

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAY 29 2019

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

IMMANUEL F. SANCHEZ,

Plaintiff-Appellant,

v.

STATE OF CALIFORNIA; et al.,

Defendants-Appellees.

No. 18-56153

D.C. No. 2:18-cv-06107-R-AFM
Central District of California,
Los Angeles

ORDER

Before: LEAVY, CALLAHAN, and BEA, Circuit Judges.

The district court certified that this appeal is not taken in good faith and has denied appellant leave to proceed on appeal in forma pauperis. *See* 28 U.S.C.

§ 1915(a). On February 15, 2019, the court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record and response to the court's February 15, 2019 order, we conclude this appeal is frivolous. We therefore deny appellant's motions to proceed in forma pauperis (Docket Entry Nos. 2 and 4) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

All other pending motions are denied as moot.

DISMISSED.

APPENDIX B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

IMMANUEL F. SANCHEZ,

CASE NUMBER

CV 18-6107 R (AFM)

PLAINTIFF(S)

v.

STATE OF CALIFORNIA, et al.,

DEFENDANT(S)

ORDER RE REQUEST TO PROCEED
IN FORMA PAUPERIS

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

☒ District Court lacks jurisdiction

☐ Legally and/or factually patently frivolous

☐ Immunity as to

☒ Other: Fails to state a federal claim on which relief may be granted

Comments:

July 20, 2018

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:

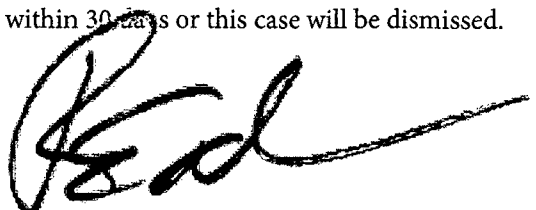
☐ Plaintiff SHALL PAY THE FILING FEES IN FULL within 30 days or this case will be dismissed.

☒ This case is hereby DISMISSED immediately.

☐ This case is hereby REMANDED to state court.

July 26, 2018

Date



United States District Judge

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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 **IMMANUEL F. SANCHEZ,**

12 **Plaintiff,**

13 **v.**

14 **STATE OF CALIFORNIA, et al.,**

15 **Defendants.**
16

Case No. CV 18-06107 R (AFM)

**ORDER (1) DENYING REQUEST
TO PROCEED IN FORMA
PAUPERIS AND (2) DISMISSING
COMPLAINT FOR LACK OF
SUBJECT MATTER
JURISDICTION**

17
18 Plaintiff seeks leave to proceed *in forma pauperis* in a civil rights action. In
19 accordance with the mandate of the Prison Litigation Reform Act of 1995, the
20 Court has screened the Complaint to determine whether the action is frivolous or
21 malicious; or fails to state a claim on which relief may be granted; or seeks
22 monetary relief against a defendant who is immune from such relief. *See* 28 U.S.C.
23 § 1915(e)(2); *Lopez v. Smith*, 203 F.3d 1122, 1127 n.7 (9th Cir. 2000) (“section
24 1915(e) applies to all *in forma pauperis* complaints” and district courts should
25 “dismiss a complaint that fails to state a claim upon which relief may be granted”)
26 (en banc). After careful review, the Court finds that the Complaint, to the extent
27 that it purports to raise any federal civil rights claims, lacks an arguable basis in
28 either fact or law. In addition, plaintiff’s factual allegations fall far short of raising

1 a purported right to relief on any federal claim beyond the speculative level. *See*
2 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Accordingly, it fails to
3 state a federal claim on which relief may be granted against any named defendant.
4 *See Denton v. Hernandez*, 504 U.S. 25, 32-33 (1992); *Neitzke v. Williams*, 490 U.S.
5 319, 325 (1989).

