

FILED

APR 24 2020

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

HELEN LE,

Plaintiff-Appellant,

v.

MOLLY C. DWYER; et al.,

Defendants-Appellees.

No. 20-15119

D.C. No.
2:19-cv-00414-KJM-DB
Eastern District of California,
Sacramento

ORDER

Before: MURGUIA, OWENS, and BENNETT, Circuit Judges.

Upon a review of the record, the opening brief at Docket Entry No. 6, and the responses to the court's April 1, 2020 order, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 4), *see* 28 U.S.C. § 1915(a), and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

All other pending motions are denied as moot.

DISMISSED.

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Eastern District of California,
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ORDER

Before: MURGUIA, OWENS, and BENNETT, Circuit Judges.

Appellant's motions for reconsideration (Docket Entry Nos. 22 and 35) are denied. *See* 9th Cir. R. 27-10.

All other pending motions are denied as moot.

No further filings will be entertained in this closed case.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

11 HELEN LE, No. 2:19-cv-0414 KJM DB PS
12 Plaintiff,
13 v. ORDER
14 MOLLY C DWYER, et al.,
15 Defendants

17 Plaintiff is proceeding pro se with the above-entitled action. The matter was referred to a
18 United States Magistrate Judge as provided by Local Rule 302(c)(21).

19 On October 4, 2019, the magistrate judge filed findings and recommendations, which
20 were served on plaintiff and which contained notice to plaintiff that any objections to the findings
21 and recommendations were to be filed within fourteen days after service of the findings and
22 recommendations. The fourteen-day period has expired, and plaintiff has not filed any objections
23 to the findings and recommendations.

24 The court presumes that any findings of fact are correct. *See Orand v. United States*,
25 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge's conclusions of law are reviewed
26 *de novo*. *See Robbins v. Carey*, 481 F.3d 1143, 1147 (9th Cir. 2007) ("[D]eterminations of law
27 by the magistrate judge are reviewed *de novo* by both the district court and [the appellate] court

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1"). Having reviewed the file, the court finds the findings and recommendations to be
2 supported by the record and by the proper analysis.

3 Accordingly, IT IS HEREBY ORDERED that:

4 1. The findings and recommendations filed October 4, 2019 (ECF No. 9) are adopted in
5 full;

6 2. Plaintiff's March 7, 2019 application to proceed in forma pauperis (ECF No. 2) is
7 denied;

8 3. Plaintiff's March 7, 2019 complaint (ECF No. 1) is dismissed without prejudice;

9 4. This action is dismissed; and

10 5. The clerk of court is directed to close this case.

11 DATED: January 8, 2020.

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14 CHIEF UNITED STATES DISTRICT JUDGE
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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

11 HELEN LE,
12 Plaintiff,
13 v.
14 MOLLY C DWYER, et al.,
15 Defendants.
No. 2:19-cv-0414 KJM DB PS
ORDER AND
FINDINGS AND RECOMMENDATION

ORDER AND FINDINGS AND RECOMMENDATIONS

17 Plaintiff, Helen Le, is proceeding in this action pro se. This matter was referred to the
18 undersigned in accordance with Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1). Pending
19 before the court are plaintiff's complaint, motion to proceed in forma pauperis pursuant to 28
20 U.S.C. § 1915, motion for emergency relief, and motion for jury trial. (ECF Nos. 1, 2, 7, 8.)
21 Plaintiff's complaint appears to concern frustrations with various court proceedings following a
22 vehicle accident.

23 The court is required to screen complaints brought by parties proceeding in forma
24 pauperis. See 28 U.S.C. § 1915(e)(2); see also Lopez v. Smith, 203 F.3d 1122, 1129 (9th Cir.
25 2000) (en banc). Here, plaintiff's complaint is deficient. Accordingly, for the reasons stated
26 below, the undersigned will recommend that plaintiff's complaint be dismissed without leave to
27 amend.

