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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RYAN STEPHEN EHRENREICH,
Plaintiff,
v.
MICHAEL WATSON,
Defendant.

No. 2:20–CV–2215 JAM KJN PS

ORDER GRANTING IFP AND STAYING
CASE; and
FINDINGS AND RECOMMENDATIONS TO
DISMISS WITH PREJUDICE

(ECF No. 1, 2, 3)

Plaintiff, who proceeds in this action without counsel, has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. (ECF No. 2.)¹ Plaintiff’s application in support of his request to proceed in forma pauperis makes the showing required by 28 U.S.C. § 1915. Accordingly, the court grants plaintiff’s request to proceed without paying the filing fee.

The determination that a plaintiff may proceed in forma pauperis does not complete the required inquiry. Pursuant to 28 U.S.C. § 1915, the court is directed to dismiss the case at any time if it determines that the allegation of poverty is untrue, or if 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. For the reasons stated below, the court recommends the case be dismissed with prejudice as legally frivolous.

¹ This case proceeds before the undersigned pursuant to E.D. Cal. L.R. 302(c)(21) and 28 U.S.C. § 636(b)(1) for the issuance of findings and recommendations.

1 Legal Standard

2 Federal courts have an independent duty to assess whether federal subject matter
3 jurisdiction exists. See United Investors Life Ins. Co. v. Waddell & Reed Inc., 360 F.3d 960, 967
4 (9th Cir. 2004) (stating that “the district court had a duty to establish subject matter jurisdiction
5 over [an] action sua sponte, whether the parties raised the issue or not”); accord Rains v. Criterion
6 Sys., Inc., 80 F.3d 339, 342 (9th Cir. 1996). The court must sua sponte dismiss the case if, at any
7 time, it determines that it lacks subject matter jurisdiction. Fed. R. Civ. P. 12(h)(3).

8 Generally, federal courts have original jurisdiction over a civil action when: (1) a federal
9 question is presented in an action “arising under the Constitution, laws, or treaties of the United
10 States” or (2) there is complete diversity of citizenship and the amount in controversy exceeds
11 \$75,000. See 28 U.S.C. §§ 1331, 1332(a).

12 However, the Supreme Court has held that federal courts lack subject matter jurisdiction
13 to consider claims that are “so insubstantial, implausible, foreclosed by prior decisions of this
14 court, or otherwise completely devoid of merit as not to involve a federal controversy.” Steel Co.
15 v. Citizens for a Better Environment, 523 U.S. 83, 89 (1998) (citations and internal quotations
16 omitted); Hagans v. Lavine, 415 U.S. 528, 537 (1974) (court lacks subject matter jurisdiction over
17 claims that are “essentially fictitious,” “obviously frivolous” or “obviously without merit”); see
18 also Grancare, LLC v. Thrower by & through Mills, 889 F.3d 543, 549-50 (9th Cir. 2018) (noting
19 that the “wholly insubstantial and frivolous” standard for dismissing claims operates under Rule
20 12(b)(1) for lack of federal question jurisdiction) (citing Franklin v. Murphy, 745 F.2d 1221,
21 1227 n.6 (9th Cir. 1984) (“A [] complaint that is ‘obviously frivolous’ does not confer federal
22 subject matter jurisdiction.”) (abrogated on other grounds)). A claim is legally frivolous when it
23 lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989);
24 Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984).

25 Pro se pleadings are liberally construed. See Haines v. Kerner, 404 U.S. 519, 520-21
26 (1972); Balistreri v. Pacifica Police Dep’t., 901 F.2d 696, 699 (9th Cir. 1988). Unless it is clear
27 that no amendment can cure the defects of a complaint, a pro se plaintiff proceeding in forma
28 pauperis is ordinarily entitled to notice and an opportunity to amend before dismissal. See Noll v.

1 Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987) superseded on other grounds by statute as stated in
2 Lopez v. Smith, 203 F.3d 1122 (9th Cir.2000)) (en banc); Franklin v. Murphy, 745 F.2d 1221,
3 1230 (9th Cir. 1984). However, leave to amend need not be granted when further amendment
4 would be futile. See Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 339 (9th Cir. 1996).