6 To the extent that the Court can discern the claims purportedly raised in the
7 62-page Complaint, it appears plaintiff is contending that he was wrongfully denied
8 medical care under state law. Plaintiff names as defendants the State of California
9 and the state Department of Social Services, but the Eleventh Amendment bars
10 plaintiff from suing the State or its agencies in federal court. (ECF No. 1 at 5.) The
11 Eleventh Amendment bars federal jurisdiction over suits by individuals against a
12 State and its instrumentalities, unless either the State consents to waive its
13 sovereign immunity or Congress abrogates it. *Pennhurst State School & Hosp. v.*
14 *Halderman*, 465 U.S. 89, 99-100 (1984). In addition, “the eleventh amendment
15 bars actions against state officers sued in their official capacities for past alleged
16 misconduct involving a complainant’s federally protected rights, where the nature
17 of the relief sought is retroactive, i.e., money damages.” *Bair v. Krug*, 853 F.2d
18 672, 675 (9th Cir. 1988). To overcome this Eleventh Amendment bar, the State’s
19 consent or Congress’ intent must be “unequivocally expressed.” *Pennhurst*, 465
20 U.S. at 99. While California has consented to be sued in its own courts pursuant to
21 the California Tort Claims Act, such consent does not constitute consent to suit in
22 federal court. *See BV Engineering v. Univ. of Calif., Los Angeles*, 858 F.2d 1394,
23 1396 (9th Cir. 1988). Finally, Congress has not repealed state sovereign immunity
24 against suits brought under 42 U.S.C. § 1983.

25 In addition, plaintiff names as defendants many individuals and entities that
26 appear to be private health care providers. In order to state a federal civil rights
27 claim, however, plaintiff must allege that a specific defendant, while acting under
28 color of state law, deprived him of a right guaranteed under the Constitution or a

1 federal statute. *See West v. Atkins*, 487 U.S. 42, 48 (1988). “Section 1983 liability
2 extends to a private party where the private party engaged in state action under
3 color of law and thereby deprived a plaintiff of some right, privilege, or immunity
4 protected by the Constitution or the laws of the United States.” *Brunette v. Humane*
5 *Society of Ventura County*, 294 F.3d 1205, 1209 (9th Cir. 2002). Plaintiff’s
6 Complaint appears to allege largely that private entities or individuals failed to
7 provide adequate health care. Accepting reimbursements from the Medi-Cal
8 program is not a contract to provide health care to plaintiff that could give rise to a
9 federal constitutional claim. *See, e.g., Marquez v. Dep’t of Health Care Services*,
10 240 Cal. App. 4th 87, 93-94 (2015) (the Medi-Cal program does not directly
11 provide medical services, but reimburses providers for services). Similarly, to the
12 extent that plaintiff names any employee of the University of Southern California as
13 a defendant (*see* ECF No. 1 at 9-10), employees of a private university also do not
14 act under color of state law. Nothing in the Complaint plausibly suggests that the
15 private defendants engaged in state action under color of law. Plaintiff’s factual
16 allegations appear to give rise only to claims under state law such as medical
17 malpractice or fraud. *See, e.g., DeGrassi v. City of Glendora*, 207 F.3d 636, 647
18 (9th Cir. 2000) (a “bare allegation” that a private person acted jointly with state
19 officials is insufficient to state a claim under § 1983).

20 Plaintiff also names as a defendant the County of Los Angeles (“County”)
21 (ECF No. 1 at 6) and an individual who appears to be an employee of the County,
22 Lightbourne, who is alleged to be a director of some type of “social services.” (*Id.*)
23 A local government entity such as the County “may not be sued under § 1983 for an
24 injury inflicted solely by its employees or agents. Instead, it is when execution of a
25 government’s policy or custom, whether made by its lawmakers or by those whose
26 edicts or acts may fairly be said to represent official policy, inflicts the injury that
27 the government as an entity is responsible under § 1983.” *Monell v. Dep’t of Social*
28 *Servs. of City of New York*, 436 U.S. 658, 694 (1978); *see also Connick v.*

1 *Thompson*, 563 U.S. 51, 60 (2011) (“local governments are responsible only for
2 their own illegal acts”). The Complaint fails to set forth any factual allegations that
3 a specific policy or custom promulgated by the County was the “actionable cause”
4 of a specific constitutional violation. *See Tsao v. Desert Palace, Inc.*, 698 F.3d
5 1128, 1146 (9th Cir. 2012) (“Under *Monell*, a plaintiff must also show that the
6 policy at issue was the ‘actionable cause’ of the constitutional violation, which
7 requires showing both but for and proximate causation.”). Further, to the extent
8 that plaintiff purports to raise a federal claim against defendant Lightbourne,
9 plaintiff only alleges that this defendant is “responsible for maintaining the
10 operations of the Department of Social Services.” (ECF No. 1 at 6, 13.)
11 “Government officials may not be held liable for the unconstitutional conduct of
12 their subordinates under a theory of respondeat superior.” *Ashcroft v. Iqbal*, 556
13 U.S. 662, 676 (2009). To state a federal civil rights claim against a state or local
14 government official, plaintiff must allege that each defendant “through the official’s
15 own individual actions, has violated the Constitution.” *Id.* at 676-77 (“each
16 Government official, his or her title notwithstanding, is only liable for his or her
17 own misconduct”).

