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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JEFFREY LAUREN WRIGHT,
Plaintiff,
v.
CALIFORNIA DEPT. OF PUBLIC
HEALTH,
Defendant(s).

Case No. CV 17-6377-SJO (KK)

ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND

I.

INTRODUCTION

Plaintiff Jeffrey Lauren Wright (“Plaintiff”), proceeding pro se and in forma pauperis, filed a Complaint against defendant California Department of Public Health (“Defendant”). ECF Docket No. (“Dkt.”) 1. As discussed below, the Court dismisses the Complaint with leave to amend.

II.

PROCEDURAL HISTORY

On August 29, 2017, Plaintiff filed the Complaint against Defendant. Dkt. 1, Compl. at 1. In the Complaint, Plaintiff seeks “a court order to receive a California birth certificate or informational copy birth certificate” from Defendant. Id. at 3. Plaintiff purports to set forth the following four causes of action: (1) “Federal

1 Question: Other Civil Rights” under 28 U.S.C. § 1331; (2) “Civil Rights Act”
2 under 42 U.S.C. § 1983; (3) “Freedom of Information Act” under 5 U.S.C. § 552;
3 and (4) “Civil Rights” under 42 U.S.C. § 1983. Id. at 5-8.

4 III.

5 **STANDARD OF REVIEW**

6 As Plaintiff is proceeding in forma pauperis, the Court must screen the
7 Complaint and is required to dismiss the case at any time if it concludes the action
8 is frivolous or malicious, fails to state a claim on which relief may be granted, or
9 seeks monetary relief against a defendant who is immune from such relief. 28
10 U.S.C. § 1915(e)(2)(B); see Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir.
11 1998).

12 In determining whether a complaint fails to state a claim for screening
13 purposes, the Court applies the same pleading standard from Rule 8 of the Federal
14 Rules of Civil Procedure (“Rule 8”) as it would when evaluating a motion to
15 dismiss under Federal Rule of Civil Procedure 12(b)(6). See Watison v. Carter,
16 668 F.3d 1108, 1112 (9th Cir. 2012). Under Rule 8(a), a complaint must contain a
17 “short and plain statement of the claim showing that the pleader is entitled to
18 relief.” Fed. R. Civ. P. 8(a)(2).

19 A complaint may be dismissed for failure to state a claim “where there is no
20 cognizable legal theory or an absence of sufficient facts alleged to support a
21 cognizable legal theory.” Zamani v. Carnes, 491 F.3d 990, 996 (9th Cir. 2007)
22 (citation omitted). In considering whether a complaint states a claim, a court must
23 accept as true all of the material factual allegations in it. Hamilton v. Brown, 630
24 F.3d 889, 892-93 (9th Cir. 2011). However, the court need not accept as true
25 “allegations that are merely conclusory, unwarranted deductions of fact, or
26 unreasonable inferences.” In re Gilead Scis. Sec. Litig., 536 F.3d 1049, 1055 (9th
27 Cir. 2008) (citation omitted). Although a complaint need not include detailed
28 factual allegations, it “must contain sufficient factual matter, accepted as true, to

1 state a claim to relief that is plausible on its face.” Cook v. Brewer, 637 F.3d 1002,
2 1004 (9th Cir. 2011) (quoting Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937,
3 173 L. Ed. 2d 868 (2009)). A claim is facially plausible when it “allows the court to
4 draw the reasonable inference that the defendant is liable for the misconduct
5 alleged.” Id. (citation omitted). The complaint “must contain sufficient
6 allegations of underlying facts to give fair notice and to enable the opposing party to
7 defend itself effectively.” Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011).

8 “A document filed pro se is to be liberally construed, and a pro se complaint,
9 however inartfully pleaded, must be held to less stringent standards than formal
10 pleadings drafted by lawyers.” Woods v. Carey, 525 F.3d 886, 889-90 (9th Cir.
11 2008) (citations omitted). “[W]e have an obligation where the p[laintiff] is pro se,
12 particularly in civil rights cases, to construe the pleadings liberally and to afford the
13 p[laintiff] the benefit of any doubt.” Akhtar v. Mesa, 698 F.3d 1202, 1212 (9th Cir.
14 2012) (citation omitted).

15 If the court finds the complaint should be dismissed for failure to state a
16 claim, the court has discretion to dismiss with or without leave to amend. Lopez v.
17 Smith, 203 F.3d 1122, 1126-30 (9th Cir. 2000). Leave to amend should be granted
18 if it appears possible the defects in the complaint could be corrected, especially if
19 the plaintiff is pro se. Id. at 1130-31; see also Cato v. United States, 70 F.3d 1103,
20 1106 (9th Cir. 1995). However, if, after careful consideration, it is clear a complaint
21 cannot be cured by amendment, the court may dismiss without leave to amend.
22 Cato, 70 F.3d at 1107-11; see also Moss v. U.S. Secret Serv., 572 F.3d 962, 972 (9th
23 Cir. 2009).

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1 IV.

2 **DISCUSSION**

3 **A. PLAINTIFF FAILS TO STATE A CIVIL RIGHTS CLAIM AGAINST**
4 **DEFENDANT**

5 A plaintiff seeking to state a claim for civil rights violations under 28 U.S.C.
6 § 1983 (“Section 1983”) “must allege the violation of a right secured by the
7 Constitution and laws of the United States, and must show that the alleged
8 deprivation was committed by a person acting under color of state law.” West v.
9 Atkins, 487 U.S. 42, 48, 108 S. Ct. 2250, 101 L. Ed. 2d 40 (1988) (citations
10 omitted).

