

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF  
CALIFORNIA

**King v. State of California**

King · No. 2:25-cv-1563-DAD-CSK · Decided August 26, 2025

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OPINION

(PS) King v. State of California

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 TAMARA ANN KING, Case No. 2:25-cv-1563-DAD-CSK 12 Plaintiff,

13 v. FINDINGS AND RECOMMENDATIONS

14 STATE OF CALIFORNIA, (ECF Nos. 1, 2)

15 Defendant. 16

17 Plaintiff Tamara Ann King 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 has made the required financial showing under 28 U.S.C. 11 § 1915(a). See ECF No. 2.  
However, the Court will recommend Plaintiff’s IFP application 12 be denied because the action is

facially frivolous or without merit. ““A district court may 13 deny leave to proceed in forma pauperis at the outset if it appears from the face of the 14 proposed complaint that the action is frivolous or without merit.”” *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 F.3d 638 (9th Cir. 2014) (“the district court did not abuse its discretion by denying 18 McGee’s request to proceed IFP because it appears from the face of the amended 19 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 any application for 21 leave to proceed in forma pauperis to determine whether the proposed proceeding has 22 merit and if it appears that the proceeding is without merit, the court is bound to deny a 23 motion seeking leave to proceed in forma pauperis.”). Because it appears from the face 24 of Plaintiff’s Complaint that this action is frivolous or is without merit as discussed in 25 more detail below, the Court recommends Plaintiff’s IFP motion be denied.

## 26 II. SCREENING REQUIREMENT

27 Even if the Court were to grant Plaintiff’s IFP application, Plaintiff’s Complaint 28 warrants dismissal pursuant to 28 U.S.C. § 1915(e)’s required pre-answer screening. 1 Pursuant to 28 U.S.C. § 1915(e), the court must screen every in forma pauperis 2 proceeding, and must order dismissal of the case if it is “frivolous or malicious,” “fails to 3 state a claim on which relief may be granted,” or “seeks monetary relief against a 4 defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B); *Lopez v. Smith*, 523 F.3d 1122, 1126-27 (2000) (en banc). A claim is legally frivolous when it lacks an 6 arguable basis either in law or in fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). In 7 reviewing a complaint under this standard, the court accepts as true the factual 8 allegations contained in the complaint, unless they are clearly baseless or fanciful, and 9 construes those allegations in the light most favorable to the plaintiff. See *id.* at 326-27; 10 *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960 (9th Cir. 11 2010), cert. denied, 564 U.S. 1037 (2011). 12 Pleadings by self-represented litigants are liberally construed. *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (liberal construction appropriate even post-*Iqbal*). 14 However, the court need not accept as true conclusory allegations, unreasonable 15 inferences, or unwarranted deductions of fact. *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981). A formulaic recitation of the elements of a cause of action does 17 not suffice to state a claim. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-57 (2007); 18 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). 19 To state a claim on which relief may be granted, the plaintiff must allege enough 20 facts “to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. “A 21 claim has facial plausibility when the plaintiff pleads factual content that allows the court 22 to draw the reasonable inference that the defendant is liable for the misconduct alleged.” 23 *Iqbal*, 556 U.S. at 678. A pro se litigant is entitled to notice of the deficiencies in the 24 complaint and an opportunity to amend unless the complaint’s deficiencies could not be 25 cured by amendment. See *Lopez*, 203 F.3d at 1130-31; *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d

336, 339 (9th Cir. 1996). 27 /// 28 ///

### 1 III. THE COMPLAINT

2 Plaintiff's Complaint uses a state court fillable form complaint and names the 3 State of California or Governor Gavin Newsom as Defendant. Compl. (ECF No. 1). The 4 allegations consist of the following statements: "As Governor of California! Misuse of 5 Homeless Domestic Violence laws and funds use of funds to house homeless victims."; 6 "Kicked out of program for 1st Amendment to Constitution - freedom of speech 12 yrs. 7 Prior. No Name [illegible] footage of [illegible]. Housing drug dealers & making fetynly at 8 El tajon"; and "Stated all knowledgeable as I [illegible] facts to present an order of Martial 9 Law." Id. at 2. The Complaint checks boxes for "intentional or negligent 10 misrepresentation" and concealment. Id. at 2. The Complaint also attaches four pages of 11 state court form answer documents that are largely blank. Id. at 4-7.