18 In his Claim 3, plaintiff references “deliberate indifference,” (ECF No. 1 at
19 21), but if he is intending to raise a claim for deliberate indifference to a serious
20 medical need under the Eighth Amendment, that Amendment only applies to
21 medical services in a prison context. Plaintiff does not appear to have been a prison
22 inmate at the relevant times. *See, e.g., Bell v. Wolfish*, 441 U.S. 520, 537 n.16
23 (1979) (“Eighth Amendment scrutiny is appropriate only after the State has
24 complied with the constitutional guarantees traditionally associated with criminal
25 prosecutions”).

26 Plaintiff also purports to raise an unspecified federal claim pursuant to the
27 Fourteenth Amendment (ECF No. 1 at 25), and a claim for conspiracy pursuant to
28 Section 1983. However, plaintiff fails to allege that any specific state actors had a

1 “meeting of the minds” to deprive him of a federally protected right (*id.* at 26), and
2 his allegations fail to give rise to a plausible federal claim. *See, e.g., Crowe v.*
3 *County of San Diego*, 608 F.3d 406, 440 (9th Cir. 2010) (quoting *Mendocino Envtl.*
4 *Ctr. v. Mendocino County*, 192 F.3d 1283, 1301 (9th Cir. 1999)) (To prove a
5 conspiracy under §1983, plaintiff must “demonstrate the existence of an agreement
6 or meeting of the minds to violate constitutional rights”). Similarly, neither the
7 Fourteenth Amendment nor any other part of the United States Constitution
8 provides a “fundamental right to health care.” (ECF No. 1 at 29.) Plaintiff’s
9 reliance on *Brown v. Plata*, 563 U.S. 493, 510-11 (2011) (*id.* at 32), is misplaced
10 because that case addresses health care issues within a state prison system, but
11 plaintiff is not alleging the deprivation of health care while incarcerated.

12 Plaintiff’s purported claim under the First Amendment is frivolous because it
13 appears to arise from a practice of the State of “taking medically [sic] indigent
14 citizens or Medi-Cal beneficiaries to mind control rooms” (ECF No. 1 at 47), an
15 allegation which is fanciful, irrational or wholly incredible. *Denton*, 504 U.S. at
16 32-33. Further, to the extent that plaintiff is purporting to raise an equal protection
17 claim under the Fourteenth Amendment, it is clear that discrimination on the basis
18 of indigency does not give rise to a federal equal protection claim. *See, e.g., Harris*
19 *v. McRae*, 448 U.S. 297, 323 (1980) (this Court has repeatedly held that poverty,
20 standing alone, is not a suspect classification under the Equal Protection Clause).
21 Plaintiff claims that the State “invidiously discriminates against plaintiff because of
22 his poverty,” but this does not give rise to a claim under the federal Equal
23 Protection Clause. (ECF No. 1 at 54.)

24 Finally, to the extent that plaintiff purports to raise a claim under the
25 Racketeering Influenced and Corrupt Organizations Act (“RICO”), (EFC No. 1 at
26 56-61), that statute is intended to address organized crime and requires specific
27 factual allegations that specific defendants engaged in crimes that are defined to
28 constitute racketeering activity, and that the alleged conduct directly and

1 proximately caused plaintiff's alleged injury. *See Resolution Trust Corp. v.*
2 *Keating*, 186 F.3d 1110, 1117 (9th Cir. 1999); *Oscar v. University Students Coop.*
3 *Ass'n*, 965 F.2d 783, 786 (9th Cir. 1992) (en banc) (Congress enacted RICO "to
4 combat organized crime"), *abrogated on other grounds by Diaz v. Gates*, 420 F.3d
5 897 (9th Cir. 2005); 18 U.S.C. § 1961(1). No factual allegations of this nature are
6 found in the Complaint.

7 Accordingly, plaintiff's factual allegations lack an arguable basis in fact or
8 law to assert a federal civil rights claim and, more generally, are insufficient to state
9 a federal claim upon which relief may be granted against the named defendants.

