

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

OCT 4 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CHRISTOPHER DAVID KROHE,

Plaintiff-Appellant,

v.

ZANDRA STEINHARDT,

Defendant-Appellee.

No. 17-17259

D.C. Nos.

1:17-cv-00878-DAD-MJS

1:17-cv-00881-DAD-MJS

1:17-cv-00885-DAD-MJS

1:17-cv-00889-DAD-MJS

Eastern District of California,
Fresno

ORDER

Before: RAWLINSON, CLIFTON, and NGUYEN, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Krohe's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 12) are denied.

No further filings will be entertained in this closed case.

NOT FOR PUBLICATION

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JUN 21 2018

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MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Dale A. Drozd, District Judge, Presiding

Submitted June 12, 2018**

Before: RAWLINSON, CLIFTON, and NGUYEN, Circuit Judges.

Christopher David Krohe appeals pro se from the district court's judgment dismissing for lack of subject matter jurisdiction his action arising from a contract dispute. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Rundgren v. Wash. Mut. Bank, FA*, 760 F.3d 1056, 1060 (9th Cir. 2014). We

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

affirm.

The district court properly dismissed Krohe's action for lack of subject matter jurisdiction because Krohe failed to allege a federal question or jurisdiction based on diversity of citizenship. *See* 28 U.S.C. § 1331 (conferring jurisdiction on district courts in "civil actions arising under the Constitution, laws, or treaties of the United States"); 28 U.S.C. § 1332(a)(1) (conferring jurisdiction on district courts where the plaintiff alleges that the parties are completely diverse and the amount in controversy exceeds \$75,000); Fed. R. Civ. P. 8(a) (complaint must contain a "short and plain statement" of the grounds for the court's jurisdiction).

We do not consider arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER DAVID KROHE,

Plaintiff,

v.

ZANDRA STEINHARDT,

Defendant.

CASE NO. 1:17-cv-00878-DAD-MJS

**FINDINGS AND RECOMMENDATIONS
TO :**

(1) CONSOLIDATE CASE Nos. 1:17-cv-881-DAD-MJS, 1:17-cv-885-DAD-MJS, AND 1:17-cv-889-DAD-MJS WITH THE INSTANT CASE; AND

(2) TO DISMISS WITHOUT LEAVE TO AMEND FOR LACK OF JURISDICTION

FOURTEEN (14) DAY OBJECTION DEADLINE

Plaintiff Christopher David Krohe is a state prisoner proceeding pro se and in forma pauperis in this civil action against Zandra Steinhardt. He initiated this action on June 1, 2017 in the United States District Court for the Northern District of California. (ECF No. 1.) On June 30, 2017, the case was transferred to this district and assigned to the docket of the undersigned. (ECF No. 7.) On July 14, 2017, the case was related to the following actions, also captioned Krohe v. Steinhardt: No. 1:17-cv-881-DAD-MJS, No. 1:17-cv-885-DAD-MJS, and No. 1:17-cv-889-DAD-MJS. (ECF No. 14.)

I. Consolidation

As stated, Petitioner filed four identically captioned actions in the Northern District of California. All were transferred to this district and here related and reassigned to the undersigned. A review of the complaints reveals that Zandra Steinhardt is the sole defendant in each of the four actions. Defendant is alleged to be the trustee of a trust of which Plaintiff is a beneficiary. All four complaints concern Plaintiff's claim, described in greater detail below, that Plaintiff sent Defendant Steinhardt \$41,700 for purposes of procuring an attorney to represent Plaintiff in an appeal of the dismissal of his petition for writ of habeas corpus. After agreeing to this arrangement and receiving the funds, Defendant cut off all communication with Plaintiff. In all four actions, Plaintiff seeks relief in the course of disposition of his appeal in the Ninth Circuit. Specifically, he seeks an evidentiary hearing requiring Defendant to produce trust documents and an order requiring Defendant to obtain counsel for Plaintiff.

