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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JASON EVERETT PELLUM,)	1:09-cv-00495-LJO-SMS
)	
Plaintiff,)	ORDER GRANTING PLAINTIFF'S
)	APPLICATION TO PROCEED IN FORMA
)	PAUPERIS (DOC. 2)
v.)	
)	ORDER DISMISSING PLAINTIFF'S
FRESNO POLICE DEPARTMENT, et)	COMPLAINT WITH LEAVE TO FILE A
al.,)	FIRST AMENDED COMPLAINT NO LATER
)	THAN THIRTY DAYS AFTER THE DATE
Defendants.)	OF SERVICE OF THIS ORDER (DOC. 1)
)	
)	

Plaintiff is proceeding pro se with an action for damages and other relief concerning alleged civil rights violations. The matter has been referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b) and Local Rules 72-302 and 72-304.

I. Application to Proceed in Forma Pauperis

Plaintiff has submitted a declaration that makes the showing required by § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted. 28 U.S.C. § 1915(a).

II. Screening the Complaint

A. Legal Standards

In cases wherein the plaintiff is proceeding in forma

1 pauperis, the Court is required to screen cases and shall dismiss
2 the case at any time if the Court determines that the allegation
3 of poverty is untrue, or the action or appeal is frivolous or
4 malicious, fails to state a claim on which relief may be granted,
5 or seeks monetary relief against a defendant who is immune from
6 such relief. 28 U.S.C. 1915(e)(2).

7 Fed. R. Civ. P. 8(a) provides:

8 A pleading that states a claim for relief must
9 contain:

10 (1) a short and plain statement of the grounds
11 for the court's jurisdiction, unless the court
12 already has jurisdiction and the claim needs no
13 new jurisdictional support;

14 (2) a short and plain statement of the claim
15 showing that the pleader is entitled to relief;
16 and

17 (3) a demand for the relief sought, which may
18 include relief in the alternative or different
19 types of relief.

20 Rule 8(a)'s simplified pleading standard applies to all civil
21 actions, with limited exceptions," none of which applies to
22 section 1983 actions. Swierkiewicz v. Sorema N. A., 534 U.S. 506,
23 512 (2002); Fed. R. Civ. P. 8(a). Pursuant to Rule 8(a), a
24 complaint must contain "a short and plain statement of the claim
25 showing that the pleader is entitled to relief...." Fed. R. Civ.
26 P. 8(a). "Such a statement must simply give the defendant fair
27 notice of what the plaintiff's claim is and the grounds upon
28 which it rests." Swierkiewicz, 534 U.S. at 512. However, "the
liberal pleading standard... applies only to a plaintiff's
factual allegations." Neitze v. Williams, 490 U.S. 319, 330 n.9
(1989).

In reviewing a complaint under this standard, the Court must
accept as true the allegations of the complaint in question,

1 Hospital Bldg. Co. v. Trustees of Rex Hospital, 425 U.S. 738, 740
2 (1976), construe the pro se pleadings liberally in the light most
3 favorable to the Plaintiff, Resnick v. Hayes, 213 F.3d 443, 447
4 (9th Cir. 2000), and resolve all doubts in the Plaintiff's favor,
5 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

6 Although a complaint attacked by a Rule 12(b)(6) motion to
7 dismiss does not need detailed factual allegations, a plaintiff
8 does not meet his or her obligation to provide the grounds of
9 entitlement to relief by supplying only conclusions, labels, or a
10 formulaic recitation of the elements of a claim. Bell Atlantic
11 Corp. v. Twombly, 127 S.Ct. 1955, 1964-65 (2007). Factual
12 allegations must be sufficient, when viewed in light of common
13 experience, to raise a right to relief above the speculative
14 level and to provide plausible grounds to suggest and infer the
15 element, or to raise a reasonable expectation that discovery will
16 reveal evidence of the required element. Bell, 127 S.Ct. at 1965.
17 Once a claim has been stated adequately, it may be supported by
18 showing any set of facts consistent with the allegations of the
19 complaint, and it may not be dismissed based on a court's
20 assessment that the plaintiff will fail to find evidence to
21 support the allegations or prove the claim to the satisfaction of
22 the finder of fact. Bell, 127 S.Ct. at 1969.

23 If the Court determines that the complaint fails to state a
24 claim, leave to amend should be granted to the extent that the
25 deficiencies of the complaint can be cured by amendment. Lopez v.
26 Smith, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc). Dismissal
27 of a pro se complaint for failure to state a claim is proper only
28 where it is obvious that the Plaintiff cannot prevail on the

1 facts that he has alleged and that an opportunity to amend would
2 be futile. Lopez v. Smith, 203 F.3d at 1128.

