 1915(a)(1). The motion to proceed IFP (ECF No. 2) will therefore be granted. However, for 21 the reasons provided below, the Court finds Plaintiff’s complaint does not state a claim and fails 22 to set forth a basis for federal jurisdiction. The Court recommends this action be dismissed 23 without leave to amend. Plaintiff has additionally filed eleven other motions, including five 24 motions for temporary restraining order, which are addressed herein. 25 //// 26 //// 27 1 Plaintiff’s handwriting is sometimes difficult to read and the docket sheet reads “ITAY SNDF”, 28 but it appears from Plaintiff’s filings that this is an individual named Itay Snof.

1 I. SCREENING

2 A. Legal Standard 3 The federal IFP statute requires federal courts to dismiss a case if the action is legally 4 “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks 5 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). In 6 reviewing the complaint, the Court is guided by the requirements of the Federal Rules of Civil 7 Procedure. Under the Federal Rules of Civil Procedure, the complaint must contain (1) a “short 8 and plain statement” of the basis for federal jurisdiction (that is, the reason the case is filed in this 9 court, rather than in a state court), (2) a short and plain statement showing that plaintiff is entitled 10 to relief (that is, who harmed the plaintiff, and in what way), and (3) a demand for the relief 11 sought. Fed. R. Civ. P. 8(a). Plaintiff’s claims must be set forth simply, concisely and directly. 12 Fed. R. Civ. P. 8(d)(1). 13 A claim is legally frivolous when it lacks an

arguable basis either in law or in fact. 14 *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). In reviewing a complaint under this standard, the 15 court will (1) accept as true all of the factual allegations contained in the complaint, unless they 16 are clearly baseless or fanciful, (2) construe those allegations in the light most favorable to the 17 plaintiff, and (3) resolve all doubts in the plaintiff's favor. See *Neitzke*, 490 U.S. at 327; *Von 18 Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960 (9th Cir. 2010). 19 The court applies the same rules of construction in determining whether the complaint 20 states a claim on which relief can be granted. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (court 21 must accept the allegations as true); *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974) (court must 22 construe the complaint in the light most favorable to the plaintiff). Pro se pleadings are held to a 23 less stringent standard than those drafted by lawyers. *Erickson*, 551 U.S. at 94. However, the 24 court need not accept as true legal conclusions, even if cast as factual allegations. See *Moss v. 25 U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009). A formulaic recitation of the elements of a 26 cause of action does not suffice to state a claim. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 27 555-57 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). 28 To state a claim on which relief may be granted, the plaintiff must allege enough facts "to 1 state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. "A claim has 2 facial plausibility when the plaintiff pleads factual content that allows the court to draw the 3 reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 4 678. A pro se litigant is entitled to notice of the deficiencies in the complaint and an opportunity 5 to amend, unless the complaint's deficiencies could not be cured by amendment. See *Akhtar v. 6 Mesa*, 698 F.3d 1202, 1213 (9th Cir. 2012). 7 B. The Complaint 8 Plaintiff names five individual private defendants, including (1) Itay Snof, of Top 9 Remodeling and Design, (2) a neighbor, (3) another individual, (4) a broker, and (5) an employee 10 of a solar energy company. ECF No. 1 at 3. Plaintiff asserts there is federal question jurisdiction, 11 and that her First, Sixth, and Fourteenth Amendment rights have been violated. *Id.* at 4. 12 Plaintiff's "Statement of Claim" states that she needs to "be protected from privacy invasion, 13 intrusion, and trespassers." *Id.* at 5. She mentions a "fraudulent lien" and that she needs to be 14 able to complete her attached garage conversion. She makes a conclusory reference to "house 15 damage and personal injury." *Id.* Plaintiff's complaint does not contain a clear relief requested 16 section. Instead, the "Relief" portion of the complaint makes additional allegations, such as 17 Defendant Luebcke "responds to undisclosed an unpermitted additional room," that Snof is a 18 "defrauding contractor" who breached contract, and another defendant defrauded and deceived.

19 *Id.* at 6.