### 12 IV. DISCUSSION

13 A. Lack of Subject Matter Jurisdiction 14 Federal courts are courts of limited jurisdiction and may hear only those cases 15 authorized by federal law. *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994). 16 Jurisdiction is a threshold inquiry, and "[f]ederal courts are presumed to lack jurisdiction, 17 'unless the contrary appears affirmatively from the record.'" *Casey v. Lewis*, 4 F.3d 1516, 18 1519 (9th Cir. 1993) (quoting *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 546 19 (1986)); see *Morongo Band of Mission Indians v. Cal. State Bd. of Equalization*, 858 20 F.2d 1376, 1380 (9th Cir. 1988). Without jurisdiction, the district court cannot decide the 21 merits of a case or order any relief and must dismiss the case. See *Morongo*, 858 F.2d 22 at 1380. A federal court's jurisdiction may be established in one of two ways: actions 23 arising under federal law or those between citizens of different states in which the 24 alleged damages exceed \$75,000. 28 U.S.C. §§ 1331, 1332. "Subject-matter jurisdiction 25 can never be waived or forfeited," and "courts are obligated to consider sua sponte" 26 subject matter jurisdiction even when not raised by the parties. *Gonzalez v. Thaler*, 565 27 U.S. 134, 141 (2012). 28 The Complaint does not identify the basis for federal court subject matter 1 jurisdiction, and the Court was not able to discern a jurisdictional basis. See Compl. The 2 Complaint does not allege diversity of citizenship or present any federal question. See 3 id. Therefore, the Court lacks subject matter jurisdiction. 4 B. Failure to Comply with Federal Rule of Civil Procedure 8 5 The Complaint also does not contain a short and plain statement of a claim as 6 required by Federal Rule of Civil Procedure 8. In order to give fair notice of the claims 7 and the grounds on which they rest, a plaintiff must allege with at least some degree of 8 particularity overt acts by specific defendants which support the claims. See *Kimes v. 9 Stone*, 84 F.3d 1121, 1129 (9th Cir. 1996). Although the Federal Rules adopt a flexible 10 pleading policy, even a pro se litigant's complaint must give fair notice and state the 11 elements of a claim plainly and succinctly. *Jones v. Community Redev. Agency*, 733 12 F.2d 646, 649 (9th Cir. 1984). Here, the Complaint does not contain facts supporting any 13 cognizable legal claim against any defendant. The Complaint

therefore fails to state a claim on which relief may be granted and is subject to dismissal. See *McHenry v. Renne*, 15 84 F.3d 1172, 1178-80 (9th Cir. 1996) (affirming dismissal of complaint where “one cannot determine from the complaint who is being sued, for what relief, and on what theory, with enough detail to guide discovery”). 18 C. Leave to Amend 19 The Complaint does not present a cogent, non-frivolous claim. In light of the 20 Court’s lack of subject matter jurisdiction and the Complaint’s deficiencies, it appears 21 granting leave to amend would be futile. In considering whether leave to amend should 22 be granted, the Court also considers that this is not the first complaint Plaintiff has filed in 23 this district court that was dismissed for failure to state a claim. See *King v. State of Cal.*, 24 6/5/2025 Order, No. 2:25-cv-1510-DJC-JDP (E.D. Cal. June 5, 2025) (ECF No. 3) (order 25 dismissing complaint for failure to state a claim and granting leave to amend).2 The 26 2 Findings and recommendations to dismiss for failure to prosecute are pending in *King v. State of Cal.*, No. 2:25-cv-1510-DJC-JDP (ECF No. 6). Plaintiff did not file an amended complaint or respond to an order to show cause why the action should not be 28 dismissed. See *id.* 1 | Complaint should therefore be dismissed without leave to amend. See *Lopez*, 203 F.3d 2 | at 1130-31; *Cato v. United States*, 70 F.3d 1103, 1105-06 (9th Cir. 1995).

### 3 | V. CONCLUSION

4 Based upon the findings above, it is RECOMMENDED that: 5 1. Plaintiff's motion to proceed in forma pauperis (ECF No. 2) be DENIED; 6 2. Plaintiffs Complaint (ECF No. 1) be DISMISSED without leave to amend; 7 and 8 3. The Clerk of the Court be directed to CLOSE this case. 9 These findings and recommendations are submitted to the United States District 10 | Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 11 | 14 days after being served with these findings and recommendations, any party may file 12 | written objections with the Court and serve a copy on all parties. This document should 13 | be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Any 14 | reply to the objections shall be served on all parties and filed with the Court within 14 15 | days after service of the objections. Failure to file objections within the specified time 16 | may waive the right to appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449, 17 | 455 (9th Cir. 1998); *Martinez v. Yist*, 951 F.2d 1153, 1156-57 (9th Cir. 1991). 18 19 | Dated: August 25, 2025 Cc (i s □□

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UNITED STATES MAGISTRATE JUDGE

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