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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CESAR A. BETANCOURT,

Case No. 1:16-cv-01855-AWI-SKO

Plaintiff,

**ORDER DISMISSING FIRST AMENDED
COMPLAINT WITH LEAVE TO AMEND
WITHIN THIRTY DAYS**

v.

(Doc. 7)

NEW CENTURY MORTGAGE
CORPORATION, et al.,

Defendants.

_____ /

Before the Court is the screening determination regarding Plaintiff’s First Amended Complaint (the “Amended Complaint”). (Doc. 7 at 1.) For the reasons provided herein, the Court FINDS that the Amended Complaint fails to state a claim on which relief may be granted. The Court therefore DISMISSES the Amended Complaint with leave to amend within thirty days.

I. BACKGROUND

On December 9, 2016, Plaintiff filed his first *pro se* complaint in this Court. (Doc. 1.) On the same date, Plaintiff also filed an Application to Proceed Without Prepayment of Fees and Affidavit (the “Motion to Proceed *In Forma Pauperis*”). (Doc. 2.)

On April 12, 2017, the Court entered an Order Dismissing Complaint with Leave to Amend. (Doc. 6.) In this order, the Court discussed various deficiencies in Plaintiff’s complaint,

1 (*see id.* at 3–5), and permitted Plaintiff to “file an amended complaint curing the deficiencies
2 identified by the Court” within “thirty . . . days” of the entry of the order, (*id.* at 5).

3 Plaintiff then filed his single-page Amended Complaint on April 26, 2017. (Doc. 7 at 1.)
4 As such, the initial screening determination for the Amended Complaint is currently before the
5 Court.

6 II. LEGAL STANDARD

7 Courts are required to “screen . . . an action filed by a plaintiff proceeding *in forma*
8 *pauperis.*” *Shirley v. Univ. of Idaho, Coll. of Law*, 800 F.3d 1193, 1194 (9th Cir. 2015) (emphasis
9 added) (citing 28 U.S.C. § 1915(e)(2)(B)); *see, e.g., Lopez v. Smith*, 203 F.3d 1122, 1126 n.7 (9th
10 Cir. 2000) (stating that 28 U.S.C. § 1915(e) “applies to all *in forma pauperis* complaints”
11 (emphasis added)). Under the relevant provisions relating to screening complaints, courts “shall
12 dismiss the case at any time if the court determines that” (1) “the allegation of poverty is untrue,”
13 or (2) “the action . . . is frivolous or malicious,” “fails to state a claim on which relief may be
14 granted,” or “seeks monetary relief against a defendant who is immune from such relief.” 28
15 U.S.C. § 1915(e)(2). “A plaintiff’s claim is frivolous ‘when the facts alleged rise to the level of
16 the irrational or the wholly incredible, whether or not there are judicially noticeable facts available
17 to contradict them.’” *Morales v. City of Bakersfield*, Case No.: 1:15-cv-01652-JLT, 2015 WL
18 9481021, at *1 (E.D. Cal. Dec. 29, 2015) (quoting *Denton v. Hernandez*, 504 U.S. 25, 32–33
19 (1992)).

20 Dismissal for failure to state a claim “is proper where there is either a ‘lack of a cognizable
21 legal theory’ or ‘the absence of sufficient facts alleged under a cognizable legal theory.’” *MCI*
22 *Commc’ns Servs., Inc. v. Sec. Paving Co.*, Case No. 1:15-CV-01940-LJO-JLT, 2016 WL
23 1436521, at *2 (E.D. Cal. Apr. 12, 2016) (quoting *Balisteri v. Pacifica Police Dep’t*, 901 F.2d
24 696, 699 (9th Cir. 1990)). Federal Rule of Civil Procedure 8(a) provides that “[a] pleading that
25 states a claim for relief must contain” the following: (1) “a short and plain statement of the
26 grounds for the court’s jurisdiction,” (2) “a short and plain statement of the claim showing that the
27 pleader is entitled to relief,” and (3) “a demand for the relief sought, which may include relief in
28 the alternative or different types of relief.” The pleading standard provided by Rule 8 “does not

1 require ‘detailed factual allegations,’ but it demands more than an unadorned, the defendant-
2 unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*
3 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). “A pleading that offers ‘labels and conclusions’ or
4 ‘a formulaic recitation of the elements of a cause of action will not do.’” *Id.* (quoting *Twombly*,
5 550 U.S. at 555). “Nor does a complaint suffice if it tenders ‘naked assertion[s]’ devoid of
6 ‘further factual enhancement.’” *Id.* (quoting *Twombly*, 550 U.S. at 557).

