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

MICHAEL DEAN,

Plaintiff,

No. CIV S-11-1192 KJM CMK (TEMP) PS

vs.

SPRINGLEAF FINANCIAL SERVICES,

Defendant.

ORDER

_____ /

Plaintiff is proceeding in this action pro se. Plaintiff has requested authority pursuant to 28 U.S.C. § 1915 to proceed in forma pauperis. This proceeding was referred to this court by Local Rule 302(c)(21).

Plaintiff has submitted the affidavit required by § 1915(a) showing that plaintiff is unable to prepay fees and costs or give security for them. Accordingly, the request to proceed in forma pauperis will be granted. 28 U.S.C. § 1915(a).

The federal in forma pauperis statute authorizes federal courts to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at 327.

1 In order to avoid dismissal for failure to state a claim a complaint must contain
2 more than “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements
3 of a cause of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other
4 words, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
5 statements do not suffice.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). Furthermore, a
6 claim upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570.
7 “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to
8 draw the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 129
9 S. Ct. at 1949. When considering whether a complaint states a claim upon which relief can be
10 granted, the court must accept the allegations as true, Erickson v. Pardus, 127 S. Ct. 2197, 2200
11 (2007), and construe the complaint in the light most favorable to the plaintiff, see Scheuer v.
12 Rhodes, 416 U.S. 232, 236 (1974).

13 Plaintiff’s complaint consists of one sentence complaining about a judge who is
14 not even a named defendant in the action. The court finds the allegations in plaintiff’s complaint
15 so vague and conclusory that it is unable to determine whether the current action is frivolous or
16 fails to state a claim for relief. The court has determined that the complaint does not contain a
17 short and plain statement as required by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules
18 adopt a flexible pleading policy, a complaint must give fair notice and state the elements of the
19 claim plainly and succinctly. Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir.
20 1984). Plaintiff must allege with at least some degree of particularity overt acts which
21 defendants engaged in that support plaintiff’s claim. Id. Because plaintiff has failed to comply
22 with the requirements of Fed. R. Civ. P. 8(a)(2), the complaint must be dismissed. The court
23 will, however, grant leave to file an amended complaint.

24 If plaintiff chooses to amend the complaint, plaintiff must set forth the
25 jurisdictional grounds upon which the court’s jurisdiction depends. Federal Rule of Civil
26 Procedure 8(a). Further, plaintiff must demonstrate how the conduct complained of has resulted

1 in a deprivation of plaintiff's federal rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980).

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

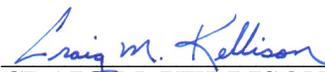
9 In accordance with the above, IT IS HEREBY ORDERED that:

10 1. Plaintiff's request to proceed in forma pauperis is granted;

11 2. Plaintiff's complaint is dismissed; and

12 3. Plaintiff is granted thirty days from the date of service of this order to file an
13 amended complaint that complies with the requirements of the Federal Rules of Civil Procedure,
14 and the Local Rules of Practice; the amended complaint must bear the docket number assigned
15 this case and must be labeled "Amended Complaint"; plaintiff must file an original and two
16 copies of the amended complaint; failure to file an amended complaint in accordance with this
17 order will result in a recommendation that this action be dismissed.

18
19 DATED: June 6, 2011

20 
21 **CRAIG M. KELLISON**
22 UNITED STATES MAGISTRATE JUDGE

23
24 JMM
25 dean-springleaf.ifp-lta.cmk