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

JOHN JAMES,

Plaintiff,

No. 2:10-cv-03279 MCE KJN PS

v.

ALBERT GARY; CURTIS
FERGUNSON and CREW,¹

Defendants.

ORDER

_____/

Plaintiff, who is proceeding without counsel, filed his complaint on December 8, 2010. (Dkt. No. 1.) Presently before the court is plaintiff’s application to proceed without prepayment of fees, otherwise referred to as an application to proceed “in forma pauperis.” (Dkt. No. 2.) For the reasons stated below, the undersigned will grant plaintiff’s application to proceed in forma pauperis, but will dismiss his complaint without prejudice. Plaintiff will be granted

¹ It is unclear what plaintiff means by including the phrase “and Crew” in the caption of his complaint. The term “crew” does not identify a specific individual or organization that plaintiff wishes to name as a defendants. Additionally, plaintiff has included the phrase “Holding Government Heritage, Money” in the area of the caption reflecting the defendants’ names. It is unclear what plaintiff intends to convey by including this phrase. Plaintiff’s Civil Cover Sheet does not clarify matters because it does not identify any named defendants in the space provided.

1 leave to file an amended complaint.

2 Plaintiff has requested leave to proceed in forma pauperis.² Pursuant to federal
3 statute, a filing fee of \$350 is ordinarily required to commence a civil action in federal district
4 court. 28 U.S.C. § 1914(a). The court may, however, authorize the commencement of an action
5 “without prepayment of fees and costs or security therefor” by a person that is unable to pay such
6 fees or provide security therefor. 28 U.S.C. § 1915(a)(1). Plaintiff’s application and declaration
7 make the showing required by 28 U.S.C. § 1915(a)(1) and (2). Accordingly, the undersigned
8 grants plaintiff’s request to proceed in forma pauperis.

9 The determination that a plaintiff may proceed in forma pauperis does not
10 complete the required inquiry. The court is also required to screen complaints brought by parties
11 proceeding in forma pauperis. See 28 U.S.C. § 1915(e)(2); see also Calhoun v. Stahl, 254 F.3d
12 845, 845 (9th Cir. 2001) (per curiam) (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not
13 limited to prisoners.”); accord Lopez v. Smith, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc).
14 Pursuant to 28 U.S.C. § 1915(e)(2), the court is directed to dismiss a case filed pursuant to the in
15 forma pauperis statute if, at any time, it determines that the allegation of poverty is untrue, or if
16 the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks
17 monetary relief against an immune defendant. See also Lopez, 203 F.3d at 1126-27 (“It is also
18 clear that section 1915(e) not only permits but requires a district court to dismiss an in forma
19 pauperis complaint that fails to state a claim.”).

20 In assessing whether a plaintiff’s complaint fails to state a claim on which relief
21 can be granted, the court adheres to the “notice pleading” standard. Under the “notice pleading”
22 standard of the Federal Rules of Civil Procedure, a plaintiff’s complaint must provide, in part, a
23 “short and plain statement” of plaintiff’s claims showing entitlement to relief. Fed. R. Civ. P.
24 8(a)(2); see also Paulsen v. CNF, Inc., 559 F.3d 1061, 1071 (9th Cir. 2009). A complaint should

25 ² The undersigned notes that plaintiff’s application to proceed in forma pauperis only
26 lists “Albert Gary and Crew” as defendants, and does not list defendant Curtis Ferguson.