5 Analysis

6 Here, plaintiff has filed suit in the Eastern District of California against the Mississippi
7 secretary of state, arguing defendant's enforcement of a Mississippi election statute that prevents
8 the counting of votes for write-in candidates abridges his (unnamed) constitutional rights. (ECF
9 No. 1.) Plaintiff generally cites to the Fifth and Fourteenth Amendments, asserting defendant
10 refuses to count any votes related to plaintiff's write-in candidacy for the 2020 presidential
11 election. (Id.) Plaintiff prays for a plethora of remedies, up through and including preventing the
12 Mississippi secretary of state from certifying that state's election results, proportionally reducing
13 the number of votes counted in other states, and nullifying the results of the 2020 presidential
14 election. (Id.)

15 Liberally construed, plaintiff's complaint purports to assert claims under 42 U.S.C.
16 Section 1983. However, the undersigned finds these claims wholly frivolous. Courts across the
17 country have upheld certain restrictions regarding write-in candidacies in a variety of contexts,
18 each of which are persuasive on the court's read of plaintiff's baseless legal assertions. See, e.g.,
19 Am. Party of Texas v. White, 415 U.S. 767, 781 (1974) (stating, in equal-protection claim
20 regarding disparate treatment between major-party candidates and others, that "[s]tatutes create
21 many classifications which do not deny equal protection; it is only 'invidious discrimination'
22 which offends the Constitution."); Burdick v. Takushi, 937 F.2d 415, 419 (9th Cir. 1991), aff'd,
23 504 U.S. 428 (1992) (noting "[t]he Supreme Court has upheld numerous state restrictions on who
24 may qualify to run for certain offices," and finding Hawaii's restrictions on write-in candidacies
25 met a compelling interest); see also, e.g., McMillan v. New York Bd. of Election, 234 F.3d 1262
26 (2d Cir. 2000) (affirming district court's sua sponte dismissal of write-in candidate's challenges
27 to New York state election laws on grounds of frivolity.); Williams v. Oklahoma, 2016 WL
28 7665657, at *2 (W.D. Okla. Feb. 23, 2016) (noting the frivolity of plaintiff's claims against the

1 election officials of various states concerning a write-in candidacy). Further, the court finds
2 plaintiff's prayed-for remedies to be wholly frivolous, and recommends dismissal without further
3 comment. Steel Co., 523 U.S. at 89; Neitzke, 490 U.S. at 325; Franklin, 745 F.2d at 1227-28.

4 Ordinarily, the court liberally grants a pro se plaintiff leave to amend. However, because
5 the record here shows that plaintiff would be unable to cure the above-mentioned deficiencies
6 through further amendment of the complaint, granting leave to amend would be futile. Cahill, 80
7 F.3d at 339.

8 Finally, the undersigned notes that five days after the complaint was filed, plaintiff filed a
9 motion for summary judgment. (ECF No. 3.) The court recommends this motion be denied as
10 both premature, given defendant has not entered an appearance, and moot, given the dismissal
11 recommendation. See, e.g., Stephenson v. Lappin, 2007 WL 2200654, at *1 (E.D. Cal. Aug. 1,
12 2007) ("Because defendants have not yet been served and have made no appearance in this
13 action, the court recommends that plaintiff's motion for summary judgment be denied as
14 premature.").

15 **ORDER**

16 Accordingly, IT IS HEREBY ORDERED that:

- 17 1. Plaintiff's motion to proceed in forma pauperis is GRANTED;
- 18 2. In light of the court's recommendations and plaintiff's frivolous filings, all pleading,
19 discovery, and motion practice in this action are stayed pending resolution of these
20 findings and recommendations. Other than objections to the findings and
21 recommendations, the court will not entertain or respond to any pleadings or motions
22 until the findings and recommendations are resolved.

23 **RECOMMENDATIONS**

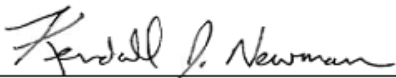
24 Further, IT IS HEREBY RECOMMENDED that:

- 25 1. The action be DISMISSED WITH PREJUDICE;
- 26 2. Plaintiff's motion for summary judgment (ECF No. 3) be DENIED; and
- 27 3. The Clerk of Court be directed to CLOSE this case.

28 These findings and recommendations are submitted to the United States District Judge assigned to

1 the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14) days after
2 being served with these findings and recommendations, any party may file written objections with
3 the court and serve a copy on all parties. Such a document should be captioned “Objections to
4 Magistrate Judge’s Findings and Recommendations.” Any reply to the objections shall be served
5 on all parties and filed with the court within fourteen (14) days after service of the objections.
6 The parties are advised that failure to file objections within the specified time may waive the right
7 to appeal the District Court’s order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998);
8 Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

9 Dated: November 13, 2020

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11 _____
KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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