3 A claim is frivolous if it lacks an arguable basis either in
4 law or fact. Neitzke v. Williams, 490 U.S. 319, 324 (1989). A
5 frivolous claim is based on an inarguable legal conclusion or a
6 fanciful factual allegation. Id. A federal court may dismiss a
7 claim as frivolous if it is based on an indisputably meritless
8 legal theory or if the factual contentions are clearly baseless.
9 Id.

10 The test for malice is a subjective one that requires the
11 Court to determine whether the applicant is proceeding in good
12 faith. Kinney v. Plymouth Rock Squab. Co., 236 U.S. 43, 46
13 (1915); see Wright v. Newsome, 795 F.2d 964, 968 n. 1 (11th Cir.
14 1986). A lack of good faith is most commonly found in repetitive
15 suits filed by plaintiffs who have used the advantage of cost-
16 free filing to file a multiplicity of suits. A complaint may be
17 inferred to be malicious if it suggests an intent to vex the
18 defendants or abuse the judicial process by relitigating claims
19 decided in prior cases, Crisafi v. Holland, 655 F.2d 1305, 1309
20 (D.C.Cir. 1981); if it threatens violence or contains
21 disrespectful references to the Court, id.; or if it contains
22 untrue material allegations of fact or false statements made with
23 knowledge and an intent to deceive the Court, Horsev v. Asher,
24 741 F.2d 209, 212 (8th Cir. 1984).

25 B. Plaintiff's Complaint

26 Plaintiff alleges that the matters in question are the theft
27 of property, the unwanted search of premises, and the destruction
28 of personal property. Specifically, Plaintiff states that at an

1 unspecified time, an unspecified child was five years old and was
2 not supervised by a parent at the time of interrogation; the
3 minor urinated on herself. Plaintiff further states that the
4 child has been in child protective services' jurisdiction since
5 February 2008. (Cmplt. p. 2.)

6 Although the Federal Rules adopt a flexible pleading policy,
7 a complaint must give fair notice and state the elements of the
8 claim plainly and succinctly. Jones v. Community Redev. Agency,
9 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at
10 least some degree of particularity overt acts which the
11 defendants engaged in that support Plaintiff's claim. Id.

12 Here, the Plaintiff's complaint is so general that the
13 Defendant is not given sufficient notice of the basic factual
14 details, such as time, place, participants, and circumstances, in
15 order to give the Defendant fair notice of the claim.

16 III. Amendment of the Complaint

17 In summary, Plaintiff has failed to state a claim against
18 any defendant upon which relief may be granted. The Court finds
19 it necessary to dismiss the complaint in its entirety.

20 However, it is possible that Plaintiff can allege a set of
21 facts, consistent with the allegations, in support of the claim
22 or claims that would entitle him to relief. Thus, the Court will
23 grant Plaintiff an opportunity to amend the complaint to cure the
24 deficiencies of this complaint. Failure to cure the deficiencies
25 will result in dismissal of this action without leave to amend.

26 A complaint must contain a short and plain statement as
27 required by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules
28 adopt a flexible pleading policy, a complaint must give fair

1 notice and state the elements of the claim plainly and
2 succinctly. Jones v. Community Redev. Agency, 733 F.2d 646, 649
3 (9th Cir. 1984). Plaintiff must allege with at least some degree
4 of particularity overt acts which specific defendants engaged in
5 that support Plaintiff's claim. Id.

6 An amended complaint supercedes the original complaint,
7 Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997);
8 King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987), and must be
9 "complete in itself without reference to the prior or superceded
10 pleading," Local Rule 15-220. Plaintiff is warned that "[a]ll
11 causes of action alleged in an original complaint which are not
12 alleged in an amended complaint are waived." King, 814 F.2d at
13 567 (citing to London v. Coopers & Lybrand, 644 F.2d 811, 814
14 (9th Cir. 1981)); accord Forsyth, 114 F.3d at 1474.

15 IV. Disposition

16 Accordingly, it IS ORDERED that:

17 1) Plaintiff's application to proceed in forma pauperis IS
18 GRANTED; and

19 2) Plaintiff's complaint IS DISMISSED with leave to amend;
20 and

21 3) Plaintiff IS GRANTED thirty days from the date of service
22 of this order to file an amended complaint that complies with the
23 requirements of the pertinent substantive law, the Federal Rules
24 of Civil Procedure, and the Local Rules of Practice; the amended
25 complaint must bear the docket number assigned this case and must
26 be labeled "First Amended Complaint"; and

27 4) Plaintiff IS INFORMED that the failure to file an amended
28 complaint in accordance with this order will be considered to be

1 a failure to comply with an order of the Court pursuant to Local
2 Rule 11-110 and will result in dismissal of this action. Further,
3 failure to file an amended complaint that states a claim upon
4 which relief may be granted will be considered to be grounds for
5 dismissing the complaint pursuant to 28 U.S.C. § 1915(e)(2) and
6 will result in dismissal of the action.

7

8 IT IS SO ORDERED.

9 **Dated:** April 10, 2009

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE

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