7 To state a claim, “a complaint must contain sufficient factual matter, accepted as true, to
8 ‘state a claim to relief that is plausible on its face.’” *Id.* (quoting *Twombly*, 550 U.S. at 570); *see*
9 *also Twombly*, 550 U.S. at 555 (stating that “[f]actual allegations must be enough to raise a right
10 to relief above the speculative level”). “A claim has facial plausibility when the plaintiff pleads
11 factual content that allows the court to draw the reasonable inference that the defendant is liable
12 for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citation omitted). “The plausibility standard
13 is not akin to a probability requirement, but it asks for more than a sheer possibility that a
14 defendant has acted unlawfully.” *Id.* (citation omitted). “In practice, ‘a complaint . . . must
15 contain either direct or inferential allegations respecting all the material elements necessary to
16 sustain recovery under some viable legal theory.’” *MCI Commc’ns Servs., Inc.*, 2016 WL
17 1436521, at *2 (quoting *Twombly*, 550 U.S. at 562).

18 In determining whether a complaint states a claim, the factual “allegations in the complaint
19 . . . are accepted as true and construed in the light most favorable to the plaintiff,” *Lazy Y Ranch*
20 *Ltd. v. Behrens*, 546 F.3d 580, 588 (9th Cir. 2008) (citing *Sprewell v. Golden State Warriors*, 266
21 F.3d 979, 988 (9th Cir. 2001)), and “all doubts” are “resolve[d] . . . in the pleader’s favor,” *MCI*
22 *Commc’ns Servs., Inc.*, 2016 WL 1436521, at *2 (citation omitted). However, “to be entitled to
23 the presumption of truth, . . . a complaint . . . must contain sufficient allegations of underlying
24 facts to give fair notice and to enable the opposing party to defend itself effectively.” *Starr v.*
25 *Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).

26 Additionally, as Plaintiff is appearing *pro se* in this action, “the court must construe the
27 pleadings liberally and must afford [the] plaintiff the benefit of any doubt.” *Karim-Panahi v. L.A.*
28 *Police Dep’t*, 839 F.2d 621, 623 (9th Cir. 1988) (citing *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1

1 (9th Cir. 1985)). *See generally* *Crowley v. Bannister*, 734 F.3d 967, 978 (9th Cir. 2013)
2 (“Presumably unskilled in the law, the pro se litigant is far more prone to make errors in pleading
3 than a person who benefits from the representation of counsel.” (citation omitted)). Nonetheless,
4 “the liberal pleading standard . . . applies only to a plaintiff’s factual allegations.” *Neitzke v.*
5 *Williams*, 490 U.S. 319, 330 n.9 (1989).

6 Finally, “[p]ro se complaints . . . may only be dismissed ‘if it appears beyond doubt that
7 the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.’”
8 *Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th Cir. 2014) (quoting *Wilhelm v. Rotman*, 680 F.3d
9 1113, 1121 (9th Cir. 2012)); *see, e.g., Schucker v. Rockwood*, 846 F.2d 1202, 1203–04 (9th Cir.
10 1988) (“Dismissal of a pro se complaint without leave to amend is proper only if it is absolutely
11 clear that the deficiencies in the complaint could not be cured by amendment.” (citation omitted)).
12 Thus, “[a] pro se litigant must be given leave to amend his or her complaint, and some notice of its
13 deficiencies, unless it is absolutely clear that the deficiencies of the complaint could not be cured
14 by amendment.” *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995) (citing *Noll v.*
15 *Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987)). “However, if, after careful consideration, it is
16 clear that a complaint cannot be cured by amendment, the [c]ourt may dismiss without leave to
17 amend.” *Melger v. Obama*, No. 2:16-cv-1527 AC P, 2017 WL 1213363, at *2 (E.D. Cal. Mar. 31,
18 2017) (citing *Cato*, 70 F.3d at 105–06).

