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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

HURSEL FLOYD MITCHELL,  
Plaintiff,  
v.  
SECURITY PACIFIC BANK, et al.,  
Defendants.

CASE NO. 1:16-cv-00775-AWI-MJS

**FINDINGS AND RECOMMENDATION TO  
DISMISS FIRST AMENDED COMPLAINT  
WITHOUT LEAVE TO AMEND**

**(ECF NO. 10)**

**THIRTY (30) DAY OBJECTION  
DEADLINE**

Plaintiff Hursel Floyd Mitchell proceeds pro se and in forma pauperis in this complaint against Security Pacific Bank, Federal Credit Union, First Interstate Bank, Bank of America, Citibank, Valley Oak Bank, and JP Morgan Chase.

His complaint was dismissed for failure to state a claim, but he was given leave to amend. (ECF No. 7.) His first amended complaint is before the Court for screening. (ECF No. 10.)

**I. Screening Requirement**

Pursuant to 28 U.S.C. § 1915(e)(2), the Court must conduct an initial review of the complaint to determine if it states a cognizable claim. The Court must dismiss a

1 complaint or portion thereof if it determines that the action has raised claims that are  
2 legally "frivolous or malicious," "fails to state a claim upon which relief may be granted,"  
3 or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C.  
4 § 1915(e)(2)(B). "Notwithstanding any filing fee, or any portion thereof, that may have  
5 been paid, the court shall dismiss the case at any time if the court determines that . . .  
6 the action or appeal . . . fails to state a claim on which relief may be granted." 28 U.S.C.  
7 § 1915(e)(2)(B)(ii).

## 8 **II. Pleading Standard**

9 A complaint must contain "a short and plain statement of the claim showing that  
10 the pleader is entitled to relief . . . ." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations  
11 are not required, but "[t]hreadbare recitals of the elements of a cause of action,  
12 supported by mere conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S.  
13 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)).  
14 Plaintiff must set forth "sufficient factual matter, accepted as true, to state a claim to relief  
15 that is plausible on its face." Id. Facial plausibility demands more than the mere  
16 possibility that a defendant committed misconduct and, while factual allegations are  
17 accepted as true, legal conclusions are not. Id. at 677-78.

## 18 **III. Plaintiff's Allegations**

19 Plaintiff's allegations are, once again, indecipherable. His complaint is comprised  
20 of a single page of randomly assembled legal phrases. It is devoid of factual allegations.  
21 He attaches various documents to his complaint, the import of which are not clear. At  
22 best, the documents may be read to reflect that Plaintiff has minimal income and is  
23 suffering financial difficulties, presumably at the hands of Defendants.

## 24 **IV. Analysis**

25 Plaintiff's complaint must be dismissed on several grounds.

26 First, the Court may dismiss a complaint for failure to state a claim if it does not  
27 "contain sufficient allegations of underlying facts to give fair notice and to enable the  
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1 opposing party to defend itself effectively.” Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir.  
2 2011). Because Plaintiff’s complaint is largely unintelligible, no defendant could be  
3 expected to defend itself effectively on Plaintiff’s allegations.

4 Second, the complaint fails to satisfy the requirements of Federal Rule of Civil  
5 Procedure 8. The complaint does not contain “a short and plain statement of the claim  
6 showing that the pleader is entitled to relief,” Fed. R. Civ. P. 8(a)(2), and the allegations  
7 are not “simple, concise, and direct,” Fed. R. Civ. P. 8(d)(1). “Although we construe  
8 pleadings liberally in their favor, pro se litigants are bound by the rules of procedure.”  
9 Ghazali v. Moran, 46 F.3d 52, 54 (9th Cir. 1995). In this case, the complaint, even when  
10 construed liberally, fails to meet the most minimal standards required by Rule 8.

11 Lastly, in order to state a claim in a United States District Court, Plaintiff must  
12 establish federal jurisdiction. Federal courts can adjudicate only those cases in which the  
13 United States Constitution and Congress authorize them to adjudicate. These generally  
14 are limited to cases involving diversity of citizenship (in which the matter in controversy  
15 exceeds the sum or value of \$75,000 and is between citizens of different states), or a  
16 federal question, or to which the United States is a party. 28 U.S.C. §§ 1331 and 1332;  
17 See also Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375 (1994); Finley v. United  
18 States, 490 U.S. 545 (1989). Here, Plaintiff has failed to establish that federal jurisdiction  
19 exists as the United States is not a party in this action and no question – let alone a  
20 federal question – can be discerned. Similarly, the complaint does not allege that the  
21 parties are citizens of different states or that the matter in controversy is more than  
22 \$75,000.00.

## 23 **V. Conclusion and Recommendation**

24 Plaintiff’s complaint is unintelligible and must be dismissed for failure to state a  
25 claim, failure to meet the most basic requirements of Rule 8, and failure to establish a  
26 basis for federal jurisdiction. Plaintiff previously was advised of these pleading defects  
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1 and given the opportunity to cure them. (ECF No. 7.) He failed to do so. Further leave to  
2 amend appears futile and should be denied.

3 Based on the foregoing, the Court HEREBY RECOMMENDS that Plaintiff's  
4 complaint be dismissed without leave to amend, and that the action be closed.

5 The findings and recommendation are submitted to the United States District  
6 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within  
7 **thirty** (30) days after being served with the findings and recommendation, Plaintiff may  
8 file written objections with the Court. Such a document should be captioned "Objections  
9 to Magistrate Judge's Findings and Recommendation." Plaintiff is advised that failure to  
10 file objections within the specified time may result in the waiver of rights on appeal.  
11 Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923  
12 F.2d 1391, 1394 (9th Cir. 1991)).

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14 IT IS SO ORDERED.

15 Dated: April 14, 2017

/s/ Michael J. Seng  
UNITED STATES MAGISTRATE JUDGE

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