In his motions to proceed in forma pauperis in Case Nos. 1:17-cv-881, 1:17-cv-885, and 1:17-cv-889, Plaintiff asks that his cases be "conflated" with the instant case as they all pertain to the same subject matter. The court construes this as a request for consolidation.

A district court has broad discretion to consolidate cases pending within its district, see Pierce v. Cty. of Orange, 526 F.3d 1190, 1203 (9th Cir. 2008), and may consolidate actions that "involve a common question of law or fact." Fed. R. Civ. P. 42(a)(2). In exercising this discretion, the Court should weigh "the saving of time and effort consolidation would produce against any inconvenience, delay, or expense that it would cause." Huene v. United States, 743 F.2d 703, 704 (9th Cir.), on reh'g, 753 F.2d 1081 (9th Cir. 1984).

Here, the four actions are substantively identical. Indeed, it is unclear why Plaintiff brought four separate actions on this single subject. Consolidation will save time and effort and will not inconvenience or prejudice Plaintiff in any way. Accordingly, the

undersigned will recommend that Case Nos. 1:17-cv-881, 1:17-cv-885, and 1:17-cv-889 be consolidated with the instant action and thereafter administratively closed.

II. Screening of Complaint

Plaintiff's complaint is before the Court for screening.

A. Screening Requirement

Pursuant to 28 U.S.C. § 1915(e)(2), the Court must conduct an initial review of the complaint to determine if it states a cognizable claim. The Court must dismiss a complaint or portion thereof if it determines that the action has raised claims that are legally "frivolous or malicious," "fails to state a claim upon which relief may be granted," or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B). "Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a claim on which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii).

B. Pleading Standard

A complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief" Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set forth "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." Id. Facial plausibility demands more than the mere possibility that a defendant committed misconduct and, while factual allegations are accepted as true, legal conclusions are not. Id. at 677-78.

C. Plaintiff's Allegations

Plaintiff's allegations may be summarized essentially as follows:

1 Plaintiff sent Defendant \$41,700 to hold in anticipation of Plaintiff retention of an attorney
2 to represent him in the Ninth Circuit. On January 4, 2017, Plaintiff called Defendant
3 about obtaining an attorney. Defendant told Plaintiff she would hire an attorney for him
4 and told Plaintiff to call back in two days to get the attorney's name. Thereafter,
5 Defendant did not accept Plaintiff's calls, respond by mail, or hire an attorney for him.

6 Plaintiff requests an evidentiary hearing in the Ninth Circuit. He wants Defendant
7 there to be required to produce trust documents and then obtain counsel for Plaintiff.¹

8 **D. Analysis**

9 Federal courts are courts of limited jurisdiction and lack inherent or general
10 subject matter jurisdiction. Federal courts can adjudicate only those cases authorized by
11 the United States Constitution and Congress. Generally, such cases involve diversity of
12 citizenship or a federal question, or cases in which the United States is a party.
13 Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375 (1994); Finley v. United States, 490
14 U.S. 545 (1989). Federal courts are presumptively without jurisdiction over civil actions.
15 Kokkonen, 511 U.S. at 377. Lack of subject matter jurisdiction is never waived and may
16 be raised by the Court sua sponte. Attorneys Trust v. Videotape Computer Prods., Inc.,
17 93 F.3d 593, 594-95 (9th Cir. 1996). "Nothing is to be more jealously guarded by a court
18 than its jurisdiction. Jurisdiction is what its power rests upon. Without jurisdiction it is
19 nothing." In re Mooney, 841 F.2d 1003, 1006 (9th Cir. 1988).

