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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

Robert Barrick,	)	No. CV 16-01909-ODW (AS)
	)	
Plaintiff,	)	<b>ORDER DISMISSING COMPLAINT</b>
v.	)	
	)	<b>WITH LEAVE TO AMEND</b>
BARRACK OBAMA, et al.,	)	
	)	
Defendants.	)	
	)	

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I. INTRODUCTION

On October 18, 2016, pro se Plaintiff Robert Barrick ("Plaintiff"), filed a Complaint pursuant to Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971). (Docket Entry No. 1). The Complaint names as Defendants: (1) Barrack Obama, President of the United States; (2) Kristie Canegallo; (3) Brian Deese; (4) Valerie B. Jarrett; (5) Loretta Lynch, Attorney General of the United States; (6) Brian Goo; (7) Doris Doe; (8) Roger Doe; (9) Lauren Doe; (10) Carol Doe; (11) Troy Riggs; (12) Valerie Snyder; (13) Matt Doe; (14) Sue Doe; (15) Amy Doe; (16) Twitter, Inc.; (17) and Does 1 through

1 10. (See Compl. 1). Plaintiff seeks declaratory and injunctive  
2 relief and compensatory damages. (Compl. 3-4, 13).

3  
4 For reasons discussed below, the Complaint is DISMISSED with  
5 leave to amend.<sup>1</sup>

6  
7 **II. ALLEGATIONS OF THE COMPLAINT**

8  
9 The Complaint alleges that "[t]his action arises under the  
10 First, Fourth and Fourteenth Amendments to the Constitution . . . the  
11 Omnibus Crime Control and Safe Street Act of 1996, 18 U.S.C. §§ 2510-  
12 2522 . . . , Violation of State Civil Rights and Torts; and 42  
13 U.S.C.A. § 1983." (Compl. at 3).<sup>2</sup>

14  
15 In support of these claims, Plaintiff alleges that Defendants  
16 used a "government drone" to insert a parasite and a "chemical  
17 corrosive" into various parts of Plaintiff's body. (Compl. 5-7, 10).  
18 Once in Plaintiff's body, the chemical corrosive allegedly resembled  
19 a "disease," which led Plaintiff to go to the emergency room and  
20 eventually "compromise[d] Plaintiff's ability to walk." (Id. at 5,  
21 7, 10). Plaintiff also alleges that Defendants "stigmatize[d]"  
22 Plaintiff to prospective employers and interfered with Plaintiff's  
23 "modes of communication" by blocking e-mails, disabling functions on  
24

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25 <sup>1</sup> Magistrate Judges may dismiss a complaint with leave to  
26 amend without approval from the district judge. McKeever v. Block,  
932 F.2d 795, 798 (9th Cir. 1991).

27 <sup>2</sup> Plaintiff cannot maintain a Bivens action for violations of  
28 federal statutes, state civil rights and torts or actions against  
state officials under 42 U.S.C. § 1983.

1 Plaintiff's cellphone and Twitter account, and deleting his Twitter  
2 account messages. Defendants have also allegedly conducted a "mass  
3 defamation campaign" through Twitter, accusing Plaintiff of rape,  
4 murder, child molestation, and assault. (Id. 8-10). Moreover,  
5 Defendants allegedly dissuaded attorneys from representing Plaintiff  
6 and destroyed evidence. (Id.).

### 8 III. STANDARD OF REVIEW

9  
10 Under the provisions of the Prison Litigation Reform Act, a  
11 district court shall sua sponte review and dismiss a complaint if  
12 the court finds that it is (1) frivolous or malicious; (2) fails to  
13 state a claim upon which relief may be granted; or (3) seeks  
14 monetary relief from a defendant immune from such relief. 28 U.S.C.  
15 § 1915A(a); see Lopez v. Smith, 203 F.3d 1122, 1126-27 & n.7 (9th  
16 Cir. 2000) (en banc); Barren v. Harrington, 152 F.3d 1193, 1194 (9th  
17 Cir. 1998). The statute governing in forma pauperis proceedings  
18 similarly provides that a court shall screen and dismiss a complaint  
19 brought by any plaintiff - prisoner or non-prisoner - proceeding in  
20 forma pauperis on these same grounds. 28 U.S.C. § 1915(e)(2)(B);  
21 Calhoun v. Stahl, 254 F.3d 845, 845 (9th Cir. 2001); Lopez, 203 F.3d  
22 at 1126 n.7, 1127.

