

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

SEP 17 2021

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

EUGENE KORTE, DBA EFK Systems,

No. 21-16145

Plaintiff-Appellant,

D.C. No. 2:21-cv-00240-JAM-DB

v.

Eastern District of California,
Sacramento

STATE OF CALIFORNIA; et al.,

ORDER

Defendants-Appellees.

Before: HAWKINS, WATFORD, and LEE, Circuit Judges.

Upon a review of the record and the response to the court's July 23, 2021 order, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 3), *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.

No further filings will be entertained in this closed case.

DISMISSED.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JUDGMENT IN A CIVIL CASE

EUGENE KORTE,

CASE NO: 2:21-CV-00240-JAM-DB

v.

STATE OF CALIFORNIA, ET AL.,

Decision by the Court. This action came before the Court. The issues have been tried, heard or decided by the judge as follows:

IT IS ORDERED AND ADJUDGED

**THAT JUDGMENT IS HEREBY ENTERED IN ACCORDANCE WITH THE
COURT'S ORDER FILED ON 6/29/2021**

Keith Holland
Clerk of Court

ENTERED: June 29, 2021

by: /s/ L. Mena-Sanchez
Deputy Clerk

Appendix B

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
10

11 EUGENE KORTE, an individual d/b/a
12 EFK Systems,

No. 2:21-cv-0240 JAM DB PS

13 Plaintiff,

ORDER

14 v.

15 STATE OF CALIFORNIA, et al.,

16 Defendants.
17

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

20 On April 23, 2021, the magistrate judge filed findings and recommendations herein which
21 were served on plaintiff and which contained notice to plaintiff that any objections to the findings
22 and recommendations were to be filed within thirty days after service of the findings and
23 recommendations. The thirty-day period has expired, and plaintiff has filed objections to the
24 findings and recommendations.

25 The court has reviewed the file and finds the findings and recommendations to be
26 supported by the record and by the magistrate judge's analysis.

27 ///

28 ///

1 Accordingly, IT IS HEREBY ORDERED that

- 2 1. The findings and recommendations filed April 23, 2021 (ECF No. 5) are adopted in
3 full;
4 2. Plaintiff's February 8, 2021 application to proceed in forma pauperis (ECF No. 2) is
5 denied;
6 3. Plaintiff's February 8, 2021 complaint (ECF No. 1) is dismissed without leave to
7 amend; and
8 4. This action is closed.

9
10 DATED: June 28, 2021

Joan A. Mendez

THE HONORABLE JOAN A. MENDEZ
UNITED STATES DISTRICT COURT JUDGE

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

EUGENE KORTE, an individual d/b/a
EFK Systems,

Plaintiff,

v.

STATE OF CALIFORNIA, et al.,

Defendants.

No. 2:21-cv-0240 JAM DB PS

FINDINGS AND RECOMMENDATIONS

Plaintiff Eugene Korte is proceeding in this action pro se. This matter was referred to the undersigned in accordance with Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1). Pending before the court are plaintiff's complaint and motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. (ECF Nos. 1 & 2.) The complaint's allegations concern an alleged cyber-attack.

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

////

////

I. Plaintiff's Application to Proceed In Forma Pauperis

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

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

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

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

The minimum requirements for a civil complaint in federal court, as explained by Rule 8 of the Federal Rules of Civil Procedure (“Rules”), are as follows:

A pleading which sets forth a claim for relief . . . shall contain (1) a 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.

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

II. Plaintiff’s Complaint

“[T]he in forma pauperis statute . . . ‘accords judges not only the authority to dismiss a claim based on an indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint’s factual allegations and dismiss those claims whose factual contentions are clearly baseless.’” Denton v. Hernandez, 504 U.S. 25, 32 (1992) (quoting Neitzke, 490 U.S. at 327). “Examples of the latter class are claims describing fantastic or delusional scenarios, claims with which federal district judges are all too familiar.” Neitzke, 490 U.S. at 328.

Here, the complaint identifies 17 defendants ranging from the Department of Homeland Security, the Federal Communications Commission, the State of California, Vacaville City Hall, Verizon Wireless, as well as several individuals. (Compl. (ECF No. 1) at 2.) The complaint alleges that the defendants engaged in a “malicious cyber espionage attack” against the plaintiff that “seemed to parallel the government’s Stucknet cyberattack[.]” (Id. at 15.) Using “malicious wireless malware, a Unified Extensible Firmware Interface” the defendants destroyed plaintiff’s copies of files associated with actions previously filed in this court. (Id. at 13-14.) The complaint seeks “in camera ex parte hearing determining who, what, when, and why a secret FISA warrant was obtained against the plaintiff[.]” (Id. at 17.) In this regard, the complaint’s allegations are delusional.

////

1 **III. Leave to Amend**

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

10 **CONCLUSION**


11 For the reasons stated above, IT IS HEREBY RECOMMENDED that:

- 12 1. Plaintiff's February 8, 2021 application to proceed in forma pauperis (ECF No. 2) be
13 denied;
14 2. Plaintiff's February 8, 2021 complaint (ECF No. 1) be dismissed without leave to
15 amend; and
16 3. This action be closed.

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

24 Dated: April 22, 2021

25
26
27 DLB:6
28 DB/orders/orders.pro se/korte0240.dism.f&rs


DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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