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

WILLIAM JOSEPH HEDGCOTH,

Plaintiff,

No. CIV S-11-1256 GEB GGH PS

vs.

SOCIAL SECURITY,

Defendant.

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 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

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

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

17 Pro se pleadings are liberally construed. See Haines v. Kerner, 404 U.S. 519,
18 520-21, 92 S. Ct. 594, 595-96 (1972); Balistreri v. Pacifica Police Dep’t., 901 F.2d 696, 699 (9th
19 Cir. 1988). Unless it is clear that no amendment can cure the defects of a complaint, a pro se
20 plaintiff proceeding in forma pauperis is entitled to notice and an opportunity to amend before
21 dismissal. See Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987); Franklin, 745 F.2d at 1230.

22 Here, the complaint alleges in part:

23 I came to social security because the police have pushed me away
24 from them thru coercion there is proof to this fact, I was looking
25 for a way to say that I am being hurt because of stalking, attack my
26 hearing (my ears) to attack my municipality (time) I have a hearing
test at mathers veterans hospital I now have inner ear trauma due to
noise & stress due to being in or going through a conspiracy to
vigilante this should prove that my hearing was exploited. [Sic]

1 The remainder of the complaint is similarly difficult to decipher.

2 The court finds the allegations in plaintiff's complaint so vague and conclusory
3 that it is unable to determine whether the current action is frivolous or fails to state a claim for
4 relief. The court has determined that the complaint does not contain a short and plain statement
5 as required by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a flexible pleading
6 policy, a complaint must give fair notice and state the elements of the claim plainly and
7 succinctly. Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff
8 must allege with at least some degree of particularity overt acts which defendants engaged in that
9 support plaintiff's claim. Id. Because plaintiff has failed to comply with the requirements of
10 Fed. R. Civ. P. 8(a)(2), the complaint must be dismissed. The court will, however, grant leave to
11 file an amended complaint.

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

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

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

- 24 1. Plaintiff's request for leave to proceed in forma pauperis is granted.
- 25 2. Plaintiff's complaint is dismissed.

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