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1 **I. Plaintiff's Application to Proceed In Forma Pauperis**

2 Plaintiff's in forma pauperis application makes the financial showing required by 28
3 U.S.C. § 1915(a)(1). However, a determination that a plaintiff qualifies financially for in forma
4 pauperis status does not complete the inquiry required by the statute. “A district court may deny
5 leave to proceed in forma pauperis at the outset if it appears from the face of the proposed
6 complaint that the action is frivolous or without merit.” Minetti v. Port of Seattle, 152 F.3d
7 1113, 1115 (9th Cir. 1998) (quoting Tripati v. First Nat. Bank & Trust, 821 F.2d 1368, 1370 (9th
8 Cir. 1987)); see also McGee v. Department of Child Support Services, 584 Fed. Appx. 638 (9th
9 Cir. 2014) (“the district court did not abuse its discretion by denying McGee’s request to proceed
10 IFP because it appears from the face of the amended complaint that McGee’s action is frivolous
11 or without merit”); Smart v. Heinze, 347 F.2d 114, 116 (9th Cir. 1965) (“It is the duty of the
12 District Court to examine any application for leave to proceed in forma pauperis to determine
13 whether the proposed proceeding has merit and if it appears that the proceeding is without merit,
14 the court is bound to deny a motion seeking leave to proceed in forma pauperis.”).

15 Moreover, the court must dismiss an in forma pauperis case at any time if the allegation of
16 poverty is found to be untrue or if it is determined that the action is frivolous or malicious, fails to
17 state a claim on which relief may be granted, or seeks monetary relief against an immune
18 defendant. See 28 U.S.C. § 1915(e)(2). A complaint is legally frivolous when it lacks an
19 arguable basis in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v.
20 Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). Under this standard, a court must dismiss a
21 complaint as frivolous where it is based on an indisputably meritless legal theory or where the
22 factual contentions are clearly baseless. Neitzke, 490 U.S. at 327; 28 U.S.C. § 1915(e).

23 To state a claim on which relief may be granted, the plaintiff must allege “enough facts to
24 state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544,
25 570 (2007). In considering whether a complaint states a cognizable claim, the court accepts as
26 true the material allegations in the complaint and construes the allegations in the light most
27 favorable to the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Hosp. Bldg. Co. v.
28 Trustees of Rex Hosp., 425 U.S. 738, 740 (1976); Love v. United States, 915 F.2d 1242, 1245

1 (9th Cir. 1989). Pro se pleadings are held to a less stringent standard than those drafted by
2 lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). However, the court need not accept as true
3 conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. Western
4 Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

5 The minimum requirements for a civil complaint in federal court are as follows:

6 A pleading which sets forth a claim for relief . . . shall contain (1) a
7 short and plain statement of the grounds upon which the court's
jurisdiction depends . . . , (2) a short and plain statement of the claim
showing that the pleader is entitled to relief, and (3) a demand for
judgment for the relief the pleader seeks.

8 Fed. R. Civ. P. 8(a).

9 **II. Plaintiff's Complaint**

10 Here, the complaint concerns plaintiff's "OLD case: 2-16-CV-1447 JAM AC PS and 2:18
11 CV-0203 TLN EFB PS" stemming from events occurring on "1/4/2013 and 12/16/2014."
12 (Compl. (ECF No. 1) at 5, 8.¹) Although the allegations found in the complaint are difficult to
13 decipher, the complaint alleges that after an "accident . . . [a]ll CEO Insurance" and "health
14 insurance . . . unite[d] together" to "torture" plaintiff and plaintiff's family. (Id. at 5-6.)
15 Plaintiff allegedly received "no feed back from any Judge of US" and seeks \$200 million in
16 compensation requested in "case 2:18cv-0203 TLN EFB PS." (Id. at 6.) Named as defendants
17 are individuals employed as court personnel. (Id. at 1-3.)

18 Although the Federal Rules of Civil Procedure adopt a flexible pleading policy, a
19 complaint must give the defendant fair notice of the plaintiff's claims and must allege facts that
20 state the elements of each claim plainly and succinctly. Fed. R. Civ. P. 8(a)(2); Jones v.
21 Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). "A pleading that offers 'labels
22 and conclusions' or 'a formulaic recitation of the elements of cause of action will not do.' Nor
23 does a complaint suffice if it tenders 'naked assertions' devoid of 'further factual
24 enhancements.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 555,
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28 ¹ Page number citations such as this are to the page number reflected on the court's CM/ECF
system and not to the page numbers assigned by the parties.

1 557). A plaintiff must allege with at least some degree of particularity overt acts which the
2 defendants engaged in that support the plaintiff's claims. Jones, 733 F.2d at 649.

3 Moreover, the court's records reveal that on June 27, 2016, plaintiff filed a federal action
4 in this court concerning an accident occurring on January 4, 2013.² See HELEN LE, et al., v.
5 KENNETH EDWARD AZNOE, RICHARD EDWARD McGREEVY, et al., No. 2:16-cv-1447
6 JAM AC PS, ("Le I"), (ECF No. 1). That action was dismissed for lack of subject matter
7 jurisdiction. (Le I, ECF No. 14, 18). The Ninth Circuit affirmed on appeal, holding that "[t]he
8 district court properly dismissed [the] action for lack of subject matter jurisdiction because the
9 federal claims were too insubstantial to confer jurisdiction." Le v. McGreevy, 692 Fed. Appx.
10 378, 379 (9th Cir. 2017).