20 **1. Diversity Jurisdiction**

21 28 U.S.C. § 1332(a)(1) grants federal district courts original jurisdiction over civil
22 actions between "citizens of different States" where the amount in controversy exceeds
23 \$75,000. To show state citizenship for the purposes of the statute, a party must be a
24 citizen of the United States and be domiciled in the state. Kantor v. Wellesley Galleries,
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26 ¹ In this regard, the Court takes judicial notice of the following: Plaintiff filed a petition for writ of habeas
27 corpus in Krohe v. Lizarraga, No. 8:16-cv-131-JGB-KS (C.D. Cal.). That petition was dismissed as time-
28 barred. (ECF Nos. 16, 20 in Case No. No. 8:16-cv-131-JGB-KS.) On April 14, 2017, the Ninth Circuit
denied Plaintiff's request for a certificate of appealability. Krohe v. Lizarraga, No. 16-56983 (9th Cir. Apr.
14, 2017.) Petitioner's motion for reconsideration of that ruling remains pending in the Ninth Circuit.

1 Ltd., 704 F.2d 1088, 1090 (9th Cir. 1983).

2 Here, the amount in controversy is \$41,700. Even assuming that Plaintiff and
3 Defendants are citizens of different states, the amount in dispute is insufficient to confer
4 jurisdiction based on diversity of citizenship.

5 **2. Federal Question Jurisdiction**

6 Under federal question jurisdiction, district courts are authorized to exercise
7 original jurisdiction in "all civil actions arising under the Constitution, laws, or treaties of
8 the United States." 28 U.S.C. § 1331. A civil action can "arise under" federal law in two
9 ways. Gunn v. Minton, 568 U.S. 251, 256 (2013). Most directly, "a case arises under
10 federal law when federal law creates the cause of action asserted." Id. If, however, a
11 claim finds its origins in state rather than federal law, federal jurisdiction will lie only "if a
12 federal issue is: (1) necessarily raised, (2) actually disputed, (3) substantial, and (4)
13 capable of resolution in federal court without disrupting the federal-state balance
14 approved by Congress." Id.; see also Grable & Sons Metal Products, Inc. v. Darue Eng'g
15 & Mfg., 545 U.S. 308, 314 (2005).

16 Plaintiff's claim that he provided Defendant funds for a specific purpose and that
17 Defendant did not fulfill the agreement arises, if at all, under state law, as a breach of
18 contract or breach of fiduciary duty claim. He states no basis for federal jurisdiction
19 regarding and the Court finds none.

20 To the extent Plaintiff seeks to challenge a ruling on his petition for writ of habeas
21 corpus or the appeal thereof, he must pursue such issues in the Ninth Circuit Court of
22 Appeal..

23 Because the Court lacks jurisdiction over the claims, the undersigned will
24 recommend dismissal of the complaint.

25 **E. Leave to Amend**

26 In general, a pro se Plaintiff is entitled to leave to amend unless "it appears
27 beyond doubt that the plaintiff can prove no set of facts in support of his claim which
28

1 would entitle him to relief.” Franklin v. Murphy, 745 F.2d 1221, 1228 (9th Cir. 1984)
2 (citation omitted). “Valid reasons for denying leave to amend include undue delay, bad
3 faith, prejudice and futility.” Cal. Architectural Bldg. Prod. v. Franciscan Ceramics, 818
4 F.2d 1276, 1293 (9th Cir. 1983); Lockman Found. v. Evangelical Alliance Mission, 930
5 F.2d 764, 772 (9th Cir. 1991).

6 Plaintiff’s only claims in this action are potential state law contract or fiduciary
7 claims and an attack on the disposition of his habeas petition in the Ninth Circuit. The
8 Court can envision no facts that would confer jurisdiction on this Court in the
9 circumstances of this case. Leave to amend would be futile and should be denied.

10 **V. Conclusion and Order**

11 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 12 1. Case Nos. 1:17-cv-881-DAD-MJS, 1:17-cv-885-DAD-MJS, and 1:17-cv-
13 889-DAD-MJS be consolidated with the instant case and administratively
14 closed; and
- 15 2. Plaintiff’s complaint be dismissed without leave to amend for lack of
16 jurisdiction.

17 The findings and recommendation will be submitted to the United States District
18 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1).
19 Within fourteen (14) days after being served with the findings and recommendation,
20 Plaintiff may file written objections with the Court. The document should be captioned
21 “Objections to Magistrate Judge’s Findings and Recommendation.” Plaintiff is advised
22 that failure to file objections within the specified time may result in the waiver of rights on
23 appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v.
24 Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).
25 IT IS SO ORDERED.

