

No. _____

SUPREME COURT OF THE UNITED STATES

William D. Bush,

Petitioner,

vs.

State of California,

Respondent.

On Petition for a Writ of Certiorari to

the United States Court of Appeals

Ninth Circuit

APPENDIX A

William David Bush

Constitutional Class Advocate

Citizenry of USA,

Resident of California.

Address: 240 West St. Sebastopol,

California, 95472 U.S.A.

E-mail: williamdbush@gmail.com

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUN 24 2020

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

WILLIAM DAVID BUSH,

Plaintiff - Appellant,

v.

STATE OF CALIFORNIA and
SUNDRAI R. MASE, County of
Sonoma Health Officer,

Defendants - Appellees.

No. 20-16200

D.C. No. 3:20-cv-02821-RS

U.S. District Court for Northern
California, San Francisco

REFERRAL NOTICE

This matter is referred to the district court for the limited purpose of determining whether in forma pauperis status should continue for this appeal or whether the appeal is frivolous or taken in bad faith. *See* 28 U.S.C. § 1915(a)(3); *see also* *Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002) (revocation of forma pauperis status is appropriate where district court finds the appeal to be frivolous).

If the district court elects to revoke in forma pauperis status, the district court is requested to notify this court and the parties of such determination within 21 days of the date of this referral. If the district court does not revoke in forma pauperis status, such status will continue automatically for this appeal pursuant to Fed. R. App. P. 24(a).

This referral shall not affect the briefing schedule previously established by this court.

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APPENDIX B

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Constitutional Class Advocate

Citizenry of USA,

Resident of California.

Address: 240 West St. Sebastopol,

California, 95472 U.S.A.

E-mail: williamdbush@gmail.com

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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WILLIAM DAVID BUSH,
Plaintiff,

9

v.

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STATE OF CALIFORNIA, et al.,
Defendants.

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Case No. 20-cv-02821-RS

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

Plaintiff William David Bush filed this action in pro se, with an application for *in forma pauperis* (IFP) status. The complaint, and an accompanying application for preliminary injunctive relief, challenge Sonoma County's power to impose a requirement that facial coverings be worn in public and the validity of an underlying provision of the California Health and Safety Code. The magistrate judge to whom the action was randomly assigned upon filing granted the IFP application, but issued a Report and Recommendation that the complaint be dismissed with leave to amend and for injunctive relief to be denied without prejudice. The matter was then reassigned for disposition.

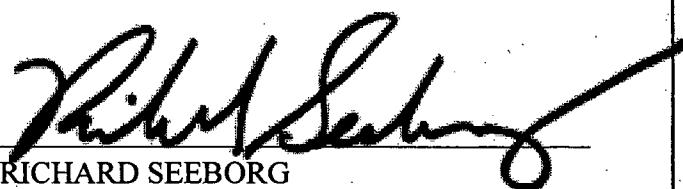
The Report and Recommendation explains why the complaint fails to state a claim and must be dismissed. No objections to the Report and Recommendation have been submitted, and the time for doing so has expired. Accordingly, the Report and Recommendation is hereby adopted in full. If Bush intends to pursue this matter, he must file an amended complaint no later than June 19, 2020. If no amended complaint is filed, the action will be dismissed without further

United States District Court
Northern District of California

1 notice.
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IT IS SO ORDERED.

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5 Dated: May 28, 2020
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RICHARD SEEBORG
United States District Judge

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WILLIAM DAVID BUSH,
Plaintiff,
v.
STATE OF CALIFORNIA, et al.,
Defendants.

Case No. 4:20-cv-02821-KAW

**ORDER GRANTING IN FORMA
PAUPERIS APPLICATION; REPORT
AND RECOMMENDATION TO
DISMISS PLAINTIFF'S COMPLAINT
AND DENY EX PARTE MOTION FOR
PRELIMINARY INJUNCTION;
ORDER REASSIGNING CASE TO A
DISTRICT JUDGE**

Re: Dkt. Nos. 1, 2, 3

On April 23, 2020, Plaintiff William David Bush filed this civil action and application to proceed *in forma pauperis*. Having considered the application, the Court GRANTS Plaintiff's application to proceed *in forma pauperis*. Plaintiff also filed an *ex parte* motion for preliminary injunction. (Mot., Dkt. No. 2.)