11 On January 30, 2018, plaintiff commenced a second action in this court, ("Le II"),
12 "seeking to challenge the dismissal of Le I and the adverse rulings on appeal." Le v. United
13 States, No. 2:18-cv-0203 TLN EFB PS, 2018 WL 2010497, at *3 (E.D. Cal. Apr. 30, 2018). Le
14 II was also "dismissed for lack of jurisdiction and failure to state a claim." Id. at *1.

15 As was true of Le I and Le II, this action must be dismissed for lack of jurisdiction and
16 failure to state a claim. As stated by the court in Le II, "it is clear that the instant action seeks to
17 challenge the dismissal of Le I, [Le II,] and the adverse rulings on appeal. This court lacks
18 jurisdiction to review or overturn those decisions." Le II, 2018 WL 2010497, at *3; see also
19 Dhalluin v. McKibben, 682 F.Supp. 1096, 1097 (D. Nev. 1988) ("The structure of the federal
20 courts does not allow one judge of a district court to rule directly on the legality of another district
21 judge's judicial acts or to deny another district judge his or her lawful jurisdiction.").

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² The court may take judicial notice of its own files and of documents filed in other courts. Reyn's
25 Pasta Bella, LLC v. Visa USA, Inc., 442 F.3d 741, 746 n. 6 (9th Cir. 2006) (taking judicial notice
26 of documents related to a settlement in another case that bore on whether the plaintiff was still
able to assert its claims in the pending case); Burbank–Glendale–Pasadena Airport Auth. v. City
27 of Burbank, 136 F.3d 1360, 1364 (9th Cir. 1998) (taking judicial notice of court filings in a state
court case where the same plaintiff asserted similar and related claims); Hott v. City of San Jose,
28 92 F.Supp.2d 996, 998 (N.D. Cal. 2000) (taking judicial notice of relevant memoranda and orders
filed in state court cases).

III. Leave to Amend

For the reasons stated above, plaintiff's complaint should be dismissed. The undersigned has carefully considered whether plaintiff may amend the complaint to state a claim upon which relief can be granted. "Valid reasons for denying leave to amend include undue delay, bad faith, prejudice, and futility." California Architectural Bldg. Prod. v. Franciscan Ceramics, 818 F.2d 1466, 1472 (9th Cir. 1988); see also Klamath-Lake Pharm. Ass'n v. Klamath Med. Serv. Bureau, 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that while leave to amend shall be freely given, the court does not have to allow futile amendments).

Here, given the defects noted above, the undersigned finds that granting plaintiff leave to amend would be futile.

IV. Plaintiff's Motions

On September 19, 2019, plaintiff filed a motion for emergency relief “to solve compensation.” (ECF No. 7 at 1.) On September 23, 2019, plaintiff filed a motion “to open TRIAL[.]” (ECF No. 8 at 1.) However, the undersigned has recommended that plaintiff’s complaint be dismissed without leave to amend. Plaintiff’s motions, therefore, will be dismissed without prejudice pending resolution of these findings and recommendations.

CONCLUSION

Accordingly, for the reasons stated above, IT IS HEREBY ORDERED that:

1. Plaintiff's September 19, 2019 motion for emergency relief (ECF No. 7) is denied without prejudice to renewal; and

2. Plaintiff's September 23, 2019 motion for jury trial (ECF No. 8) is denied without prejudice to renewal.

Also, IT IS HEREBY RECOMMENDED that:

1. Plaintiff's March 7, 2019 application to proceed in forma pauperis (ECF No. 2) be denied.

2. Plaintiff's March 7, 2019 complaint (ECF No. 1) be dismissed without prejudice; and
3. This action be dismissed.

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1 These findings and recommendations will be submitted to the United States District Judge
2 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
3 days after being served with these findings and recommendations, plaintiffs may file written
4 objections with the court. A document containing objections should be titled "Objections to
5 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
6 objections within the specified time may, under certain circumstances, waive the right to appeal
7 the District Court's order. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

8 Dated: October 4, 2019



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10 DEBORAH BARNES
11 UNITED STATES MAGISTRATE JUDGE
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