10 Further, federal courts are courts of limited jurisdiction, and have subject
11 matter jurisdiction only over matters authorized by the Constitution and Congress.
12 *See, e.g., Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994). It is this
13 Court's duty to examine its own subject matter jurisdiction, *see Arbaugh v. Y&H*
14 *Corp.*, 546 U.S. 500, 514 (2006), and the Court may dismiss a case summarily if
15 there is an obvious jurisdictional issue. *See Scholastic Entm't, Inc. v. Fox Entm't*
16 *Grp., Inc.*, 336 F.3d 982, 985 (9th Cir. 2003). Subject matter jurisdiction exists
17 over civil actions "arising under" federal law. 28 U.S.C. § 1331. A claim arises
18 under federal law "when a federal question is presented on the face of plaintiff's
19 properly pleaded complaint." *See Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392
20 (1987). "Absent a substantial federal question," a district court lacks subject matter
21 jurisdiction, and claims that are "wholly insubstantial" are insufficient to "raise a
22 substantial federal question for jurisdictional purposes." *Shapiro v. McManus*, 136
23 S. Ct. 450, 455-56 (2015); *Bailey v. Patterson*, 369 U.S. 31, 33 (1962). As
24 discussed above, plaintiff's factual allegations fail to plausibly allege that any
25 named defendant acted under color of state law to deprive him of a right guaranteed
26 under the Constitution or a federal statute. To the extent that plaintiff's allegations
27 give rise to any state law claims, no federal question is sufficiently alleged on the
28 face of the Complaint, and plaintiff has made no allegations of diversity jurisdiction

1 under 28 U.S.C. § 1332. Therefore, the Court concludes that it lacks subject matter
2 jurisdiction over any state law claims alleged in the Complaint.

3 IT THEREFORE IS ORDERED that the Request to Proceed Without
4 Prepayment of Filing Fees is denied, and the Complaint in this action is dismissed
5 without prejudice.

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7 DATED: July 26, 2018

A handwritten signature in black ink, appearing to read 'M. Real', is written over a horizontal line.

MANUEL L. REAL
UNITED STATES DISTRICT JUDGE

APPENDIX C

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

IMMANUEL F. SANCHEZ

PLAINTIFF(S)

v.

STATE OF CALIFORNIA , et al.

DEFENDANT(S).

CASE NUMBER:

2:18-cv-06107-R-AFM

**NOTICE OF JUDGE ASSIGNMENT AND
REFERENCE TO A UNITED STATES
MAGISTRATE JUDGE**

This case has been assigned to the calendar of the Honorable Judge Manuel L. Real U. S. District Judge, and referred to U. S. Magistrate Judge Alexander F. MacKinnon, who is authorized to consider preliminary matters and conduct all further hearings as may be appropriate or necessary. Thereafter, unless the Magistrate Judge determines that a trial is required, the Magistrate Judge shall prepare and file a report and recommendation regarding the disposition of this case, which may include proposed findings of fact, conclusions of law, and proposed written order or judgment, which shall be served on all parties. If the Magistrate Judge concludes that a trial is required, the Magistrate Judge shall so report to the District Judge.

Pursuant to Local Rule 5-4.1, all subsequent documents in this case must be filed electronically, unless exempted by Local Rule 5-4.2. Documents exempt from electronic filing pursuant to Local Rule 5-4.2(b), or presented by filer exempt from electronic filing pursuant to Local Rule 5-4.2(a), must be filed with the Clerk in paper at the following location:

Western Division
255 East Temple Street, Suite TS-134
Los Angeles, CA 90012

Please note that, pursuant to Local Rule 83-2.5, all matters must be called to the judge's attention by appropriate application or motion filed in compliance with the Court's Local Rules. Parties are not permitted to write letters to the judge.

Local Rule 83-2.4 requires that the Court must be notified within five (5) days of any address change. If mail directed by the clerk to your address of record is returned undelivered by the Post Office, and if the Court and opposing counsel are not notified in writing within five (5) days thereafter of your current address, the Court may dismiss the petition, with or without prejudice, for want of prosecution.