Upon review of the complaint and the pending motion, the Court concludes that the operative complaint is deficient pursuant to 28 U.S.C. § 1915, and, for the reasons set forth below, RECOMMENDS that the complaint be dismissed with leave to amend, and that the pending *ex parte* motion for preliminary injunction be denied without prejudice.

I. LEGAL STANDARD

The *in forma pauperis* statute provides that the Court shall dismiss the case if at any time the Court determines that the allegation of poverty is untrue, or that the action (1) is frivolous or malicious, (2) fails to state a claim on which relief may be granted; or (3) seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

A complaint is frivolous under Section 1915 where there is no subject matter jurisdiction. See *Castillo v. Marshall*, 207 F.3d 15, 15 (9th Cir. 1997) (citation omitted); see also *Pratt v. Sumner*,

1 807 F.2d 817, 819 (9th Cir. 19987) (recognizing the general proposition that a complaint should be
2 dismissed as frivolous on Section 1915 review where subject matter jurisdiction is lacking).

3 A complaint may also be dismissed for failure to state a claim, because Section 1915(e)(2)
4 parallels the language of Federal Rule of Civil Procedure 12(b)(6). *Lopez v. Smith*, 203 F.3d 1122,
5 1126-27 (9th Cir. 2000). The complaint, therefore, must allege facts that plausibly establish the
6 defendant's liability. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-57 (2007). When the
7 complaint has been filed by a pro se plaintiff, courts must "construe the pleadings liberally . . . to
8 afford the petitioner the benefit of any doubt." *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir.
9 2010)(citations omitted). Upon dismissal, pro se plaintiffs proceeding *in forma pauperis* must be
10 given leave to "amend their complaint unless it is absolutely clear that the deficiencies of the
11 complaint could not be cured by amendment." *Franklin v. Murphy*, 745 F.2d 1221, 1235 n.9 (9th
12 Cir. 1984) (internal citations and quotation marks omitted); *Lopez v. Smith*, 203 F.3d 1122, 1130-
13 31 (9th Cir. 2000).

14 II. DISCUSSION

15 A. Initial Complaint Fails to State a Claim

16 As courts of limited jurisdiction, "federal courts have an independent obligation to ensure
17 that they do not exceed the scope of their jurisdiction." *Henderson ex rel. Henderson v. Shinseki*,
18 562 U.S. 428, 434 (2011); *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1116 (9th Cir. 2004) (noting
19 that district courts are "obligated to consider *sua sponte* whether [they] have subject matter
20 jurisdiction"). There are two bases for federal subject matter jurisdiction: (1) federal question
21 jurisdiction under 28 U.S.C. § 1331 and (2) diversity jurisdiction under 28 U.S.C. § 1332. A
22 district court has federal question jurisdiction in "all civil actions arising under the Constitution,
23 laws, or treaties of the United States." *Id.* at § 1331. A cause of action "arises under federal law
24 only when the plaintiff's well-pleaded complaint raises issues of federal law." *Hansen v. Blue
25 Cross of Cal.*, 891 F.2d 1384, 1386 (9th Cir. 1989). A district court has diversity jurisdiction
26 "where the matter in controversy exceeds the sum or value of \$75,000 . . . and is between citizens
27 of different states, or citizens of a State and citizens or subjects of a foreign state." *Id.*

1 Here, Plaintiff appears to be alleging that Sonoma County's requirement to wear facial
2 covering in all public spaces—as allegedly permitted under California Health and Safety Code §
3 120275— violates his constitutional rights. (See Compl. at 2.) While Plaintiff vaguely claims that
4 his rights under the Bill of Rights are being infringed upon, he does not identify which
5 amendment¹ serves to invalidate § 120275. Thus, Plaintiff has failed to set forth “a short and plain
6 statement of the claim showing that the pleader is entitled to relief” as required by Rule 8 of the
7 Federal Rules of Civil Procedure.

8 Accordingly, the Court concludes that the complaint is insufficient to satisfy Section 1915
9 review and recommends that it be dismissed with leave to amend.

10 **B. Pending *Ex Parte* Motion Should be Denied**

11 Plaintiff has also filed an *ex parte* motion for preliminary injunction. (Mot. at 2.) As an
12 initial matter, the motion is virtually identical to the complaint, which, as discussed above, is
13 subject to dismissal under Section 1915. *See* discussion, *supra*, Part II.A.

