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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JOHN FREDERICK WHEELER,	)	1:09-cv-01631-LJO-SMS
	)	
Plaintiff,	)	ORDER GRANTING PLAINTIFF'S
	)	APPLICATION TO PROCEED IN FORMA
	)	PAUPERIS (DOC. 2)
v.	)	
	)	ORDER DISMISSING PLAINTIFF'S
The US Department of	)	COMPLAINT WITH LEAVE TO FILE AN
Education, et al.,	)	AMENDED COMPLAINT NO LATER THAN
	)	THIRTY DAYS AFTER THE DATE OF
Defendants.	)	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 each case and shall  
2 dismiss the case at any time if the Court determines that the  
3 allegation of poverty is untrue, or the action or appeal is  
4 frivolous or malicious, fails to state a claim on which relief  
5 may be granted, or seeks monetary relief against a defendant who  
6 is immune from such relief. 28 U.S.C. 1915(e)(2).

7 "Rule 8(a)'s simplified pleading standard applies to all  
8 civil actions, with limited exceptions," none of which applies to  
9 section 1983 actions. Swierkiewicz v. Sorema N. A., 534 U.S. 506,  
10 512 (2002); Fed. R. Civ. P. 8(a). Pursuant to Rule 8(a), a  
11 complaint must contain "a short and plain statement of the claim  
12 showing that the pleader is entitled to relief . . . ." Fed. R.  
13 Civ. P. 8(a). "Such a statement must simply give the defendant  
14 fair notice of what the plaintiff's claim is and the grounds upon  
15 which it rests." Swierkiewicz, 534 U.S. at 512. Detailed factual  
16 allegations are not required, but "[t]hreadbare recitals of the  
17 elements of a cause of action, supported by mere conclusory  
18 statements, do not suffice." Ashcroft v. Iqbal, 129 S.Ct. 1937,  
19 1949 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544,  
20 555, 127 S.Ct. 1955, 1964-65 (2007)). Plaintiff must set forth  
21 "sufficient factual matter, accepted as true, to 'state a claim  
22 that is plausible on its face.'" Iqbal, 129 S.Ct. at 1949  
23 (quoting Twombly, 550 U.S. at 555). While factual allegations are  
24 accepted as true, legal conclusions are not. Id. at 1949.

25 Determining whether a complaint states a plausible claim for  
26 relief is generally a context-specific task that requires the  
27 reviewing court to draw on its judicial experience and common  
28 sense. However, where the well-pleaded facts do not permit the

1 court to infer more than the mere possibility of misconduct, the  
2 complaint has not shown that the pleader is entitled to relief."  
3 Ashcroft v. Iqbal, 129 S. Ct. 1937, 1950 (2009). A claim has  
4 facial plausibility,"when the plaintiff pleads factual content  
5 that allows the court to draw the reasonable inference that the  
6 defendant is liable for the misconduct alleged." Ashcroft v.  
7 Iqbal, - U.S. -, 129 S.Ct. 1937, 1949 (2009). "[F]or a complaint  
8 to survive a motion to dismiss, the non-conclusory 'factual  
9 content,' and reasonable inferences from that content, must be  
10 plausibly suggestive of a claim entitling the plaintiff to  
11 relief." Moss v. U.S. Secret Service, 572 F.3d 962, 970 (9th Cir.  
12 2009).

13 If the Court determines that the complaint fails to state a  
14 claim, leave to amend should be granted to the extent that the  
15 deficiencies of the complaint can be cured by amendment. Lopez v.  
16 Smith, 203 F.3d 1122, 1130 (9<sup>th</sup> Cir. 2000) (en banc). Dismissal  
17 of a pro se complaint for failure to state a claim is proper only  
18 where it is obvious that the Plaintiff cannot prevail on the  
19 facts that he has alleged and that an opportunity to amend would  
20 be futile. Lopez v. Smith, 203 F.3d at 1128.

#### 21 B. Plaintiff's Complaint

22 Plaintiff complains of letters or communications that  
23 Defendants Diversified Collection Services (DCS) and Van Ru  
24 Credit Corporation sent him concerning debts owed to unidentified  
25 creditors; however, Plaintiff later states that if he does not  
26 receive an apology and satisfaction from "THIS NOTICE" (an  
27 apparent reference to the complaint itself), he would file suit  
28 and ask for damages. (Cmplt. pp. 1-2.) Plaintiff later makes

1 conclusional statements to the effect that the aforementioned  
2 Defendants, as well as the United States Department of Education,  
3 deprived Plaintiff of unspecified rights in violation of 42  
4 U.S.C. § 1983. He states that the Department of Education  
5 threatened to collect a debt by attaching his Social Security  
6 benefits, and that he received documents from Defendant Van Ru  
7 concerning a loan application and that his civil rights have  
8 thereby been violated.

9 Plaintiff's allegations are inconsistent, and it is unclear  
10 whether he intends his complaint as an operative legal document  
11 or whether his intention is to decide to sue or not upon learning  
12 the reaction of Defendants to his complaint. Further, there is a  
13 lack of clarity as to the delineation between events meant to be  
14 recited to Defendants and events which Plaintiff intends to form  
15 the basis of his complaint. Plaintiff will be given an  
16 opportunity to file an amended complaint in which to state  
17 specific facts constituting the conduct, and significant  
18 attendant circumstances, for which Plaintiff intends to seek  
19 relief.

20 C. Leave to Amend

21 In summary, the Court finds it necessary to dismiss the  
22 complaint in its entirety. Plaintiff has failed to state a  
23 cognizable claim against the defendants and has failed to plead  
24 facts demonstrating jurisdiction in this Court. However, it is  
25 possible that Plaintiff can allege a set of facts, consistent  
26 with the allegations, in support of the claim or claims that  
27 would entitle him to relief. Thus, the Court will grant Plaintiff  
28 an opportunity to amend the complaint to cure the deficiencies of

1 this complaint. Failure to cure the deficiencies will result in  
2 dismissal of this action without leave to amend.

3 Plaintiff is informed that the Court cannot refer to a prior  
4 pleading in order to make Plaintiff's amended complaint complete.  
5 Local Rule 15-220 requires that an amended complaint be complete  
6 in itself without reference to any prior pleading. This is  
7 because, as a general rule, an amended complaint supersedes the  
8 original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.  
9 1967). Once Plaintiff files an amended complaint, the original  
10 pleading no longer serves any function in the case. Therefore, in  
11 an amended complaint, as in an original complaint, each claim and  
12 the involvement of each defendant must be sufficiently alleged.  
13 Plaintiff is warned that "[a]ll causes of action alleged in an  
14 original complaint which are not alleged in an amended complaint  
15 are waived." King, 814 F.2d at 567 (citing to London v. Coopers &  
16 Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord Forsyth, 114  
17 F.3d at 1474.

18 III. Disposition

19 Accordingly, it IS ORDERED that:

20 1) Plaintiff's application to proceed in forma pauperis IS  
21 GRANTED; and

22 2) Plaintiff's complaint IS DISMISSED with leave to amend;  
23 and

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

1 be labeled "First Amended Complaint"; failure to file an amended  
2 complaint in accordance with this order will be considered to be  
3 a failure to comply with an order of the Court pursuant to Local  
4 Rule 11-110 and will result in dismissal of this action.

5  
6 IT IS SO ORDERED.

7 **Dated: October 29, 2009**

**/s/ Sandra M. Snyder**  
UNITED STATES MAGISTRATE JUDGE

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