1 be dismissed for failure to state a claim if, taking all well-pleaded factual allegations as true, it
2 does not contain “enough facts to state a claim to relief that is plausible on its face.” See Coto
3 Settlement v. Eisenberg, 593 F.3d 1031, 1034 (9th Cir. 2010) (quoting Ashcroft v. Iqbal, 129 S.
4 Ct. 1937, 1949 (2009)). “A claim has facial plausibility when the plaintiff pleads factual content
5 that allows the court to draw the reasonable inference that the defendant is liable for the
6 misconduct alleged.” Caviness v. Horizon Cmty. Learning Ctr., Inc., 590 F.3d 806, 812 (9th
7 Cir. 2010) (quoting Iqbal, 129 S. Ct. at 1949). The court accepts all of the facts alleged in the
8 complaint as true and construes them in the light most favorable to the plaintiff. Corrie v.
9 Caterpillar, 503 F.3d 974, 977 (9th Cir. 2007). The court is “not, however, required to accept as
10 true conclusory allegations that are contradicted by documents referred to in the complaint, and
11 [the court does] not necessarily assume the truth of legal conclusions merely because they are
12 cast in the form of factual allegations.” Paulsen, 559 F.3d at 1071 (citations and quotation marks
13 omitted). The court must construe a pro se pleading liberally to determine if it states a claim and,
14 prior to dismissal, tell a plaintiff of deficiencies in the complaint and give the plaintiff an
15 opportunity to cure them if it appears at all possible that the plaintiff can correct the defect. See
16 Lopez, 203 F.3d at 1130-31.

17 Upon review of plaintiff’s complaint, the undersigned will dismiss the complaint
18 for failure to comply with the pleading standards described above, but will permit plaintiff to file
19 an amended complaint. The pleading deficiencies in the complaint are fundamental and preclude
20 the court from ordering service of the complaint. Plaintiff filed his complaint on a form
21 complaint, which includes instructions for the pleading party. However, plaintiff has not actually
22 provided any text, let alone facts, regarding any events in question, including the alleged conduct
23 of each defendant, and the claims for relief that arose as a result of each defendant’s alleged
24 conduct. The only text in the complaint consists of the pre-printed instructions on the form. In
25 any amended complaint, plaintiff must follow the pleading standards set forth above, including
26 identifying the alleged conduct of each named defendant that gives rise to plaintiff’s claims,

1 whatever those claims might be.³

2 Based on the foregoing, the undersigned will dismiss plaintiff's complaint.
3 However, plaintiff will be granted leave to file an amended complaint that complies with Rule 8
4 and the pleading standards set forth above and corrects the deficiencies addressed herein. Lopez,
5 203 F.3d at 1126-27 (district courts must afford pro se litigants an opportunity to amend to
6 correct any deficiency in their complaints). Should plaintiff choose to file an amended
7 complaint, he shall identify each defendant in both the caption and the body of the amended
8 complaint, and clearly set forth the factual allegations against each such defendant showing
9 entitlement to relief, as well as the relief sought.

10 Plaintiff shall also specify a basis for this court's subject matter jurisdiction.
11 Generally, original federal subject matter jurisdiction may be premised on two grounds:
12 (1) federal question jurisdiction, or (2) diversity jurisdiction.⁴ District courts have federal
13 question jurisdiction over "all civil actions that arise under the Constitution, laws, or treaties of
14 the United States." 28 U.S.C. § 1331. "A case 'arises under' federal law either where federal
15 law creates the cause of action or 'where the vindication of a right under state law necessarily
16 turn[s] on some construction of federal law.'" Republican Party of Guam v. Gutierrez, 277 F.3d
17 1086, 1088-89 (9th Cir. 2002) (modification in original) (citing Franchise Tax Bd. v. Constr.
18 Laborers Vacation Trust, 463 U.S. 1, 8-9 (1983)). "[T]he presence or absence of
19 federal-question jurisdiction is governed by the 'well-pleaded complaint rule,' which provides
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21 ³ Plaintiff's Civil Cover Sheet filed with the court, which does not legally constitute part
22 of the complaint, sheds no light on plaintiff's purported claims. Insofar as the "Nature of Suit" is
23 concerned, plaintiff checked all of the following boxes despite the instruction to check only one
24 box: "Land Condemnation"; "Assault, Libel & Slander"; a "Motor Vehicle" tort; "Other Personal
25 Injury"; "Other Personal Property Damage"; a civil rights claim related to
26 "Housing/Accommodations"; "Other Civil Rights"; a prisoner civil rights petition; and violation
of statutes pertaining to "Banks and Banking," "Deportation," "Racketeer Influenced and Corrupt
Organizations," and the "Freedom of Information Act." (Dkt. No. 1, Doc. No. 1-1.)