23  
24 Under Federal Rule of Civil Procedure 12(b)(6), a trial court  
25 may dismiss a claim sua sponte "where the claimant cannot possibly  
26 win relief." Omar v. Sea-Land Serv., Inc., 813 F.2d 986, 991 (9th  
27 Cir. 1987); see also Baker v. Director, U.S. Parole Comm'n, 916 F.2d  
28 725, 726 (D.C. Cir. 1990) (per curiam) (adopting the Ninth Circuit's

1 position in Omar and noting that a sua sponte dismissal "is  
2 practical and fully consistent with plaintiff's rights and the  
3 efficient use of judicial resources"). When a plaintiff appears pro  
4 se in a civil rights case, the court must construe the pleadings  
5 liberally and afford the plaintiff the benefit of any doubt. Karim-  
6 Panahi v. Los Angeles Police Dep't., 839 F.2d 621, 623 (9th Cir.  
7 1988). In giving liberal interpretation to a pro se complaint, the  
8 court may not, however, supply essential elements of a claim that  
9 were not initially pled. Ivey v. Bd. of Regents of Univ. of Alaska,  
10 673 F.2d 266, 268 (9th Cir. 1982). A court must give a pro se  
11 litigant leave to amend the complaint unless it is "absolutely clear  
12 that the deficiencies of the complaint could not be cured by  
13 amendment." Karim-Panahi, 839 F.2d at 623.

14  
15 Dismissal for failure to state a claim is appropriate if a  
16 complaint fails to proffer "enough facts to state a claim for relief  
17 that is plausible on its face." Bell Atl. Corp. v. Twombly,  
18 550 U.S. 544, 570 (2007); Ashcroft v. Iqbal, 556 U.S. 662, 678  
19 (2009). "A claim has facial plausibility when the plaintiff pleads  
20 factual content that allows the court to draw the reasonable  
21 inference that the defendant is liable for the misconduct alleged."  
22 Iqbal, 556 U.S. at 678; see also Hartmann v. Cal. Dep't of Corr.  
23 & Rehab., 707 F.3d 1114, 1122 (9th Cir. 2013). A plaintiff must  
24 provide more than "labels and conclusions" or a "formulaic recitation  
25 of the elements" of his claim. Twombly, 550 U.S. at 555; Iqbal,  
26 556 U.S. at 678. However, "[s]pecific facts are not necessary; the  
27 [complaint] need only 'give the defendant fair notice of what the  
28 . . . claim is and the grounds upon which it rests.'" Erickson v.

1 Pardus, 551 U.S. 89, 93 (2007) (per curiam) (quoting Twombly, 550  
2 U.S. at 555).

#### 3 4 IV. DISCUSSION

5  
6 The Court has reviewed Plaintiff's Complaint under the  
7 aforementioned standards and concludes that the Complaint is  
8 deficient and must be DISMISSED with leave to amend.

##### 9 10 A. Plaintiff Cannot Seek Injunctive or Declaratory Relief

11  
12 A Bivens action can only be maintained for monetary damages  
13 against an officer of the United States. Solida v. McKelvey, 820  
14 F.3d 1090, 1093 (9th Cir. 2016); see also Bivens, 403 U.S. at 397.  
15 "[R]elief under Bivens does not encompass injunctive and declaratory  
16 relief where, as here, the equitable relief sought requires official  
17 government action." Solida, 820 F.3d at 1093. Thus, to the extent  
18 Plaintiff asserts a Bivens claim for injunctive or declaratory relief  
19 against the individual Defendants (see Compl. At 3-4), Plaintiff's  
20 claim fails. Accordingly, the Complaint's injunctive and declaratory  
21 claims for relief must be DISMISSED.