14 Notwithstanding, based on the facts alleged, there is no indication that Plaintiff would
15 suffer irreparable harm due to the County's requirement that he wear a facial covering in public.
16 As the moving party, Plaintiff has the burden of establishing that “he is likely to succeed on the
17 merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the
18 balance of equities tips in his favor, and that an injunction is in the public interest.” *Klein v. City*
19 *of San Clemente*, 584 F.3d 1196, 1199 (9th Cir. 2009) (internal quotation omitted). “In exercising
20 their sound discretion, courts of equity should pay particular regard for the public consequences in
21 employing the extraordinary remedy of injunction.” *Winter v. Nat. Res. Def. Council, Inc.*, 555
22 U.S. 7, 24 (2008) (citations and internal quotations omitted). Here, Plaintiff does not attempt to
23 argue that he would experience irreparable harm in the absence of a court order permitting him to
24 go out in public without a facial covering. (See Mot. at 2.) To the contrary, should Plaintiff be
25 infected with COVID-19 and be permitted to go out in public without a facial covering, it is

27 ¹ Plaintiff quotes the Tenth Amendment, but not as a source of his constitutional right to be free
28 from facial coverings in public.

1 virtually assured that he will spread the disease to others, some of which will be harmed
2 irreparably, since the virus can cause permanent medical impairments and even death. Thus, an
3 injunction also does not appear to be in the public interest.

4 Regardless, given the deficient nature of the operative complaint, the undersigned
5 recommends that the *ex parte* motion for preliminary injunction be denied without prejudice. This
6 would permit Plaintiff to again seek injunctive relief after he files a complaint that complies with
7 the Federal Rules of Civil Procedure.

III. CONCLUSION

9 For the reasons set forth above, Plaintiff's motion to proceed *in forma pauperis* is
10 GRANTED.

11 Additionally, the allegations in Plaintiff's complaint are insufficient under 28 U.S.C. §
12 1915(e)(2), and the Court REASSIGNS this case to the district court with the
13 RECOMMENDATION that Plaintiff's complaint be dismissed with leave to amend.

14 Finally, the undersigned RECOMMENDS that the pending *ex parte* motion for
15 preliminary injunction be denied without prejudice.

16 Any party may file objections to this report and recommendation with the district judge
17 within 14 days of being served with a copy. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); N.D.
18 Civil L.R. 72-3. The parties are advised that failure to file objections within the specified time
19 may waive the right to appeal the District Court's order. *IBEW Local 595 Trust Funds v. ACS*
20 *Controls Corp.*, No. C-10-5568, 2011 WL 1496056, at *3 (N.D. Cal. Apr. 20, 2011).

21 IT IS SO RECOMMENDED.

22 Dated: May 5, 2020

Kandis Westnode

KANDIS A. WESTMORE
United States Magistrate Judge

1 William David Bush
2 240 West St, Sebastopol
3 California, 95472
4 (707) 829-0941
5 Plaintiff

6 **UNITED STATES DISTRICT COURT**
7 **NORTHERN DISTRICT OF CALIFORNIA**

8	William David Bush 9 State of California County of Sonoma Health Officer Sundrai R. Mase	
10	Case No.: 11 3:20-CV-02821 12 Objection(s) to Recommendation and Response in Pending Ex Parte	

13 **SUMMARY OF OBJECTIONS & RESPONSE**

14 The Plaintiff objects to the Recommendation in that it is inflammatory. The mere
15 recommendation by the Magistrate to the presiding District Judge creates a conclusion
16 prejudice; presenting argument and recommendations in opposition to a complaint in
17 such manor is improper. Kandis A. Westmore does not represent the Defendants in this
18 case, and the law requires that upon legal summons the Defendants be called to answer
19 the complaint and make their defense against the complaint before the Court. The
20 “Recommendation” is aimed at creating inflammatory prejudice before the Presiding
21 Judge, and so should be explicitly stricken.

22 Furthermore, the Plaintiff re-asserts and clarifies his Federal Question at instant,
23 California Health and Safety Code § 120275, et seq is over reaching in its legislated
24 verbatim. Plaintiff is raising the Federal Question at issue of the State law codes validity
25 in general conflict with Article 10(X) of the U.S. Bill of Rights by which “the powers not
26 delegated to the United States by the Constitution, nor prohibited by it to the States, are
27 reserved to the States respectively, or to the people.” Grounds that a competent District
28 Judge has jurisdiction and the authority to interpret and opine upon, given the presented

1 literary statute and the substance conflict therefrom of the rights and liberties guaranteed
2 to Citizens by the Constitution of the United States of America.