⁴ Other bases for subject matter jurisdiction may exist depending on the nature of the
claims and the parties.

1 that federal jurisdiction exists only when a federal question is presented on the face of the
2 plaintiff's properly pleaded complaint." Provincial Gov't of Marinduque v. Placer Dome, Inc.,
3 582 F.3d 1083, 1091 (9th Cir. 2009). District courts have diversity jurisdiction over "all civil
4 actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of
5 interest and costs," and the action is between: "(1) citizens of different States; (2) citizens of a
6 State and citizens or subjects of a foreign state; (3) citizens of different States and in which
7 citizens or subjects of a foreign state are additional parties; and (4) a foreign state . . . as plaintiff
8 and citizens of a State or of different States." 28 U.S.C. § 1332.

9 Additionally, plaintiff is informed that the court cannot refer to prior pleadings in
10 order to make an amended complaint complete. Eastern District Local Rule 220 requires that an
11 amended complaint be complete in itself. This is because, as a general rule, an amended
12 complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967)
13 ("The amended complaint supersedes the original, the latter being treated thereafter as
14 non-existent."). Accordingly, once a plaintiff files an amended complaint, the original no longer
15 serves any function in the case. Therefore, "a plaintiff waives all causes of action alleged in the
16 original complaint which are not alleged in the amended complaint," London v. Coopers &
17 Lybrand, 644 F.2d 811, 814 (9th Cir. 1981), and defendants not named in an amended complaint
18 are no longer defendants. Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992).

19 Finally, the undersigned cautions plaintiff that failure to prosecute his lawsuit or
20 failure to comply with the Federal Rules of Civil Procedure, this court's Local Rules, or any
21 court order may result in a recommendation that this action be dismissed. See Fed. R. Civ. P.
22 41(b); Local Rules 110, 183(a); see Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991)
23 (recognizing that a court "may act *sua sponte* to dismiss a suit for failure to prosecute"); Hells
24 Canyon Preservation Council v. U.S. Forest Serv., 403 F.3d 683, 689 (9th Cir. 2005)
25 (recognizing that courts may dismiss an action pursuant to Federal Rule of Civil Procedure 41(b)
26 *sua sponte* for a plaintiff's failure to prosecute or comply with the rules of civil procedure or the

1 court's orders); Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995) (per curiam) ("Failure to follow
2 a district court's local rules is a proper ground for dismissal."); Ferdik, 963 F.2d at 1260
3 ("Pursuant to Federal Rule of Civil Procedure 41(b), the district court may dismiss an action for
4 failure to comply with any order of the court."); King v. Atiyeh, 814 F.2d 565, 567 (9th Cir.
5 1987) ("Pro se litigants must follow the same rules of procedure that govern other litigants.");
6 Thompson v. Housing Auth. of City of L.A., 782 F.2d 829, 831 (9th Cir. 1986) (per curiam)
7 (stating that district courts have inherent power to control their dockets and may impose
8 sanctions including dismissal).

9 For the reasons stated above, IT IS HEREBY ORDERED that:

- 10 1. Plaintiff's application for leave to proceed in forma pauperis (Dkt. No. 2)
11 is granted;
- 12 2. Plaintiff's complaint is dismissed with leave to amend; and
- 13 3. Plaintiff is granted thirty (30) days from the date of service of this order to
14 file an amended complaint that is complete in itself. The amended complaint must bear the
15 docket number assigned to this case and must be labeled "First Amended Complaint." Plaintiff
16 must file an original and two copies of the First Amended Complaint. Failure to timely file a
17 First Amended Complaint in accordance with this order will result in a recommendation that this
18 action be dismissed.

19 DATED: December 9, 2010

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22 KENDALL J. NEWMAN
23 UNITED STATES MAGISTRATE JUDGE
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