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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LATISHA SANTOS,

Plaintiff,

No. CIV S-10-0220 JAM GGH PS

vs.

UNITED NATIONS, et al.,

Defendants.

ORDER

_____ /

Plaintiff, proceeding in this action pro se, has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 72-302(21), pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff has submitted an affidavit making the showing required by 28 U.S.C. § 1915(a)(1). Accordingly, the request to proceed in forma pauperis will be granted.

The determination that plaintiff may proceed in forma pauperis does not complete the required inquiry. Pursuant to 28 U.S.C. § 1915(e)(2), the court is directed to dismiss the case at any time if it determines the allegation of poverty is untrue, or if the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against an immune defendant.

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1 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
2 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28
3 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
4 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
5 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
6 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
7 Cir. 1989); Franklin, 745 F.2d at 1227.

8 A complaint must contain more than a “formulaic recitation of the elements of a
9 cause of action;” it must contain factual allegations sufficient to “raise a right to relief above the
10 speculative level.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 1965 (2007).
11 “The pleading must contain something more...than...a statement of facts that merely creates a
12 suspicion [of] a legally cognizable right of action.” Id., quoting 5 C. Wright & A. Miller, Federal
13 Practice and Procedure 1216, pp. 235-235 (3d ed. 2004). “[A] complaint must contain sufficient
14 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft
15 v. Iqbal, ___ U.S. ___, 129 S.Ct. 1937, 1949 (2009) (quoting Twombly, 550 U.S. at 570, 127
16 S.Ct. 1955). “A claim has facial plausibility when the plaintiff pleads factual content that allows
17 the court to draw the reasonable inference that the defendant is liable for the misconduct
18 alleged.” Id.

19 Pro se pleadings are liberally construed. See Haines v. Kerner, 404 U.S. 519,
20 520-21, 92 S. Ct. 594, 595-96 (1972); Balistreri v. Pacifica Police Dep’t., 901 F.2d 696, 699 (9th
21 Cir. 1988). Unless it is clear that no amendment can cure the defects of a complaint, a pro se
22 plaintiff proceeding in forma pauperis is entitled to notice and an opportunity to amend before
23 dismissal. See Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987); Franklin, 745 F.2d at 1230.

24 The court finds the allegations in plaintiff’s complaint so vague and conclusory
25 that it is unable to determine whether the current action is frivolous or fails to state a claim for
26 relief. Plaintiff’s complaint titled “Murder of My Children” is a fairly fantastic rendition of

1 unrelated conclusions/facts about a plethora of unrelated defendants. The court has determined
2 that the complaint does not contain a short and plain statement as required by Fed. R. Civ. P.
3 8(a)(2). Although the Federal Rules adopt a flexible pleading policy, a complaint must give fair
4 notice and state the elements of the claim plainly and succinctly. Jones v. Community Redev.
5 Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least some degree of
6 particularity overt acts which defendants engaged in that support plaintiff's claim. Id. Because
7 plaintiff has failed to comply with the requirements of Fed. R. Civ. P. 8(a)(2), the complaint must
8 be dismissed. The court will, however, grant leave to file an amended complaint. The amended
9 complaint will be limited to twenty (20) pages.

10 If plaintiff chooses to amend the complaint, plaintiff must set forth the
11 jurisdictional grounds upon which the court's jurisdiction depends. Fed. R. Civ. P. 8(a). Further,
12 plaintiff must demonstrate how the conduct complained of has resulted in a deprivation of
13 plaintiff's federal rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980).

14 In addition, plaintiff is informed that the court cannot refer to a prior pleading in
15 order to make plaintiff's amended complaint complete. Local Rule 220 requires that an amended
16 complaint be complete in itself without reference to any prior pleading. This is because, as a
17 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375
18 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no
19 longer serves any function in the case. Therefore, in an amended complaint, as in an original
20 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

21 In accordance with the above, IT IS HEREBY ORDERED that:

22 1. Plaintiff's request for leave to proceed in forma pauperis is granted.

23 2. Plaintiff's complaint is dismissed.

24 3. Plaintiff is granted twenty-eight (28) days from the date of service of this order
25 to file an amended complaint that complies with the requirements of the Civil Rights Act, the
26 Federal Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must

1 bear the docket number assigned this case and must be labeled "Amended Complaint"; the
2 amended complaint must be limited to twenty (20) pages; plaintiff must file an original and two
3 copies of the amended complaint; failure to file an amended complaint in accordance with this
4 order will result in a recommendation that this action be dismissed.

5 DATED: May 19, 2010

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7 /s/ Gregory G. Hollows
8 UNITED STATES MAGISTRATE JUDGE

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