Clerk, U.S. District Court

July 13, 2018
Date

By /s/ Estrella Tamayo
Deputy Clerk

NOTICE TO COUNSEL / PRO SE LITIGANT

*The party who filed the case-initiating document in this case must serve a copy of this Notice
on all parties served with the case-initiating document.*

APPENDIX D



Office of the Clerk
United States Court of Appeals for the Ninth Circuit
Post Office Box 193939
San Francisco, California 94119-3939
415-355-8000

Molly C. Dwyer
Clerk of Court

August 28, 2018

No.: 18-56153
D.C. No.: 2:18-cv-06107-R-AFM
Short Title: Immanuel Sanchez v. State of California, et al

Dear Appellant/Counsel

A copy of your notice of appeal/petition has been received in the Clerk's office of the United States Court of Appeals for the Ninth Circuit. The U.S. Court of Appeals docket number shown above has been assigned to this case. You must indicate this Court of Appeals docket number whenever you communicate with this court regarding this case.

Please furnish this docket number immediately to the court reporter if you place an order, or have placed an order, for portions of the trial transcripts. The court reporter will need this docket number when communicating with this court.

The due dates for filing the parties' briefs and otherwise perfecting the appeal have been set by the enclosed "Time Schedule Order," pursuant to applicable FRAP rules. These dates can be extended only by court order. Failure of the appellant to comply with the time schedule order will result in automatic dismissal of the appeal. 9th Cir. R. 42-1.

Payment of the \$505 docketing and filing fees is past due. Failure to correct this deficiency **within 14 days** will result in the dismissal of this case for failure to prosecute. See 9th Cir. R. 42-1. The fee is payable to the District Court.

Appellants who are filing pro se should refer to the accompanying information sheet regarding the filing of informal briefs.

APPENDIX E

MIME-Version:1.0 From:cacd_ecfmail@cacd.uscourts.gov To:ecfnf@cacd.uscourts.gov
Message-Id:<26262032@cacd.uscourts.gov>Subject:Activity in Case 2:18-cv-06107-R-AFM
Immanuel F. Sanchez v. State of California et al Text Only Scheduling Notice Content-Type: text/html

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Notice of Electronic Filing

The following transaction was entered on 9/13/2018 at 12:04 PM PDT and filed on 9/13/2018

Case Name: Immanuel F. Sanchez v. State of California et al

Case Number: 2:18-cv-06107-R-AFM

Filer:

WARNING: CASE CLOSED on 07/26/2018

Document Number: 12(No document attached)

Docket Text:

TEXT ONLY REFERRAL RE: PLAINTIFF'S MOTION TO APPEAL IN FORMA PAUPERIS (DKT. NO. 9) by Judge Manuel L. Real. The Court hereby refers Plaintiff Immanuel F. Sanchez' Motion to Appeal in Forma Pauperis (Dkt. No. [9]) to Magistrate Judge Alexander F. MacKinnon for a recommendation. IT IS SO ORDERED. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (cch) TEXT ONLY ENTRY

2:18-cv-06107-R-AFM Notice has been electronically mailed to:

2:18-cv-06107-R-AFM Notice has been delivered by First Class U. S. Mail or by other means BY THE FILER to :

Immanuel F. Sanchez
1345 N. Watland Avenue
Los Angeles, CA 90063

APPENDIX F

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. **CV 18-06107 R (AFM)**

Date: **September 20, 2018**

Title **Immanuel F. Sanchez v. State of California, et al.**

Present: The Honorable: **ALEXANDER F. MacKINNON, U.S. Magistrate Judge**

Ilene Bernal
Deputy Clerk

N/A
Court Reporter / Recorder

Attorneys Present for Plaintiff:
N/A

Attorneys Present for Defendants:
N/A

**Proceedings (In Chambers): Motion to Appeal In Forma Pauperis and Notice of
Constitutional Challenge to Federal Statute to a Magistrate
Judge (Filed September 17, 2018)**

The hearing on Plaintiff's Motion to Appeal In Forma Pauperis and Notice of Constitutional Challenge to Federal Statute to A Magistrate Judge noticed for October 2, 2018, is **TAKEN OFF CALENDAR. No appearance is necessary.** Local Rule 7-15. The Motion shall stand submitted.

IT IS SO ORDERED.

Initials of Preparer

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ib

APPENDIX G

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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 **IMMANUEL F. SANCHEZ,**

12 **Plaintiff,**

13 **v.**

14 **THE STATE OF CALIFORNIA, *et al.*,**

15 **Defendants.**
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Case No. CV 18-06107 R (AFM)

**ORDER CERTIFYING APPEAL IS
NOT TAKEN IN GOOD FAITH**

18 This closed federal civil rights action, which is currently on appeal, was filed
19 pro se by plaintiff, who also requested to proceed in forma pauperis ("IFP"). In an
20 order dated July 26, 2018, the Court denied plaintiff's request to proceed IFP and
21 dismissed plaintiff's claims without leave to amend and without prejudice because
22 there was no federal subject matter jurisdiction over the claims asserted in the
23 complaint. Plaintiff filed a notice of appeal on August 24, 2018 and filed a motion
24 to appeal in forma pauperis on the same date.