##### 22 23 B. The Complaint Fails To Satisfy Federal Rule of Civil Procedure 8

24  
25 As currently pled, Plaintiff's allegations do not provide  
26 sufficient detail to state a Bivens claim in accordance with Federal  
27 Rule of Civil Procedure 8. Rule 8 provides, in relevant part, that  
28 "[a] pleading that states a claim for relief must contain: . . . a

1 short and plain statement of the claim showing that the pleader is  
2 entitled to relief." See Fed. R. Civ. P. 8. Rule 8 requires a  
3 showing, rather than a blanket assertion, of entitlement to relief;  
4 without some factual allegation in the complaint it is hard to see  
5 how a claimant could satisfy the requirement of providing not only  
6 fair notice of the nature of the claim, but also grounds on which the  
7 claim rests. Fed. R. Civ. P. 8(a)(2); Twombly, 550 U.S. 544 at 555.

8  
9 Here, Plaintiff alleges that "Defendants" used a drone to insert  
10 "corrosive substances" into Plaintiff's body; threatened Plaintiff;  
11 defamed Plaintiff on Twitter; "stigmatized" Plaintiff to prospective  
12 employers; tracked Plaintiff with a drone; and dismantled functions  
13 on Plaintiff's phone and Twitter account. (Compl. 5-13). However,  
14 the Complaint does not allege facts showing which defendants  
15 conducted these activities and fails to state a cognizable legal  
16 theory. (See Pet. 1-15). Consequently, the Complaint does not show  
17 there are plausible grounds for relief, nor does it provide enough  
18 facts for the Defendants to properly respond to the Complaint.  
19 Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc., 637 F.3d 1047,  
20 1059 (9th Cir. 2011). Indeed, Plaintiff fails to name the defendants  
21 who carried out the activities discussed in the Complaint, and  
22 Defendants cannot adequately respond to the Complaint without this  
23 basic information.

24  
25 A complaint is subject to dismissal for failure to state a claim  
26 if "one cannot determine from the complaint who is being sued, for  
27 what relief, and on what theory." McHenry v. Renne, 84 F.3d 1172,  
28 1178 (9th Cir. 1996); see also Chevalier v. Ray and Joan Kroc Corps.

1 Cnty. Ctr., No. C-11-4891 SBA, 2012 WL 2088819, \*2 (N.D. Cal. June 8,  
2 2012) (complaint that did not "identify which wrongs were committed  
3 by which Defendant" violated Rule 8).

4  
5 **C. Plaintiffs Fail To Allege Personal Participation By**  
6 **Defendants In The Alleged Civil Rights Violations**

7  
8 To demonstrate a civil rights violation against a defendant, a  
9 plaintiff must show either direct, personal participation or some  
10 sufficient causal connection between a defendant's conduct and the  
11 alleged constitutional violation. See Starr v. Baca, 652 F.3d 1202,  
12 1205-06 (9th Cir. 2011) (as applied to a section 1983 claim); Kwai  
13 Fun Wong v. United States, 373 F.3d 952, 966-67 (9th Cir. 2004)(as  
14 applied to a Bivens claim).

15  
16 Here, Plaintiff's allegations against Defendants are conclusory  
17 and vague. For example, throughout the Complaint, Plaintiff alleges  
18 that "Defendants engaged in" an assortment of activities, as  
19 discussed above. (Compl. 5-10). These statements are boiler plate  
20 assertions rather than allegations of specific facts. Ashcroft v.  
21 Iqbal, 556 U.S. 662, 676 (2009) (complaint must include specific  
22 facts for a plausible claim). Similarly, it is not enough to allege  
23 that "Defendants deliberately inflicted emotional torture . . ." or  
24 "that federal employee-defendants have hired . . ." people to  
25 harass Plaintiff on Twitter. (Compl. 5, 9). Plaintiff must  
26 identify how each individual defendant personally participated in  
27 the purported constitutional deprivation. Hansen v. Black, 885 F.2d  
28 642, 646 (9th Cir. 1989); see also Iqbal, 556 U.S. at 677 (in a

1 Bivens action, "each Government official, his or her title  
2 notwithstanding, is only liable for his or her own misconduct").  
3 "[I]ndividual government officials 'cannot be held liable' in a  
4 Bivens suit 'unless they themselves acted [unconstitutionally].'"  
5 Wood v. Moss, 134 S. Ct. 2056, 2070 (2014) (quoting Iqbal, 556 U.S.  
6 at 683).