26 Dated: July 31, 2017

27 /s/ Michael J. Long
28 UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER DAVID KROHE,
Plaintiff,
v.
ZANDRA STEINHARDT,
Defendant.

No. 1:17-cv-00878-DAD-MJS

LEAD CASE

ORDER:

(1) ADOPTING FINDINGS AND
RECOMMENDATIONS,

(2) CONSOLIDATING CASE NOS.
1:17-cv-00878-DAD-MJS,
1:17-cv-00881-DAD-MJS,
1:17-cv-00885-DAD-MJS, AND
1:17-cv-00889-DAD-MJS;

(3) ADMINISTRATIVELY CLOSING CASE
NOS.
1:17-cv-00881-DAD-MJS,
1:17-cv-00885-DAD-MJS, AND
1:17-cv-00889-DAD-MJS; AND

(4) DISMISSING PLAINTIFF'S COMPLAINT
WITHOUT LEAVE TO AMEND

(Doc. No. 16)

CHRISTOPHER D. KROHE,
Plaintiff,

v.

ZANDRA K. STEINHARDT,
Defendant.

No. 1:17-cv-00881-DAD-EPG

CHRISTOPHER D. KROHE,
Plaintiff,

v.

ZANDRA K. STEINHARDT,
Defendant.

No. 1:17-cv-00885-LJO-SKO

CHRISTOPHER D. KROHE,
Plaintiff,

v.

ZANDRA STEINHARDT,
Defendant.

No. 1:17-cv-00889-DAD-SKO

Plaintiff Christopher David Krohe proceeds *pro se* and *in forma pauperis* in this complaint against Zandra Steinhardt. (Doc. No. 1.) The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302 of the United States District Court for the Eastern District of California.

On August 1, 2017, the assigned magistrate judge screened plaintiff's complaint and recommended that: (1) Case Nos. 1:17-cv-00881-DAD-MJS, 1:17-cv-00885-DAD-MJS, and 1:17-cv-00889-DAD-MJS, be consolidated with the instant case and thereafter administratively closed; and (2) plaintiff's complaint, which is substantially identical to those in each of the other consolidated cases, be dismissed without leave to amend due to lack of jurisdiction. (Doc. No. 16.) On August 21, 2017, plaintiff filed objections. (Doc. No. 17.) In those objections, plaintiff

1 agrees that the cases should be consolidated but objects to the dismissal of his complaint.

2 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a
3 *de novo* review of this case. Having carefully reviewed the entire file, including plaintiff's
4 objections, the court finds the findings and recommendations to be supported by the record and
5 by proper analysis. Plaintiff's objections do not address the jurisdictional defects described in the
6 findings and recommendations, nor do they otherwise establish a basis for federal subject matter
7 jurisdiction.

8 Accordingly,

9 1. The August 1, 2017 findings and recommendations (Doc. No. 16) are adopted in full;

10 2. The following cases shall be consolidated:

11 1:17-cv-00878-DAD-MJS,

12 1:17-cv-00881-DAD-MJS,

13 1:17-cv-00885-DAD-MJS, and

14 1:17-cv-00889-DAD-MJS;

15 3. The Clerk of Court is directed to file a copy of this order in each of the above-
16 referenced consolidated cases;

17 4. The Clerk of Court is directed to administratively close Case Nos. 1:17-cv-00881-
18 DAD-MJS, 1:17-cv-00885-DAD-MJS, and 1:17-cv-00889-DAD-MJS;

19 5. Plaintiff's complaint is dismissed without leave to amend for lack of jurisdiction; and

20 6. The Clerk of Court is directed to terminate any pending motions and close this case.

21 IT IS SO ORDERED.

22 Dated: September 28, 2017

23 Dale A. Dray
UNITED STATES DISTRICT JUDGE

**Additional material
from this filing is
available in the
Clerk's Office.**