

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

FEB 20 2025

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

ARDY MERRITT,

Plaintiff - Appellant,

v.

UNITED STATES DEPARTMENT OF
HOUSING AND URBAN
DEVELOPMENT; et al.,

Defendants - Appellees.

No. 24-5400

D.C. No.

3:24-cv-03968-MMC

Northern District of California,
San Francisco

ORDER

Before: SILVERMAN, WARDLAW, and DESAI, Circuit Judges.

After considering the response to the court's September 20, 2024 order, we deny the motion to proceed in forma pauperis (Docket Entry No. 12) and dismiss this appeal as frivolous. *See* 28 U.S.C. § 1915(a), (e)(2).

All other pending motions and requests are denied as moot.

No further filings will be entertained in this closed case.

DISMISSED.

UNITED STATES COURT OF APPEALS
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Defendants - Appellees.

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Northern District of California,
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ORDER

A review of the district court's docket reflects that the district court has certified that this appeal is not taken in good faith and has revoked appellant's in forma pauperis status. *See* 28 U.S.C. § 1915(a). This court may dismiss a case at any time, if the court determines the case is frivolous. *See* 28 U.S.C. § 1915(e)(2).

Within 35 days after the date of this order, appellant must:

- (1) file a motion to dismiss this appeal, *see* Fed. R. App. P. 42(b), or
- (2) file a statement explaining why the appeal is not frivolous and should go forward.

If appellant files a statement that the appeal should go forward, appellant also must:

- (1) file in this court a motion to proceed in forma pauperis, OR

(2) pay to the district court \$605.00 for the filing and docketing fees for this appeal AND file in this court proof that the \$605.00 was paid.

If appellant does not respond to this order, the Clerk will dismiss this appeal for failure to prosecute, without further notice. *See* 9th Cir. R. 42-1. If appellant files a motion to dismiss the appeal, the Clerk will dismiss this appeal, pursuant to Federal Rule of Appellate Procedure 42(b). If appellant submits any response to this order other than a motion to dismiss the appeal, the court may dismiss this appeal as frivolous, without further notice.

The briefing schedule for this appeal is stayed.

The Clerk will serve on appellant: (1) a form motion to voluntarily dismiss the appeal, (2) a form statement that the appeal should go forward, and (3) a Form 4 financial affidavit. Appellant may use the enclosed forms for any motion to dismiss the appeal, statement that the appeal should go forward, and/or motion to proceed in forma pauperis.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

UNITED STATES COURT OF APPEALS
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APR 14 2025

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U.S. COURT OF APPEALS

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UNITED STATES DEPARTMENT OF
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DEVELOPMENT; et al.,

Defendants - Appellees.

No. 24-5400

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Northern District of California,
San Francisco

MANDATE

The judgment of this Court, entered February 20, 2025, takes effect this
date.

This constitutes the formal mandate of this Court issued pursuant to
Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ARDY MERRITT,
Plaintiff.

v.

HOUSING AND URBAN
DEVELOPMENT, et al.,
Defendants.

Case No. 24-cv-03968-MMC

JUDGMENT IN A CIVIL CASE

Re: Dkt. No. 13

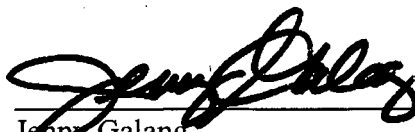
Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

The AC is hereby DISMISSED without further leave to amend, for lack of subject matter jurisdiction.

IT IS SO ORDERED AND ADJUDGED

Dated: 8/15/2024

Mark B. Busby, Clerk of Court


Jenny Galang
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ARDY MERRITT,
Plaintiff,
v.

HOUSING AND URBAN
DEVELOPMENT, et al.,
Defendants.

Case No. 24-cv-03968-MMC

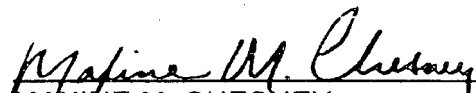
**ORDER DENYING PLAINTIFF'S
REQUEST FOR HEARING**

By order filed August 15, 2024, the Court dismissed the above-titled action for lack of subject matter jurisdiction. On August 16, 2024, plaintiff, apparently not having received the dismissal, filed a "Request for Hearing," whereby he seeks, for the second time, reconsideration of the denial of his motion to enjoin proceedings in a state court unlawful detainer action.