7  
8 Therefore, to state a claim, Plaintiff "must 'allege with at  
9 least some degree of particularity overt acts which defendants  
10 engaged in' that support [his] claim." Jones v. Cmty. Redevelopment  
11 Agency, 733 F.2d 646, 649 (9th Cir. 1984) (citation omitted).  
12 Plaintiff also must allege facts that establish a "causal  
13 connection" between the conduct of each Defendant and the alleged  
14 constitutional deprivation. See Hansen, 885 F.2d at 646; Johnson,  
15 588 F.2d at 743-44.

16  
17 **D. The Complaint Fails To State A Constitutional Violation**

18  
19 A plaintiff bringing a Bivens action against a federal official  
20 must allege, at a minimum, that (1) an established constitutional or  
21 federal statutory right was involved, and (2) the federal officer  
22 violated that right. Davis v. Passman, 442 U.S. 228, 243-45 (1979);  
23 see also Bivens, 403 U.S. at 396-97. Although Plaintiff alleges that  
24 "[t]his action arises under the First, Fourth and Fourteenth  
25 Amendments to the Constitution" (see Compl. at 3), Plaintiff's  
26 conclusory allegations fail to state a constitutional violation.



1 E. The Complaint Fails to Name Each Defendant in Both the Caption and Body of  
2 the Complaint

3  
4 Plaintiff's Complaint violates Fed. R. Civ. P. 10(a), which  
5 requires naming each defendant in both the caption and body of the  
6 complaint. Here, despite naming multiple defendants in the caption  
7 of his Complaint, Plaintiff does not individually name any Defendant  
8 in the body of the Complaint. (See Compl. 1-15). This is  
9 insufficient.

10  
11 F. The Complaint Fails To State A Claim Against Defendants In Their  
12 Official Capacity

13  
14 According to the Complaint, "Defendants are sued in both  
15 personal and official capacities." (Compl. at 4). However,  
16 Plaintiff's claims against Defendants in their official capacities,  
17 fail to state a claim for relief.

18  
19 "Absent a waiver, sovereign immunity shields the Federal  
20 Government and its agencies from suit." FDIC v. Meyer, 510 U.S.  
21 471, 475 (1994). Under Bivens, 403 U.S. at 388, an action may only  
22 be brought for monetary damages against a responsible federal  
23 official in his or her individual - not official - capacity. See  
24 Daly-Murphy v. Winston, 837 F.2d 348, 355 (9th Cir. 1988); Consejo  
25 de Desarrollo Economico de Mexicali, A.C. v. United States, 482 F.3d  
26 1157, 1173 (9th Cir. 2007); Gilbert v. DaGrossa, 756 F.2d 1455, 1458  
27 (9th Cir. 1985). "This is because a Bivens suit against a defendant  
28 in his or her official capacity would merely be another way of

1 pleading an action against the United States, which would be barred  
2 by the doctrine of sovereign immunity." Consejo de Desarrollo  
3 Economico de Mexicali, 482 F.3d at 1173; see also Nurse v. U.S., 226  
4 F.3d 996, 1004 (9th Cir. 2000); Mueller v. U.S., No. EDCV 08-0918-  
5 DSF (MAN), 2009 WL 273283, \*6 (C.D. Cal. 2009) ("It has long been  
6 the rule that the bar of sovereign immunity cannot be avoided by  
7 naming officers and employees of the United States as defendants.")  
8 (citing Gilbert, 756 F.2d at 1459).

9  
10 Absent any waiver of the United States' sovereign immunity,  
11 Plaintiff cannot state a claim against Defendants in their official  
12 capacity.