20 Plaintiff attaches to the six-page complaint over 2,000 additional pages of documents. 21 These exhibits are not referenced in the complaint. Many of these attachments appear to be 22 pleadings and other documents from prior state court litigation. 23 C. Analysis 24 Plaintiff sued several of these same defendants, concerning apparently the same real estate 25 dispute, in state court. As described by the California Court of Appeal: 26 In October 2021, Nguyen purchased a home in

Napa County with rooftop solar panels. The following year, she filed a lawsuit against real estate agent Luebcke, escrow officer 27 Andi Frattini, appraiser David Danza, and Tesla Inc. (Tesla) employee Gilberto 28 Klobekoski. The operative first amended complaint (complaint) asserted causes of action 1 for fraud and breach of contract against all defendants; it asserted claims for violating the disclosure obligations in Civil Code section 1102 et seq. and for breach of fiduciary duty 2 against Luebcke, Frattini, and Danza. According to the complaint, a room advertised as “bonus” space was instead an “unpermitted smoking room,” and information about the 3 solar panels— including whether Nguyen was obligated to pay for the panels and whether 4 Tesla agreed to maintain them—was not disclosed when she purchased the home. 5 *Nguyen v. Luebcke*, 2024 WL 1984579, *1 (Cal. Ct. App. May 6, 2024). In that action, the 6 defendants’ motion to dismiss was granted, and plaintiff was allowed leave to file a second 7 amended complaint. When Plaintiff failed to do so, the action was dismissed with prejudice, and 8 the Court of Appeal affirmed. In affirming the trial court’s judgment, the court commented on 9 Plaintiff’s litigation practices: 10 In closing, we note that in the last 20 months, Nguyen has—while self-represented—filed four appeals and 10 writ petitions in this court, all of which have been decided adversely 11 to her. While this appeal was pending, Nguyen engaged in conduct that has burdened 12 court staff: she filed unnecessary civil case information statements, multiple requests to augment the record, nearly 1,000 pages of exhibits, two petitions for writ relief, and 13 numerous miscellaneous requests. She also attempted to file a 237-page opening brief that 14 did not cite to the appellate record or contain intelligible legal argument. And she sent numerous emails to the clerks of this court. 15 16 *Nguyen*, 2024 WL 1984579, *3. 17 In an appeal this year, the California Court of Appeal declared Plaintiff to be a vexatious 18 litigant: “on our own motion after having issued an order to show cause, we conclude Nguyen is a 19 vexatious litigant. We therefore impose a prefiling order prohibiting her from filing new 20 litigation in the courts of this state in propria persona without first obtaining permission from the 21 presiding judge or justice where the litigation is proposed to be filed Plaintiff’s complaint does 22 not set forth a valid basis for federal jurisdiction.” *Nguyen v. Harsaghy*, 2025 WL 354017, *1 23 (Cal. Ct. App. Jan. 31, 2025). 24 Plaintiff has now switched forums to federal court, but is engaging in the same vexatious 25 litigation tactics. Plaintiff attached 2,000 pages to the complaint she filed on May 19, 2025. In 26 the first ten days the action was pending, Plaintiff filed 12 motions. Some of the motions were 27 repetitive, such as filing five motions for temporary restraining order. Some of the motions were 28 1 legally frivolous, such as the “motion requesting an exemption of res judicata.” ECF No. 8. 2 Plaintiff’s action appears to be a state court matter. Although her complaint is unclear, 3 she complains of something to do with home remodeling or construction and she makes 4 allegations of fraud or deception—as she did in her prior state litigation. All of the Defendants 5 have addresses in California, and Plaintiff does not allege diversity of citizenship jurisdiction. See 6 *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996) (diversity jurisdiction requires “complete 7 diversity of citizenship” where “the citizenship of each plaintiff is diverse from the citizenship of