In light of the dismissal of the action, the Request is hereby DENIED.

IT IS SO ORDERED.

Dated: August 20, 2024


MAXINE M. CHESNEY
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ARDY MERRITT,
Plaintiff,

v.

HOUSING AND URBAN
DEVELOPMENT, CITY OF BERKELEY
(Health, Housing and Human Services),
SHELTERPLUS CARE DEPARTMENT
AND PROGRAM, SB MANN 3 LLC

Defendants.

Case No. 24-cv-03968-MMC

**ORDER DISMISSING AMENDED
COMPLAINT WITHOUT FURTHER
LEAVE TO AMEND; DIRECTIONS TO
CLERK**

By order filed July 16, 2024 ("July 16 Order"), the Court granted plaintiff Ardy Merritt's ("Merritt") application to proceed in forma pauperis and, pursuant to 28 U.S.C. § 1915(e)(2), dismissed Merritt's complaint, for failure to state a claim; the Court afforded Merritt leave to amend. Now before the Court is Merritt's amended complaint, titled "Amended Breach of Contract[,] Fraudulent Enforcement of Contract" ("AC"), and an affidavit in support thereof, both filed July 26, 2024.

Where, as here, a party proceeds in forma pauperis, the district court, pursuant to 28 U.S.C. § 1915(e)(2), must "dismiss the case" if the plaintiff "fails to state a claim on which relief may be granted." See 28 U.S.C. § 1915(e)(2)(B). The Court thus turns to the question of whether the AC states a claim on which relief may be granted.

Merritt asserts claims of breach of contract and fraud and seeks, as against all defendants, monetary damages, as well as an injunction to stay proceedings in an unlawful detainer action filed in state court. As set forth in greater detail in the July 16 Order, Merritt's claims arise from his allegations that his landlord, SB Mann 3 LLC,

brought an unlawful detainer action against him after it assertedly had breached the terms of their rental agreement, and that the City of Berkeley ("Berkeley"), which provided a rental subsidy to Merritt under Berkeley's ShelterPlus Care Program, and the United States Department of Housing and Urban Development ("HUD"), which provided a grant to Berkeley to fund said Program, failed to take steps against SB Mann 3 LLC for its asserted breach of the rental agreement.

In its prior Order, the Court dismissed Merritt's claims against HUD, as asserted in the initial Complaint, for lack of subject matter jurisdiction, as Merritt did not allege he had presented an administrative claim to HUD prior to his filing the instant action. See 28 U.S.C. § 2675(a) (providing "action shall not be instituted against the United States for money damages . . . unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied"). In light of such dismissal, the Court also dismissed Merritt's claims against SB Mann 3 LLC and Berkeley, which claims arise under state law, also for lack of subject matter jurisdiction. See Scott v. Pasadena Unified Sch. Dist., 306 F.3d 646, 664 (9th Cir. 2002) (holding, where federal claims are dismissed for lack of subject matter jurisdiction, district court has "no discretion to retain supplemental jurisdiction over [plaintiff's] state law claims").

In the AC and supporting affidavit, Merritt provides additional details as to SB Mann 3 LLC's alleged breach of contract (see, e.g., AC at 5 (alleging SB Mann 3 LLC is "allowing . . . transient squatters to reside on property")), and the asserted failure by HUD and Berkeley to intervene on his behalf (see, e.g., AC Ex. 2 at 1 (letter from HUD to Merritt, stating HUD "field office" had "recommended [Merritt] comply with the terms of [his] lease" and "work with [Berkeley] on paying the arrearage"); Pl.'s Aff. 6 (alleging Berkeley employees in ShelterCare Plus engaged in "delay" that "prevented full disclosure of the safety and security violations [of SB Mann 3 LLC]")). As neither the AC nor the supporting affidavit, however, includes any allegation that Merritt submitted an administrative claim to HUD prior to filing the instant action, let alone an allegation that such claim had been denied, the Court lacks jurisdiction over the claims in the AC for the

1 same reasons as expressed in the July 16 Order.


2 Accordingly, the AC is hereby DISMISSED without further leave to amend, for lack
3 of subject matter jurisdiction.

4 The Clerk of Court is hereby DIRECTED to close the file.

5 **IT IS SO ORDERED.**

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7 Dated: August 15, 2024


MAXINE M. CHESNEY
United States District Judge

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United States District Court
Northern District of California

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