3 To entrust any unelected health officer with the power to impose "any rule, order,
4 or regulation" (Cal. HSC § 120275) on any person, or persons, or entire regions, infected
5 or not, circumvents the Constitutional rights and liberties guaranteed by the Bill of
6 Rights, and in so much violates Article 10 of the U.S. Constitution. Irreparable harm
7 would be caused in the event that the Plaintiff (or any of the citizenry) were to be arrested
8 on the orders of an unelected health officer in violation of the freedom and liberties
9 guaranteed to the citizens by the US Constitution.

10 Additionally, the Plaintiff objects to the incompetent assertion that wearing a
11 mask prevents the spread of disease in the context of the current pandemic crisis. The
12 prior court in this case is giving opinions without facts or relevant data.

13 The Plaintiffs Complaint and Federal Question is specifically aimed at the
14 invalidity of a Health and Safety Code section which improperly grants powers and
15 authority to an unelected health officer, of any county, to order the incrimination of the
16 citizenry regardless of their rights to freedom and liberty by making "any rule, order, or
17 regulation" during an indiscriminate mass quarantine of the entire population. The
18 potential for abuse in such authoritarian power is present and immediate.

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21 The Plaintiffs complaint and request for relief should be granted immediately.

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Dated: May 11th 2020

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By: WILLIAM DAVID BUSH

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Plaintiff

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Appendix D

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Constitutional Class Advocate

Citizenry of USA,

Resident of California.

Address: 240 West St. Sebastopol,

California, 95472 U.S.A.

E-mail: williamdbush@gmail.com

1 William David Bush
2 240 West St, Sebastopol
3 California, 95472
4 (707) 829-0941
5 Plaintiff

FILED
APR 23 2020
SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTH DISTRICT OF CALIFORNIA

6 - UNITED STATES DISTRICT COURT
7 NORTHERN DISTRICT OF CALIFORNIA

8 William David Bush	Case No.:
9 State of California 10 County of Sonoma Health Officer 11 Sundrai R. Mase	CV-20-2821

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13 **COMPLAINT AND REQUEST FOR INJUNCTION**

14 **Parties**

15 A. Plaintiff, William David Bush is a seasonal resident of Sonoma County, residing at
16 240 West St, Sebastopol, California, 95472.
17 B. Defendant, Sundari R. Mase, is the Health Officer with the County of Sonoma
18 addressed at 625 5th Street, Santa Rosa, California, 95404
19 C. The State of California, Office of the Attorney General 1300 I Street, Sacramento,
20 California 95814.

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23 **JURISDICTION AND VENUE**

24 Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal
25 laws or treaties is a federal question case. At instant concerning Article X of the U.S.
26 Constitution and its conflict of authority with the California Health and Safety Code
27 Statutes.

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2 **SUMMARY OF COMPLAINT & REQUEST FOR RELIEF**

3 As of 12:01 a.m. on Friday, April 17, 2020: The County of Sonoma's Health Department
4 imposition of California Health and Safety Code § 120275, et seq; being in conflict with
5 the guarantees of rights and citizens liberties under the US Constitution, specifically
6 citing the Defendants imposing facial coverings be worn in all public spaces under threat
7 of criminal penalty basing authority on the Health and Safety Code context: "upon the
8 demand of any health officer, refuses or neglects to conform to, any rule, order, or
9 regulation prescribed by the department respecting a quarantine or disinfection of
10 persons, animals, things, or places, is guilty of a misdemeanor." It is beyond the authority
11 of any State to impose 'any rule, order, or regulation' that is in conflict with the Bill of
12 Rights and Liberties guaranteed by the US Constitution. Citing the 10th Amendment of
13 the US constitution - "The powers not delegated to the United States by the Constitution,
14 nor prohibited by it to the States, are reserved to the States respectively, or to the people."
15 This State Health and Safety Code is invalid as written, granting unlimited powers over
16 the citizenry to any health officer during a quarantine period. Therefore this law code
17 section is invalid, should be over ruled, and the orders based improperly upon its
18 misplaced authority nullified by the higher authority of this court.

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22 Dated: April 20th 2020

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25 By: WILLIAM DAVID BUSH

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