8 each defendant.”). There are no factual allegations to support the conclusory contention that 9 Plaintiff’s First, Sixth, and Fourteenth Amendment rights were violated. Even if Plaintiff could 10 plead such facts, and was pursuing a claim under 42 U.S.C. § 1983, all of the Defendants appear 11 to be private actors. No Defendant is alleged to be a state or local government employee. 12 “[Section] 1983 ‘is not itself a source of substantive rights,’ but merely provides ‘a 13 method for vindicating federal rights elsewhere conferred.’” *Graham v. Connor*, 490 U.S. 386, 14 393–94 (1989). A plaintiff alleging a claim under § 1983 must plead that (1) the defendants 15 acting under color of state law (2) deprived plaintiffs of rights secured by the Constitution or 16 federal statutes. *Benavidez v. County of San Diego*, 993 F.3d 1134, 1144 (9th Cir. 2021). 17 Generally, private parties are not acting under color of state law. See *O’Handley v. Weber*, 62 18 F.4th 1145, 1155-56 (9th Cir. 2023) (noting that only in “exceptional cases” will a private entity 19 be treated as a state actor for constitutional purposes). 20 A federal court may dismiss a federal question claim for lack of subject matter jurisdiction 21 if: “(1) the alleged claim under the Constitution or federal statutes clearly appears to be 22 immaterial and made solely for the purpose of obtaining jurisdiction; or (2) such a claim is wholly 23 insubstantial and frivolous.” *Leeson v. Transamerica Disability Income Plan*, 671 F.3d 969, 975 24 (9th Cir. 2012). The Court finds here that Plaintiff has not alleged a basis for federal jurisdiction. 25 Her only reference to federal law is to the Constitution, but none of the Defendants are alleged to 26 be state actors and some of the constitutional provisions are clearly inapplicable, such as 27 Plaintiff’s reference to the Sixth Amendment. The Sixth Amendment provides rights to criminal 28 defendants. Plaintiff does not allege she was a defendant in a criminal proceeding. Plaintiff also 1 makes reference to the False Claims Act in her jurisdictional statement, but she refers to sections 2 12650 to 12656, a reference to a California state statute. 3 The complaint fails to state a claim and does not establish a basis for federal jurisdiction. 4 Additionally, Plaintiff sues five individuals: 1) Itay Snof; 2) Russell Moulder; 3) Erin Harsaghy; 5 4) Gilberto Klobukoski; and 5) Kathryn Luebcke. ECF No. 1 at 2-3. Plaintiff sued some of these 6 same Defendants in her California state lawsuit, in which the claims were dismissed with 7 prejudice. See *Nguyen*, 2024 WL 1984579. To the extent the action arises from the same 8 common nucleus of operative fact as the prior action, and involves the same claims and parties, 9 those claims are barred by res judicata. 10 The doctrine of res judicata provides that a final judgment on the merits bars further claims by 11 parties or their privies based on the same cause of action. See *Tahoe-Sierra Pres. Council, Inc. v. 12 Tahoe Reg’l Plan. Agency*, 322 F.3d 1064, 1077 (9th Cir. 2003). The doctrine of res judicata, also 13 known as claim preclusion, is applicable when there is (1) an identity of claims; (2) a final judgment 14 on the merits; and (3) identity or privity between parties. *Owens v. Kaiser Found. Health Plan, Inc.*, 15 244 F.3d 708, 713 (9th Cir. 2001). When the doctrine applies, it “‘bar(s) all grounds for recovery 16 which could have been asserted, whether they were or not in a prior suit between the same parties ...” 17 *Costantini v. Trans World Airlines*, 681 F.2d 1199, 1201 (9th Cir. 1982) (quoting *Ross v. IBEW*, 634 18 F.2d 453, 457 (9th Cir. 1980)). In addressing whether res judicata applies,