25 In his Complaint, plaintiff contends that he was wrongfully denied medical
26 care under state law. He names as defendants the State of California and the state
27 Department of Social Services, as well as many individuals and entities that appear
28 to be private health care providers. This Court's dismissal order analyzed each of

1 the claims in the complaint and concluded that plaintiff's factual allegations lacked
2 an arguable basis in fact or law to assert a federal civil rights claim against the
3 named defendants. The order concluded that even if the complaint could be read to
4 allege a cause of action under state law, no federal question was alleged on the face
5 of the Complaint, and plaintiff made no allegations of diversity jurisdiction under
6 28 U.S.C. § 1332. Accordingly, the Court dismissed the complaint for lack of
7 subject matter jurisdiction.

8 Rule 24(a)(3) of the Federal Rules of Appellate Procedure provides that a
9 party granted leave to proceed IFP in district court may continue in that status on
10 appeal unless the district court certifies that the appeal is not taken in good faith.
11 Here, plaintiff was not granted IFP status, so this is not a question of continuing his
12 status on appeal. Nevertheless, 28 U.S.C. § 1915(a)(3) provides that an appeal may
13 not be taken IFP if the district court certifies it is not taken in good faith. "Not
14 taken in good faith" means "frivolous." *Ellis v. United States*, 356 U.S. 674, 674-
15 75 (1958); *Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002). The
16 "good faith" test does not require a preliminary showing of any particular degree of
17 merit. In the absence of some evident improper motive, the appellant's good faith
18 is established by the presentation of any issue on appeal that is not plainly
19 "frivolous." *Farley v. United States*, 354 U.S. 521, 522-23 (1957); *Gardner v.*
20 *Pogue*, 558 F.2d 548, 551 (9th Cir. 1977).

21 Here, in his motion to appeal IFP, plaintiff presents a number of issues that
22 he intends to raise on appeal, arguing that his complaint should not have been
23 dismissed on screening without a hearing, that he has asserted valid causes of
24 action, and that the Prison Litigation Reform Act of 1995 (PLRA) is
25 unconstitutional.

26 It is this Court's duty to examine its own subject matter jurisdiction, *see*
27 *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006), and the Court may dismiss a
28 case summarily if there is an obvious jurisdictional defect. *See Scholastic Entm't,*

1 *Inc. v. Fox Entm't Grp., Inc.*, 336 F.3d 982, 985 (9th Cir. 2003). Notably, plaintiff's
2 motion does not challenge this law regarding jurisdiction and does not suggest how
3 his complaint properly invoked federal subject matter jurisdiction – which was the
4 fundamental basis for the dismissal order. Although Plaintiff challenges the
5 Court's screening of his complaint under 28 U.S.C. 1915(e)(2), that statute provides
6 the court “shall dismiss the case at any time if the court determines that the
7 action . . . fails to state a claim upon which relief may be granted.” Thus, this Court
8 was obligated to comply with 28 U.S.C. § 1915(e)(2). *See, e.g., Shirley v. Univ. of*
9 *Idaho*, 800 F.3d 1193 (9th Cir. 2015) (citing 28 U.S.C. § 1915(e)(2)(B) and noting
10 that a “district court shall screen and dismiss an action filed by a plaintiff
11 proceeding in forma pauperis”); *Lopez v. Smith*, 203 F.3d 1122, 1127, n.7 (9th Cir.
12 2000) (“section 1915(e) applies to all *in forma pauperis* complaints” and directs
13 “district courts to dismiss a complaint that fails to state a claim upon which relief
14 may be granted”) (en banc); *Porto v. Farris*, 2016 WL 96138, at *1 (C.D. Cal. Jan.
15 8, 2016), *aff'd*, 698 F. App'x 393 (9th Cir. 2017). Such screening is necessary
16 because a party proceeding *in forma pauperis*, in the absence of an obligation to
17 pay a filing fee, is “immune from the economic deterrents to filing frivolous
18 lawsuits.” *Franklin v. Murphy*, 745 F.2d 1221, 1226 (9th Cir. 1984). Further, the
19 same standards apply to the Court's screening pursuant to 28 U.S.C. § 1915(e)(2) as
20 would apply to a defendant's motion to dismiss had plaintiff paid the required filing
21 fee and served his pleading without screening. *See Rosati v. Igbinoso*, 791 F.3d
22 1037, 1039 (9th Cir. 2015) (in determining whether a complaint should be
23 dismissed under 28 U.S.C. § 1915(e)(2)(B), courts apply the standard of Fed. R.
24 Civ. P. 12(b)(6)). As to plaintiff's challenge to the PLRA, the Ninth Circuit and
25 several other circuits have held that provisions of this statute are constitutional¹, and
26