19 III. DISCUSSION

20 The Amended Complaint in this case has two fatal deficiencies. First, the Amended
21 Complaint fails to identify the defendants in this action. The Amended Complaint provides
22 certain allegations against various parties, such as an “[a]gent from New Century,” “Wells Fargo
23 Bank,” “3 different[] Lawyers,” a third party who “used [Plaintiff’s] name and” a false “signature”
24 to receive “a lien” on Plaintiff’s property, and “First American Title Change.” (Doc. 7 at 1.)
25 However, Plaintiff never identifies which of these parties are the defendants in this matter. (*See*
26 *id.*) The Court reiterates its pertinent guidance from its Order Dismissing Complaint with Leave
27 to Amend: “Should Plaintiff file an amended complaint, . . . he must (1) name all defendants in the
28 caption and (2) include factual allegations against each defendant in the body of the complaint.”

1 (Doc. 6 at 3.) The Court encourages Plaintiff to use a template for the amended complaint—such
2 as in his first complaint, (*see* Doc. 1)—to clearly identify the defendants in this case.

3 Second, the Amended Complaint fails to identify Plaintiff’s causes of action. As
4 previously stated by the Court in its Order Dismissing Complaint with Leave to Amend, “[t]he
5 amended complaint should identify the federal statute under which” Plaintiff’s “claim proceeds.”
6 (Doc. 6 at 3.)

7 For these reasons, the Court finds that the Amended Complaint fails to state a claim on
8 which relief may be granted. The Court therefore finds that the Amended Complaint is properly
9 dismissed.

10 **A. Plaintiff May File a Second Amended Complaint**

11 As often noted by the Ninth Circuit, “[a] pro se litigant must be given leave to amend his or
12 her complaint, and some notice of its deficiencies, unless it is absolutely clear that the deficiencies
13 of the complaint could not be cured by amendment.” *Cato v. United States*, 70 F.3d 1103, 1106
14 (9th Cir. 1995) (citing *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987)). Here, Plaintiff may
15 be able to remedy the deficiencies in the Amended Complaint through amendment. The Court
16 therefore finds that it is appropriate to provide an opportunity for Plaintiff to file a second amended
17 complaint.

18 If Plaintiff elects to file a second amended complaint, the Court encourages Plaintiff to
19 resolve the deficiencies identified above and remain mindful of both (1) the legal standard for
20 stating a claim, as provided herein, and (2) the Court’s previous statements regarding a properly
21 filed complaint in its first Order Dismissing Complaint with Leave to Amend. (*See* Doc. 6.)

22 The Court also cautions Plaintiff that “[a]n amended complaint must be legible, must
23 identify what causes of action are being pursued, identify the improper actions or basis for liability
24 of each defendant, and the factual allegations must demonstrate plausible claims.” *Borders v. City*
25 *of Tulare*, CASE NO. 1:16-cv-1818-DAD-SKO, 2017 WL 1106039, at *4 (E.D. Cal. Mar. 23,
26 2017). Additionally, “Plaintiff may not change the nature of this suit by adding new, unrelated
27 claims in his amended complaint.” *Id.* (citing *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007)).
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1 The Court declines to rule at this time on Plaintiff's pending Motion to Proceed *In Forma*
2 *Pauperis*. (Doc. 2.) If Plaintiff files a second amended complaint, it will be reviewed and the
3 Court will make a determination regarding the Motion to Proceed *In Forma Pauperis*. However, if
4 Plaintiff does not timely file an amended complaint or fails to cure the deficiencies identified in
5 this Order, the Court will deny the Motion to Proceed *In Forma Pauperis* and recommend that the
6 presiding district court judge dismiss the Complaint with prejudice and, consequently, terminate
7 this case.

8 **IV. CONCLUSION**

9 For the reasons provided herein, the Court DISMISSES the Amended Complaint, (Doc. 7
10 at 1), WITHOUT PREJUDICE and WITH LEAVE TO AMEND. The Court further ORDERS
11 that Plaintiff may file a second amended complaint, if he so chooses, **by no later than thirty (30)**
12 **days from the date of this Order.**

13 Finally, the Court CAUTIONS Plaintiff that, if he fails to file a timely second amended
14 complaint in compliance with this Order, the Court will recommend that the presiding district
15 court judge dismiss the Amended Complaint *with prejudice* and, as such, terminate this case.

16 IT IS SO ORDERED.

17 Dated: June 16, 2017

18 /s/ Sheila K. Oberto
19 UNITED STATES MAGISTRATE JUDGE

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