

1 Court has screened the FAC and Motion to Proceed *In Forma Pauperis* and makes its
2 recommendations herein, namely, that Plaintiff’s Motion be denied and the FAC be dismissed.

3 **II. PAYMENT OF FILING FEE**

4 As a general rule, all parties instituting any civil action, suit, or proceeding in a district
5 court must pay a filing fee. 28 U.S.C. § 1914(a). However, the Court may authorize the
6 commencement of an action “without prepayment of fees and costs of security therefor, by a
7 person who submits an affidavit that . . . the person is unable to pay such fees or give security
8 therefor.” 28 U.S.C. § 1915(a)(1). Therefore, an action may proceed despite a failure to prepay
9 the filing fee only if leave to proceed *in forma pauperis* is granted by the Court. *See Rodriguez v.*
10 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).

11 The Ninth Circuit has held that “permission to proceed in forma pauperis is itself a matter
12 of privilege and not right; denial of in forma pauperis status does not violate the applicant’s right
13 to due process.” *Franklin v. Murphy*, 745 F.2d 1221, 1231 (9th Cir. 1984). The Court has broad
14 discretion to grant or deny a motion to proceed *in forma pauperis*. *O’Laughlin v. Doe*, 920 F.2d
15 614, 616 (9th Cir. 1990) (a “district court may deny leave to proceed [*in forma pauperis*] at the
16 outset if it appears from the face of the proposed complaint that the action is frivolous or without
17 merit.”).

18 Plaintiff has not paid the filing fee or filed an application to proceed *in forma pauperis*.
19 Thus, the action cannot proceed and should be dismissed without prejudice. *See, e.g., Olivares v.*
20 *Marshall*, 59 F.3d 109, 112 (9th Cir. 1995) (upholding dismissal for failure to pay partial filing
21 fee); *Brewer v. Rianda*, Case No. C 03-3102 SI(PR), 2003 WL 22016783, at *1 (N.D. Cal. Aug.
22 14, 2003) (dismissing complaint for failure to pay filing fee or submit *in forma pauperis*
23 application).

24 To the extent Plaintiff’s letters constitute a request to proceed *in forma pauperis*, however,
25 Plaintiff’s Complaint is frivolous and without merit, and the application to proceed *in forma*
26 *pauperis* should be denied. *Pate v. Guiltie*, Case No. CIV S-08-1802-JAM-DAD (PS), 2009 WL
27 3710714, at *1 (E.D. Cal. Nov. 4, 2009).

28 **III. LEGAL STANDARD**

Under 28 U.S.C. § 1915(e)(2), the Court must conduct a review of a *pro se* complaint to
determine whether it “state[s] a claim on which relief may be granted,” is “frivolous or

1 malicious,” or “seek[s] monetary relief against a defendant who is immune from such relief.” If
2 the Court determines that the complaint fails to state a claim, it must be dismissed. *Id.* Leave to
3 amend may be granted to the extent that the deficiencies of the complaint can be cured by
4 amendment. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

5 A complaint must contain “a short and plain statement of the claim showing that the
6 pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
7 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
8 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell*
9 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65 (2007)). Plaintiff must set
10 forth “sufficient factual matter, accepted as true, to ‘state a claim that is plausible on its face.’”
11 *Ashcroft v. Iqbal*, 556 U.S. at 663 (quoting *Twombly*, 550 U.S. at 555). While factual allegations
12 are accepted as true, legal conclusions are not. *Id.* at 678.

13 In determining whether a complaint states an actionable claim, the Court must accept the
14 allegations in the complaint as true, *Hosp. Bldg. Co. v. Trs. of Rex Hospital*, 425 U.S. 738, 740
15 (1976), construe *pro se* pleadings liberally in the light most favorable to the Plaintiff, *Resnick v.*
16 *Hayes*, 213 F.3d 443, 447 (9th Cir. 2000), and resolve all doubts in the Plaintiff’s favor. *Jenkins*
17 *v. McKeithen*, 395 U.S. 411, 421 (1969). Pleadings of *pro se* plaintiffs “must be held to less
18 stringent standards than formal pleadings drafted by lawyers.” *Hebbe v. Pliler*, 627 F.3d 338, 342
19 (9th Cir. 2010) (holding that *pro se* complaints should continue to be liberally construed after
20 *Iqbal*).