27 ¹ *See Taylor v. Delatoore*, 281 F.3d 844, 847-48 (9th Cir. 2002); *Tucker v.*
28 *Branker*, 142 F.3d 1294, 1299, 1301 (D.C. Cir. 1998); *Lucien v. DeTella*, 141 F.3d

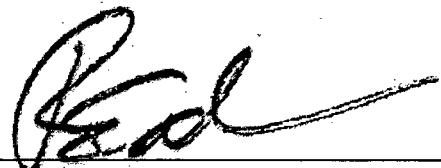
1 even if the challenge to the statute were assumed to be non-frivolous, it would not
2 affect the Court's conclusion that the complaint plainly fails to allege claims over
3 which there is federal subject matter jurisdiction.

4 Because the Court's application of the PLRA and its finding of lack of
5 subject matter jurisdiction were required by controlling authority, it is certified that
6 this appeal is frivolous. Therefore, any IFP appeal from this Order would not be
7 taken "in good faith" pursuant to 28 U.S.C. § 1915(a)(3).

8 The Clerk of the Court shall forthwith notify Plaintiff and the Court of
9 Appeals of this Order. *See* Fed. R. App. P. 24(a)(4).

10 IT IS SO ORDERED.

11 DATED: September 25, 2018



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MANUEL L. REAL
UNITED STATES DISTRICT JUDGE

773, 775-76 (7th Cir. 1998); *Shabazz v. Parsons*, 127 F.3d 1246, 1248-49 (10th
Cir. 1997); *Norton v. Dimazana*, 122 F.3d 286, 289-91 (5th Cir. 1997); *Nicholas v.*
Tucker, 114 F.3d 17, 20-21 (2d Cir. 1997); *Mitchell v. Farcass*, 112 F.3d 1483,
1489-90 (11th Cir. 1997); *Roller v. Gunn*, 107 F.3d 227, 230-34 (4th Cir. 1997);
Hampton v. Hobbs, 106 F.3d 1281, 1284-88 (6th Cir. 1997).

APPENDIX H



United States District Court
Central District of California
Office of the Clerk

Cristina M. Squieri Bullock
Chief Deputy of Administration
350 West 1st Street, Suite 4311
Los Angeles, CA 90012

Kiry K. Gray
District Court Executive / Clerk of Court
350 West 1st Street, Suite 4311
Los Angeles, CA 90012

Sara Tse Soo Hoo
Chief Deputy of Operations
255 East Temple Street, Suite TS-134
Los Angeles, CA 90012

September 27, 2018

Immanuel F. Sanchez
1345 N. Watland Avenue
Los Angeles, CA 90063

Re: Case Number: 2:18-cv-06107-R-AFM

Case Title: Immanuel F. Sanchez v. State of California et al

Dear Immanuel F. Sanchez :

The Court is in receipt of the Notice of Appeal you filed in the matter indicated above. Please be advised that, pursuant to Rule 3(e) of the Federal Rules of Appellate Procedure, 28 U.S.C. § 1917, and the Court of Appeals Miscellaneous Fee Schedule issued in accordance with 28 U.S.C. § 1913, a \$5.00 filing fee and a \$500.00 docketing fee are due upon the filing of a Notice of Appeal.

Please immediately remit a cashier's check, certified bank check, business or corporate check, or money order drawn on a major American bank or on the United States Postal Service, payable to *Clerk, U.S. District Court*, in the amount of \$505.00. The Clerk's Office will also accept credit cards (Mastercard/ Visa, Discover, American Express) for filing fees and miscellaneous fees. Credit card payments may be made at all payment windows where receipts are issued.

If you are attempting to proceed in forma pauperis, you should complete Form A-18 (Motion and Affidavit for Leave to Appeal in Forma Pauperis) and file it with this Court under the case number given above. Court forms are available on the court's website at www.cacd.uscourts.gov.