13  
14 **G. Plaintiff Must Identify The Doe Defendants Before The Court May**  
15 **Order Service Of Process**

16  
17 The Complaint names four Doe defendants. A plaintiff's  
18 complaint may name a fictitious defendant if the plaintiff does not  
19 know the true identity of the defendant prior to the filing of the  
20 complaint. See Wakefield v. Thompson, 177 F.3d 1160, 1163 (9th Cir.  
21 1999). Nonetheless, before the Court can order service of process by  
22 the United States Marshal upon any fictitious defendant, a plaintiff  
23 must provide the Court identifying information sufficient to permit  
24 the United States Marshal to effect service of process. Thus, a  
25 plaintiff should generally be given an opportunity to discover the  
26 names of unknown defendants. See Gillespie v. Civiletti, 629 F.2d  
27 637, 642-43 (9th Cir. 1980).

1 It is premature to order discovery because Plaintiff's claims  
2 are defective for reasons unrelated to the naming of fictitious  
3 defendants. See Wakefield, 177 F.3d at 1163. Plaintiff is advised  
4 that he may be required to conduct discovery to determine the  
5 identities of any Doe defendants if he pursues this action.

6  
7 Plaintiff is also advised that he must establish that every  
8 Defendant, including every unknown defendant, had personal  
9 involvement in the civil rights violations alleged and that the  
10 defendant's action or inaction caused the harm suffered. See Starr,  
11 652 F.3d at 1207.

12  
13 V. ORDER

14  
15 For the reasons discussed above, the Court DISMISSES the  
16 Complaint WITH LEAVE TO AMEND. If Plaintiff still wishes to pursue  
17 this action, he shall **file a First Amended Complaint no later than 30**  
18 **days from the date of this Order. The First Amended Complaint must**  
19 **cure the pleading defects discussed above and shall be complete in**  
20 **itself without reference to the original Complaint. See L.R. 15-2**  
21 **("Every amended pleading filed as a matter of right or allowed by**  
22 **order of the Court shall be complete including exhibits. The amended**  
23 **pleading shall not refer to the prior, superseding pleading.").** This  
24 means that Plaintiff must allege and plead any viable claims in the  
25 original Complaint again.

26  
27 In any amended complaint, Plaintiff should identify the nature  
28 of each separate legal claim and confine his allegations to those

1 operative facts supporting each of his claims. Pursuant to Federal  
2 Rule of Civil Procedure 8(a), all that is required is a "short and  
3 plain statement of the claim showing that the pleader is entitled to  
4 relief." However, Plaintiff is advised that the allegations in the  
5 First Amended Complaint should be consistent with the authorities  
6 discussed above. In addition, the First Amended Complaint may not  
7 include new Defendants or claims not reasonably related to the  
8 allegations in the previously filed complaints. **Plaintiff is**  
9 **strongly encouraged to once again utilize the standard civil rights**  
10 **complaint form when filing any amended complaint, a copy of which is**  
11 **attached.**

12  
13 ///

14 ///

15 ///

1 Plaintiff is explicitly cautioned that failure to timely file a  
2 First Amended Complaint, or failure to correct the deficiencies  
3 described above, may result in a recommendation that this action, or  
4 portions thereof, be dismissed with prejudice for failure to  
5 prosecute and/or failure to comply with court orders. See Fed. R.  
6 Civ. P. 41(b). Plaintiff is further advised that if he no longer  
7 wishes to pursue this action in its entirety or with respect to  
8 particular Defendants or claims, he may voluntarily dismiss all or  
9 any part of this action by filing a Notice of Dismissal in accordance  
10 with Federal Rule of Civil Procedure 41(a)(1). A form Notice of  
11 Dismissal is attached for Plaintiff's convenience.

12  
13 IT IS SO ORDERED.

14  
15 Dated: November 28, 2016

16  
17 \_\_\_\_\_ /s/ \_\_\_\_\_  
18 ALKA SAGAR  
19 United States Magistrate Judge  
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