the court evaluates 19 whether the claims asserted “arise out of the same transactional nucleus of facts” as the prior action. 20 See *id.* at 1202 (quoting *Harris v. Jacobs*, 621 F.2d 341, 343 (9th Cir. 1980)). A court may sua sponte 21 dismiss an action based on the doctrine of *res judicata*, even though the doctrine is normally raised as 22 an affirmative defense. See *Arizona v. California*, 530 U.S. 392, 412 (2000). 23 The prior lawsuit involved factual allegations concerning the 2021 purchase of home, and the 24 complaint therein alleged “a room advertised as a ‘bonus’ space was instead an ‘unpermitted smoking 25 room,’ and information about the solar panels—including whether Nguyen was obligated to pay for 26 the panels” and who agreed to maintain them, was not disclosed. *Nguyen*, 2024 WL 1984579, *1. 27 The factual allegations of the instant complaint are sparse, however the allegations do include “an 28 unpermitted additional room” and mention of the solar roof panels. Plaintiff also attaches to her 1 instant complaint hundreds of pages of filings from the state court action, indicating the two 2 lawsuits arise from same common nucleus of operative facts. While it appears that the instant 3 action should be dismissed on the basis of *res judicata*, the Court need not conclusively determine 4 whether that doctrine applies, because the complaint fails to establish federal subject matter 5 jurisdiction. 6

7 II. AMENDING THE COMPLAINT

8 The Court has considered whether Plaintiff should be granted leave to amend. The Court 9 has liberally construed Plaintiff’s pro se complaint and considered that generally pro se litigants 10 are given an opportunity to amend. See *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012) 11 (“[a] district court should not dismiss a pro se complaint without leave to amend unless it is 12 absolutely clear that the deficiencies of the complaint could not be cured by amendment.”). 13 However, in this case, amendment would be futile. See *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th

14 Cir. 2000) (en banc) (“Courts are not required to grant leave to amend if a complaint lacks merit 15 entirely.”); *Lockheed Martin Corp. v. Network Solutions, Inc.*, 194 F.3d 980, 986 (9th Cir. 1999) 16 (“Where the legal basis for a cause of action is tenuous, futility supports the refusal to grant leave 17 to amend.”). The Court has also considered that Plaintiff previously litigated these claims so 18 extensively in state court she was declared a vexatious litigant. And in *Nguyen v. Luebcke*, 2024 19 WL 1984579, she was given leave to file a second amended complaint, but instead of doing so 20 “she filed at least seven separate pleadings totaling 850 pages.” *Id.* at *2. The Court concludes 21 leave to amend is inappropriate.

22 III. PLAINTIFF’S PENDING MOTIONS

23 In the less than two weeks this action has been pending, Plaintiff has filed twelve motions. 24 If adopted, the undersigned’s recommendation that this case be dismissed for lack of jurisdiction 25 and without leave to amend would render Plaintiff’s other motions moot. In any event, a court 26 without jurisdiction cannot grant motions seeking substantive relief. Accordingly, the 27 undersigned also recommends that all of Plaintiff’s pending motions be denied. 28 ///

1 IV. CONCLUSION

2 Plaintiff fails to state a claim and her complaint does not establish a basis for subject 3 || matter jurisdiction. Plaintiff filed the action after several unsuccessful lawsuits in state court and 4 || being declared a vexatious litigant in state court. The Court recommends the action be dismissed 5 || for lack of jurisdiction. 6 Accordingly, IT IS HEREBY ORDERED that: 7 1. Plaintiff's motion to proceed in forma pauperis (ECF No. 2) is GRANTED; 8 IT IS FURTHER RECOMMENDED THAT: 9 1. Plaintiff's complaint be DISMISSED without leave to amend; 10 2. All remaining motions (ECF Nos. 3 thru 13) be DENIED as moot and for lack of 11 Jurisdiction; and 12 3. The Clerk be directed to enter judgment and close this case. 13 These findings and recommendations are submitted to the United States District Judge 14 || assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14) 15 | days after being served with these findings and recommendations, Plaintiff may file written 16 | objections with the court. Such document should be captioned "Objections to Magistrate Judge's 17 | Findings and Recommendations." Local Rule 304(d). Plaintiff is advised that failure to file 18 | objections within the specified time may waive the right to appeal the District Court's order. 19 | Martinez v. Yist, 951 F.2d 1153 (9th Cir. 1991). 20 SO ORDERED. 21 || DATED: May 30, 2025.

23 SEAN C. RIORDAN

34 UNITED STATES MAGISTRATE JUDGE

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