Sincerely,

Clerk, U.S. District Court

By Martha Torres 213 894 3570

Deputy Clerk

APPENDIX I

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF DOCUMENT DISCREPANCIES

To: ☐ U.S. District Judge / ☒ U.S. Magistrate Judge _____
From: R. Smith, Deputy Clerk Date Received: 09/28/2018
Case No.: 2:18-cv-06107-R-AFM Case Title: Immanuel F. Sanchez v. State of CA, et al
Document Entitled: NOTICE OF MAJOR FRAUD AGAINST THE COURT AND PLAINTIFF

Upon the submission of the attached document(s), it was noted that the following discrepancies exist:

- | | |
|--|---|
| <input type="checkbox"/> Local Rule 5-4.1 | Documents must be filed electronically |
| <input type="checkbox"/> Local Rule 6-1 | Written notice of motion lacking or timeliness of notice incorrect |
| <input type="checkbox"/> Local Rule 7-19.1 | Notice to other parties of ex parte application lacking |
| <input type="checkbox"/> Local Rule 7.1-1 | No Certification of Interested Parties and/or no copies |
| <input type="checkbox"/> Local Rule 11-3.1 | Document not legible |
| <input type="checkbox"/> Local Rule 11-3.8 | Lacking name, address, phone, facsimile numbers, and e-mail address |
| <input type="checkbox"/> Local Rule 11-4.1 | No copy provided for judge |
| <input type="checkbox"/> Local Rule 11-6 | Memorandum/brief exceeds 25 pages |
| <input type="checkbox"/> Local Rule 11-8 | Memorandum/brief exceeding 10 pages shall contain table of contents |
| <input type="checkbox"/> Local Rule 15-1 | Proposed amended pleading not under separate cover |
| <input type="checkbox"/> Local Rule 16-7 | Pretrial conference order not signed by all counsel |
| <input type="checkbox"/> Local Rule 19-1 | Complaint/Petition includes more than 10 Does or fictitiously named parties |
| <input type="checkbox"/> Local Rule 56-1 | Statement of uncontroverted facts and/or proposed judgment lacking |
| <input type="checkbox"/> Local Rule 56-2 | Statement of genuine disputes of material fact lacking |
| <input type="checkbox"/> Local Rule 83-2.5 | No letters to the judge |
| <input type="checkbox"/> Fed. R. Civ. P. 5 | No proof of service attached to document(s) |
| <input checked="" type="checkbox"/> Other: | <u>Case was terminated on 07/26/2018. Judicial review required.</u> |

Please refer to the Court's website at www.cacd.uscourts.gov for Local Rules, General Orders, and applicable forms.

ORDER OF THE JUDGE/MAGISTRATE JUDGE

IT IS HEREBY ORDERED:

- ☐ The document is to be filed and processed. The filing date is ORDERED to be the date the document was stamped "received but not filed" with the Clerk. Counsel* is advised that any further failure to comply with the Local Rules may lead to penalties pursuant to Local Rule 83-7.

Date

U.S. District Judge / U.S. Magistrate Judge

- ☒ The document is NOT to be filed, but instead REJECTED, and is ORDERED returned to counsel.* Counsel* shall immediately notify, in writing, all parties previously served with the attached documents that said documents have not been filed with the Court.

10-2-2018

Date

U.S. District Judge / U.S. Magistrate Judge

* The term "counsel" as used herein also includes any pro se party. See Local Rule 1-3.

COPY 1 - ORIGINAL-OFFICE

COPY 2 - JUDGE

COPY 3 - SIGNED & RETURNED TO FILER

COPY 4 - FILER RECEIPT

APPENDIX J

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

OCT 3 2019

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

IMMANUEL F. SANCHEZ,

Plaintiff-Appellant,

v.

STATE OF CALIFORNIA; et al.,

Defendants-Appellees.

No. 18-56153

D.C. No. 2:18-cv-06107-R-AFM
Central District of California,
Los Angeles

ORDER

Before: LEAVY, CALLAHAN, and BEA, Circuit Judges.

Appellant has filed a combined motion for reconsideration and motion for reconsideration en banc (Docket Entry No. 8).

The motion for reconsideration is denied and the motion for reconsideration en banc is denied on behalf of the court. *See* 9th Cir. R. 27-10; 9th Cir. Gen. Ord. 6.11.

No further filings will be entertained in this closed case.