11 Here, Plaintiff sues Defendant for civil rights violations under Section 1983.¹
12 However, Plaintiff fails to set forth sufficient facts establishing a violation of his
13 rights under the Constitution or laws of the United States. In fact, Plaintiff does
14 not even identify which specific right he claims was allegedly violated. Moreover,
15 while Plaintiff appears to seek an order compelling Defendant to provide a copy of
16 his birth certificate, Plaintiff fails to allege facts establishing (1) Plaintiff has sought
17 or requested his birth certificate from Defendant, and (2) Defendant has denied his
18 request. Thus, it is unclear whether Plaintiff has suffered a harm as required for
19 standing to bring *any* legal action against Defendant. Spokeo, Inc. v. Robins, ___
20 U.S. ___, 136 S. Ct. 1540, 1547, 194 L. Ed. 2d 635 (2016) (“Plaintiff must have . . .
21 suffered an injury in fact” in order to have standing). Hence, because Plaintiff fails
22 to allege the violation of a right secured by the Constitution and laws of the United
23 States, Plaintiff’s civil rights claims must be dismissed.

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27 ¹ While Plaintiff purports to also set forth a civil rights cause of action under 28
28 U.S.C. § 1331 (“Section 1331”), Section 1331 simply states “[t]he district courts
shall have original jurisdiction of all civil actions arising under the Constitution,
laws, or treaties of the United States,” and does not confer any independent cause
of action.

1 **B. PLAINTIFF FAILS TO STATE A FOIA CLAIM AGAINST**
2 **DEFENDANT**

3 The Freedom of Information Act (“FOIA”) provides for the mandatory
4 disclosure of information held by federal agencies, unless the information is exempt
5 from disclosure under specific provisions set forth in FOIA. NLRB v. Robbins Tire
6 & Rubber Co., 437 U.S. 214, 220-21, 98 S. Ct. 2311, 2316, 57 L. Ed. 2d 159 (1978);
7 see also 5 U.S.C. § 552.

8 Here, Plaintiff sues Defendant under FOIA. However, FOIA applies only to
9 federal agencies. 5 U.S.C. § 552; see also Armstrong v. Exec. Office of the
10 President, 90 F.3d 553, 569 (D.C. Cir. 1996). Hence, because Defendant is a state
11 agency, Plaintiff’s FOIA claim must be dismissed.

12 **V.**

13 **LEAVE TO FILE A FIRST AMENDED COMPLAINT**

14 For the foregoing reasons, the Complaint is subject to dismissal. While the
15 Court is skeptical that Plaintiff can remedy the deficiencies set forth above, the
16 Court will grant Plaintiff leave to amend. See Lucas v. Dep’t of Corr., 66 F.3d 245,
17 248 (9th Cir. 1995) (per curiam).

18 Accordingly, IT IS ORDERED THAT **within twenty-one (21) days** of the
19 service date of this Order, Plaintiff choose one of the following two options:

20 1. Plaintiff may file a First Amended Complaint to attempt to cure the
21 deficiency discussed above. **The Clerk of Court is directed to mail Plaintiff a**
22 **blank Central District civil rights complaint form to use for filing the First**
23 **Amended Complaint, which the Court encourages Plaintiff to use.**

24 If Plaintiff chooses to file a First Amended Complaint, Plaintiff must clearly
25 designate on the face of the document that it is the “First Amended Complaint,” it
26 must bear the docket number assigned to this case, and it must be retyped or
27 rewritten in its entirety, preferably on the court-approved form. Plaintiff shall not
28 include new defendants or new allegations that are not reasonably related to the

1 claims asserted in the Complaint. In addition, the First Amended Complaint must
2 be complete without reference to the Complaint or any other pleading, attachment,
3 or document.

4 An amended complaint supersedes the preceding complaint. Ferdik v.
5 Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). After amendment, the Court will
6 treat all preceding complaints as nonexistent. Id. Because the Court grants
7 Plaintiff leave to amend as to all his claims raised here, any claim raised in a
8 preceding complaint is waived if it is not raised again in the First Amended
9 Complaint. Lacey v. Maricopa Cty., 693 F.3d 896, 928 (9th Cir. 2012).

10 The Court advises Plaintiff that it generally will not be well-disposed toward
11 another dismissal with leave to amend if Plaintiff files a First Amended Complaint
12 that continues to include claims on which relief cannot be granted. “[A] district
13 court’s discretion over amendments is especially broad ‘where the court has
14 already given a plaintiff one or more opportunities to amend his complaint.’”
15 Ismail v. Cty. of Orange, 917 F. Supp. 2d 1060, 1066 (C.D. Cal. 2012) (citations
16 omitted); see also Ferdik, 963 F.2d at 1261. Thus, **if Plaintiff files a First**
17 **Amended Complaint with claims on which relief cannot be granted, the First**
18 **Amended Complaint will be dismissed without leave to amend and with**
19 **prejudice.**

20 **Plaintiff is explicitly cautioned that failure to timely file a First**
21 **Amended Complaint will result in this action being dismissed with prejudice**
22 **for failure to state a claim, prosecute and/or obey Court orders pursuant to**
23 **Federal Rule of Civil Procedure 41(b).**

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1 2. Alternatively, Plaintiff may voluntarily dismiss the action without
2 prejudice, pursuant to Federal Rule of Civil Procedure 41(a). **The Clerk of Court**
3 **is directed to mail Plaintiff a blank Notice of Dismissal Form, which the Court**
4 **encourages Plaintiff to use.**

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6 Dated: September 20, 2017



HONORABLE KENLY KIYA KATO
United States Magistrate Judge

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