21 **III. PLAINTIFF’S ALLEGATIONS**

22 Plaintiff is an individual who has been engaged in litigation in California state courts. The
23 bulk of his 22 page complaint is rambling, incoherent, and fails to state any claim under federal
24 law. *Ashcroft v. Iqbal*, 556 U.S. 662, 678, (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544,
25 555 (2007). Although Defendant names the United States as the sole defendant in the case, it is
26 unclear what role the federal government played in any of the actions Plaintiff alleges and the
27 Court is largely unable to decipher Plaintiff’s allegations. For example, a portion of the
28 allegations reads:

1 On October 25th, 2015 – the following collateral was entered into the commercial
2 registry by plaintiff on behalf of the DAE HENDERSON JR TRUST / ESTATE
3 out of necessity to secure the Right(s), Title(s), interest and value therefrom in
4 and of the root of title from inception as well as all property held in Trust
5 including tho [sic] not limited to all DNA, cDNA, cell lines, retina scans,
fingerprints, hereditaments, pignus, hypotheca, res, energy to include all
debenture(s), agreement(s), facsimile(s) and signatures nunc pro tunc of owner's
name predicated on the straw man/ens legis/trust/estate described as the debtor
and all property is exempt from levy;

6 The FAC proceeds to list a number of documents identified by long strings of numbers.

7 The FAC claims two causes of action—one for breach of contract and one for trespass to
8 “chattles.” Neither cause of action has any description of the respective claims. For relief,
9 Plaintiff requests that the Court suspend four state court judgments that have been entered against
10 him, at least one of which appears to be a criminal case in Fresno County Superior Court.¹
11 Plaintiff also asks that the Court stay proceedings of a criminal case that is currently proceeding
12 in Amador County Superior Court, *State of California v. Dae Henderson*, Case No. 15-CR-
13 24274-02. Plaintiff also demands specific performance of the contract that was purportedly
14 breached.

15 **IV. DISCUSSION**

16 **A. Rule 8(a)**

17 Under federal notice pleading, a complaint is required to contain “a short and plain
18 statement of the claim showing that the pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2).
19 Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause
20 of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678, citing
21 *Twombly*, 550 U.S. at 555. While a plaintiff’s allegations are taken as true, courts “are not
22 required to indulge unwarranted inferences,” *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681
23 (9th Cir. 2009) (internal quotation marks and citation omitted). Plaintiff must set forth “sufficient
24 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Iqbal* 556
25 U.S. at 678. While factual allegations are accepted as true, legal conclusions are not. *Id.* The mere
26 possibility of misconduct falls short of meeting this plausibility standard. *Id.*

27 ¹ *State of California v. Dae Henderson, JR*, Case No. F06906257. The Court may take judicial notice of the existence
28 and course of these state court proceedings. *U.S. v. Corinthian Colls.*, 655 F.3d 984, 999 (9th Cir. 2011) (courts may
“take judicial notice of ‘matters of public record’”).

1 Plaintiff's complaint fails to comport with Rule 8(a)'s instruction that the complaint is
2 required to contain "a short and plain statement of the claim showing that the pleader is entitled to
3 relief." Plaintiff's narrative does not clearly allege facts against any defendant. Although the
4 Federal Rules adopt a flexible pleading policy, a complaint must give fair notice and state the
5 elements of the claim plainly and succinctly. *Jones v. Comty. Redev. Agency*, 733 F.2d 646, 649
6 (9th Cir. 1984). Plaintiff must allege with at least some degree of particularity overt acts which
7 defendants engaged in that support Plaintiff's claim. *Id.* Because Plaintiff has failed to comply
8 with the requirements of Fed. R. Civ. P. 8(a)(2), the complaint must be dismissed.

9 The Court also lacks subject matter jurisdiction because of the insubstantiality of the
10 allegations. *Bell v. Hood*, 327 U.S. 678, 682-83 (1946) (recognizing dismissal of claim for lack of
11 jurisdiction where the claim is "wholly insubstantial and frivolous"); *Hagans v. Lavine*, 415 U.S.
12 528, 543 (1974) (dismissal warranted when claim is "so insubstantial, implausible . . . or
13 otherwise completely devoid of merit as not to involve a federal controversy within the
14 jurisdiction of the District Court"); *Franklin v. Murphy*, 745 F.2d 1221, 1227 n. 6 (9th Cir. 1984)
15 (finding that "[a] paid complaint that is 'obviously frivolous' does not confer federal subject
16 matter jurisdiction . . . and may be dismissed sua sponte before service of process"). The FAC thus
17 fails to state any claim.

