

NOT FOR PUBLICATION**FILED**

UNITED STATES COURT OF APPEALS

MAY 13 2020

FOR THE NINTH CIRCUIT

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

ARMIN ABAZARI, DPM, JD Candidate,

No. 19-55854

Plaintiff-Appellant,

D.C. No. 8:19-cv-01290-DMG-
FFM

v.

U.S. DEPARTMENT OF EDUCATION; et
al.,

MEMORANDUM*

Defendants-Appellees.

Appeal from the United States District Court
for the Central District of California
Dolly M. Gee, District Judge, Presiding

Submitted May 6, 2020**

Before: BERZON, N.R. SMITH, and MILLER, Circuit Judges.

Armin Abazari appeals pro se from the district court's order denying his motion to proceed in forma pauperis ("IFP") in his action alleging federal and state law claims related to his federal student loan debt. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion the denial of leave to proceed

* 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).

IFP, and de novo a determination that a complaint lacks arguable substance in law or fact. *Tripathi v. First Nat'l Bank & Tr.*, 821 F.2d 1368, 1369 (9th Cir. 1987).

We affirm.

The district court did not abuse its discretion by denying Abazari's motion to proceed IFP because Abazari either failed to allege facts in his proposed complaint sufficient to state a claim or the claims were frivolous. *See id.* at 1370 (district court may deny leave to proceed IFP "at the outset if it appears from the face of the proposed complaint that the action is frivolous or without merit"); *see also, e.g., United Bhd. of Carpenters & Joiners of Am., Local 610 v. Scott*, 463 U.S. 825, 828-29 (1983) (elements of 42 U.S.C. § 1985(3) claim); *Living Designs, Inc. v. E.I. Dupont de Nemours & Co.*, 431 F.3d 353, 361 (9th Cir. 2005) (elements of civil Racketeer Influenced and Corrupt Organizations Act claim).

We reject as meritless Abazari's contentions that the district judge was biased and violated his constitutional rights, and did not review the findings and recommendations de novo.

All pending motions and requests are denied.

AFFIRMED.

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ARMIN ABAZARI, et al.,

CASE NUMBER

SACV 19-1290 DMG (FFMx)

v.

PLAINTIFF(S)

UNITED STATES DEPARTMENT OF EDUCATION, et
al.,

ORDER RE REQUEST TO PROCEED
IN FORMA PAUPERIS

DEFENDANT(S)

IT IS ORDERED that the Request to Proceed *In Forma Pauperis* is hereby GRANTED.

Date

United States Magistrate Judge

IT IS RECOMMENDED that the Request to Proceed *In Forma Pauperis* be DENIED for the following reason(s):

- ☐ Inadequate showing of indigency
☒ Legally and/or factually patently frivolous
☒ Other: See attachment.

- ☒ District Court lacks jurisdiction
☒ Immunity as to See attachment.

Comments:

See attachment.

Date

United States Magistrate Judge

IT IS ORDERED that the Request to Proceed *In Forma Pauperis* is hereby:

- ☐ GRANTED
☒ DENIED (see comments above). IT IS FURTHER ORDERED that:
☐ Plaintiff SHALL PAY THE FILING FEES IN FULL within 30 days or this case will be dismissed.
☒ This case is hereby DISMISSED immediately.
☐ This case is hereby REMANDED to state court.

July 5, 2019
Date

United States District Judge

ATTACHMENT

Armin Abazari v. United States Department of Education, et al.

8:19-cv-01290 DMG (FFMx)

Plaintiff alleges that in order to (1) induce him to attend defendant Rosalind Franklin University of Medicine and Science ("RFUMS"); and (2) incur educational debt to do so, defendants made false statements bearing on plaintiff's ability to obtain employment in his chosen field after graduation. Plaintiff made the same or similar allegations against RFUMS and others in an Illinois state court action. His claims in that action were dismissed with prejudice. *See Abazari v. Rosalind Franklin University of Medicine and Science, et al.*, 40 N.E. 3d 264 (2015); *Abazari v. Rosalind Franklin University of Medicine and Science, et al.*, 2016 WL 6311338 (2016). Therefore, claim preclusion bars plaintiff's claims against RFUMS and its privities. Issue preclusion bars plaintiff's claims against all other defendants to the extent they are based on the same alleged false statements. As well, the *Rooker-Feldman* doctrine bars plaintiff's challenges to the judgment in the state court action.

Plaintiff's claims suffer from additional infirmities. He does not have a private right of action under the wire fraud, peonage, and involuntary servitude statutes; his peonage and involuntary servitude claims are frivolous, as are his allegations of conspiracy; the alleged wrongs do not implicate his constitutional rights; and the Eleventh Amendment bars his claims against the state of Illinois. Furthermore, the United States has not waived its sovereign immunity under the statutes in question, and it cannot be sued under the Federal Tort Claims Act for claims arising out of misrepresentation or deceit, 28 U.S.C. § 2680(h).

Finally, the foregoing deficiencies are not curable by amendment. Accordingly, leave to file *in forma pauperis* is denied and this action is dismissed.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ARMIN ABAZARI, et al.,

CASE NUMBER

SACV 19-1290 DMG (FFMx)

v.

PLAINTIFF(S)

UNITED STATES DEPARTMENT OF EDUCATION, et
al.,

DEFENDANT(S)

ORDER RE REQUEST TO PROCEED
IN FORMA PAUPERIS

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Date

United States Magistrate Judge

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- | | |
|---------------------------------------------------------------------------------|---------------------------------------------------------------------------|
| <input type="checkbox"/> Inadequate showing of indigency | <input checked="" type="checkbox"/> District Court lacks jurisdiction |
| <input checked="" type="checkbox"/> Legally and/or factually patently frivolous | <input checked="" type="checkbox"/> Immunity as to <u>See attachment.</u> |
| <input checked="" type="checkbox"/> Other: <u>See attachment.</u> | |

Comments:
See attachment.

July 3, 2019
Date

[Signature]
United States Magistrate Judge

IT IS ORDERED that the Request to Proceed *In Forma Pauperis* is hereby:

- ☐ GRANTED
- ☐ DENIED (see comments above). IT IS FURTHER ORDERED that:
- ☐ Plaintiff SHALL PAY THE FILING FEES IN FULL within 30 days or this case will be dismissed.
 - ☐ This case is hereby DISMISSED immediately.
 - ☐ This case is hereby REMANDED to state court.

Date

United States District Judge

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