

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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.

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Northern District of California,
San Francisco

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
FOR THE NINTH CIRCUIT

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APR 14 2025

MOLLY C. DWYER, CLERK
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UNITED STATES DEPARTMENT OF
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DEVELOPMENT; et al.,

Defendants - Appellees.

No. 24-5400

D.C. No.
3:24-cv-03968-MMC

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

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4 ARDY MERRITT,
5 Plaintiff.
6
7 v.
8
9 HOUSING AND URBAN
10 DEVELOPMENT, et al.,
11 Defendants.
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Case No. 24-cv-03968-MMC

JUDGMENT IN A CIVIL CASE

Re: Dkt. No. 13

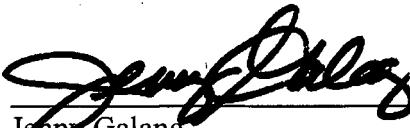
13 **Decision by Court.** This action came to trial or hearing before the Court. The issues have
14 been tried or heard and a decision has been rendered.

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

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18 **IT IS SO ORDERED AND ADJUDGED.**

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20 Dated: 8/15/2024

21 Mark B. Busby, Clerk of Court

22 
23 Jenny Galang
24 Deputy Clerk

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4 ARDY MERRITT,
5 Plaintiff,
6 v.
7 HOUSING AND URBAN
8 DEVELOPMENT, et al.,
9 Defendants.

10 Case No. 24-cv-03968-MMC
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13 ORDER DENYING PLAINTIFF'S
14 REQUEST FOR HEARING
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17 By order filed August 15, 2024, the Court dismissed the above-titled action for lack
18 of subject matter jurisdiction. On August 16, 2024, plaintiff, apparently not having
19 received the dismissal, filed a "Request for Hearing," whereby he seeks, for the second
20 time, reconsideration of the denial of his motion to enjoin proceedings in a state court
21 unlawful detainer action.

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

23 IT IS SO ORDERED.

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27
28 Dated: August 20, 2024

Maxine M. Chesney
MAXINE M. CHESNEY
United States District Judge

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

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

18 In the AC and supporting affidavit, Merritt provides additional details as to SB
19 Mann 3 LLC's alleged breach of contract (see, e.g., AC at 5 (alleging SB Mann 3 LLC is
20 "allowing . . . transient squatters to reside on property")), and the asserted failure by HUD
21 and Berkeley to intervene on his behalf (see, e.g., AC Ex. 2 at 1 (letter from HUD to
22 Merritt, stating HUD "field office" had "recommended [Merritt] comply with the terms of
23 [his] lease" and "work with [Berkeley] on paying the arrearage"); Pl.'s Aff. 6 (alleging
24 Berkeley employees in ShelterCare Plus engaged in "delay" that "prevented full
25 disclosure of the safety and security violations [of SB Mann 3 LLC]")). As neither the AC
26 nor the supporting affidavit, however, includes any allegation that Merritt submitted an
27 administrative claim to HUD prior to filing the instant action, let alone an allegation that
28 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.**