18 **B. Younger Abstention**

19 Federal courts "may not interfere with pending state criminal or civil proceedings." *Aiona*
20 *v. Judiciary of State of Haw.*, 17 F.3d 1244, 1248 (9th Cir. 1994). This doctrine, called "Younger
21 abstention," is rooted in the "desire to permit state courts to try state cases free from interference
22 by federal courts." *Younger v. Harris*, 401 U.S. 37, 43 (1971) (the "underlying reason for
23 restraining courts of equity from interfering with criminal prosecutions is reinforced by an even
24 more vital consideration, the notion of 'comity,' that is, a proper respect for state functions, a
25 recognition of the fact that the entire country is made up of a Union of separate state
26 governments, and a continuance of the belief that the National Government will fare best if the
27 States and their institutions are left free to perform their separate functions in their separate
28 ways"). "Abstention is appropriate in favor of state proceedings if (1) the state proceedings are

1 ongoing, (2) the proceedings implicate important state interests, and (3) the state proceedings
2 provide the plaintiff an adequate opportunity to litigate federal constitutional questions.” *Aiona*,
3 17 F.3d at 1248 (“If these three circumstances exist, then ‘a district court must dismiss the federal
4 action . . . [and] there is no discretion to grant injunctive relief”).

5 The FAC lists a number of state court cases that appear to have begun before Plaintiff
6 filed his complaint in this case. And, in fact, the docket for his case before Amador County
7 Superior Court, case no. 15-CR-24274-02, indicates that the case is currently active and a trial has
8 yet to be set. Thus, state proceedings were ongoing at the time the complaint was filed and the
9 first requirement has been met. *Id.* at 1249 (“state administrative proceedings and judicial
10 proceedings were ongoing at the time the plaintiffs filed this section 1983 action” where a state
11 court was adjudicating plaintiffs’ pending traffic citations); *Wiener v. Cnty. of San Diego*, 23 F.3d
12 263, 266 (9th Cir. 1994) (“[T]he critical question is not whether the state proceedings are still
13 ‘ongoing’ but whether ‘the state proceedings were underway before initiation of the federal
14 proceedings”).

15 Moreover, the state proceedings implicate important state interests in conducting criminal
16 matters unimpeded. *Kelly v. Robinson*, 479 U.S. 36, 49 (1986) (“This Court has recognized that
17 the States’ interest in administering their criminal justice systems free from federal interference is
18 one of the most powerful of the considerations that should influence a court considering equitable
19 types of relief”).

20 Plaintiff also has an adequate opportunity to raise any federal claims in the state
21 proceedings because they are state criminal proceedings, which routinely involve constitutional
22 and other federal issues. “*Younger* requires only the absence of ‘procedural bars’ to raising a
23 federal claim in the state proceedings.” *Commc’ns Telesys. Int’l v. Cal. Pub. Util. Comm’n*, 196
24 F.3d 1011, 1020 (9th Cir. 1999); *see also Juidice v. Vail*, 430 U.S. 327, 337 (1977) (“Appellees
25 need be accorded only an opportunity to fairly pursue their constitutional claims in the ongoing
26 state proceedings, and their failure to avail themselves of such opportunities does not mean that
27 the state procedures were inadequate”). No such procedural bars are alleged in the Complaint.
28 The third prong of the *Younger* test is thus met. Because Plaintiff’s Complaint asks the Court to

1 intrude upon the ordinary course of state criminal proceedings in a way that would threaten the
2 autonomy of the state court, it must be barred from proceeding. *Gilbertson v. Albright*, 381 F.3d
3 965, 981 (9th Cir. 2004) (“When an injunction is sought and *Younger* applies, it makes sense to
4 abstain, that is, to refrain from exercising jurisdiction, *permanently* by dismissing the federal
5 action because the federal court is only being asked to stop the state proceeding”).

6 **C. Leave to Amend**

7 Dismissal of a *pro se* complaint without leave to amend is appropriate where any
8 opportunity to amend the complaint would be futile. *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th
9 Cir. 2000) (“a district court should grant leave to amend even if no request to amend the pleading
10 was made, unless it determines that the pleading could not possibly be cured by the allegation of
11 other facts.”). No additional facts could cure the deficiencies in the Complaint. The problem is
12 not that it is missing important facts; it is that the requested relief is simply unavailable. Dismissal
13 without leave to amend is thus appropriate.

14 **V. RECOMMENDATION**

15 For the reasons set forth above, the Court finds that Plaintiff has failed to pay the required
16 filing fee and that the First Amended Complaint fails to state a claim under 28 U.S.C. §
17 1915(e)(2). Accordingly, the Court RECOMMENDS that the First Amended Complaint be
18 dismissed without leave to amend. To the extent Plaintiff is requesting to proceed *in forma*
19 *pauperis*, that request should be denied.

20 These findings and recommendations will be submitted to the United States District Judge
21 assigned to this case pursuant to the provisions of Title 28 of the United States Code section
22 636(b)(1). Within **fourteen days** after being served with these findings and recommendations, the
23 parties may file written objections with the Court. The document should be captioned “Objections
24 to Magistrate Judge’s Findings and Recommendations.”

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The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

IT IS SO ORDERED.

Dated: March 6, 2017

/s/ Eric P. Gray
UNITED STATES MAGISTRATE JUDGE