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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

VINCENT YEE,  
Plaintiff,  
v.  
SACRAMENTO COUNTY JAIL, et al.,  
Defendants.

No. 2:14-cv-2955 KJM DAD PS

ORDER

Plaintiff Vincent Yee is proceeding in this action pro se. This matter was referred to the undersigned in accordance with Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1). Plaintiff has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

Plaintiff has submitted an in forma pauperis application that make the showing required by 28 U.S.C. § 1915(a)(1). Plaintiff's request for leave to proceed in forma pauperis will therefore be granted.

The determination that plaintiff may proceed in forma pauperis does not complete the inquiry required by the statutes. The court must dismiss an in forma pauperis case at any time if the allegation of poverty is found to be untrue or if it is determined that 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. See 28 U.S.C. § 1915(e)(2). A complaint is legally frivolous when it lacks an arguable basis in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin

1 v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). Under this standard, a court must dismiss a  
2 complaint as frivolous where it is based on an indisputably meritless legal theory or where the  
3 factual contentions are clearly baseless. Neitzke, 490 U.S. at 327; 28 U.S.C. § 1915(e).

4 To state a claim on which relief may be granted, the plaintiff must allege “enough facts to  
5 state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544,  
6 570 (2007). In considering whether a complaint states a cognizable claim, the court accepts as  
7 true the material allegations in the complaint and construes the allegations in the light most  
8 favorable to the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Hosp. Bldg. Co. v.  
9 Trustees of Rex Hosp., 425 U.S. 738, 740 (1976); Love v. United States, 915 F.2d 1242, 1245  
10 (9th Cir. 1989). Pro se pleadings are held to a less stringent standard than those drafted by  
11 lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). However, the court need not accept as true  
12 conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. Western  
13 Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

14 The minimum requirements for a civil complaint in federal court are as follows:

15 A pleading which sets forth a claim for relief . . . shall contain (1) a  
16 short and plain statement of the grounds upon which the court’s  
17 jurisdiction depends . . . , (2) a short and plain statement of the  
claim showing that the pleader is entitled to relief, and (3) a demand  
for judgment for the relief the pleader seeks.

18 FED. R. CIV. P. 8(a).

19 Here, plaintiff’s complaint alleges that his father died in the Sacramento County Jail on  
20 December 16, 1998, as a result of being denied “proper medical + psychiatric care (suicide watch)  
21 after he repeatedly yelled out and wrote about his suicidal ideations in jail and before  
22 incarceration.” (Compl. (Dkt. No. 1) at 1.) In addition, in his complaint plaintiff alleges that his  
23 mother previously filed an action, “99-2485 WBS JFM PS,” raising these claims on plaintiff’s  
24 behalf, but that the action was dismissed because plaintiff’s parents “were not married,” and  
25 because plaintiff’s mother could not sue on his behalf. (Id. at 2.)

26 The court’s own records do reflect that on December 24, 2002, in the matter of Margarita  
27 Garcia for Vincent Yee v. Sacramento County Jail, Harold Penny, and Cathleen Fritzsche, No.  
28 CIV S-99-2485 WBS JFM, the District Judge assigned to that action dismissed “Vincent Yee’s

1 claims . . . without prejudice so that he may proceed when . . . he reaches the age of majority.”

2 (Margarita Garcia for Vincent Yee v. Sacramento County Jail, Harold Penny, and Cathleen  
3 Fritzsche, No. CIV S-99-2485 WBS JFM, Dkt. No. 42 at 2.) Here, plaintiff’s complaint filed in  
4 this action alleges that plaintiff has now reached the age of majority. (Compl. (Dkt. No. 1) at 2.)

5 Nonetheless, plaintiff’s complaint fails to satisfy the minimum requirements of Rule 8 of  
6 the Federal Rules of Civil Procedure discussed above. In this regard, plaintiff’s complaint fails to  
7 contain (1) a short and plain statement of the grounds upon which the court’s jurisdiction  
8 depends, (2) a short and plain statement of a claim showing that he is entitled to relief and (3) a  
9 demand for judgment for the relief he seeks. Although the Federal Rules of Civil Procedure  
10 adopt a flexible pleading policy, a complaint must give the defendant fair notice of the plaintiff’s  
11 claims and must allege facts that state the elements of each claim plainly and succinctly. FED. R.  
12 CIV. P. 8(a)(2); Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). “A  
13 pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of cause of  
14 action will not do.’ Nor does a complaint suffice if it tenders ‘naked assertions’ devoid of  
15 ‘further factual enhancements.’” Ashcroft v. Iqbal, 556 U.S.662, 678 (2009) (quoting Twombly,  
16 550 U.S. at 555, 557. A plaintiff must allege with at least some degree of particularity overt acts  
17 which the defendants engaged in that support the plaintiff’s claims. Jones, 733 F.2d at 649.

18 Accordingly, plaintiff’s complaint will be dismissed for failure to state a claim. The  
19 undersigned has carefully considered whether plaintiff may amend the complaint to state a claim  
20 upon which relief can be granted. “Valid reasons for denying leave to amend include undue  
21 delay, bad faith, prejudice, and futility.” California Architectural Bldg. Prod. v. Franciscan  
22 Ceramics, 818 F.2d 1466, 1472 (9th Cir. 1988). See also Klamath-Lake Pharm. Ass’n v. Klamath  
23 Med. Serv. Bureau, 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that while leave to amend shall  
24 be freely given, the court does not have to allow futile amendments). However, when evaluating  
25 the failure to state a claim, the complaint of a pro se plaintiff may be dismissed “only where ‘it  
26 appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which  
27 would entitle him to relief.’” Franklin v. Murphy, 745 F.2d 1221, 1228 (9th Cir. 1984) (quoting  
28 Haines v. Kerner, 404 U.S. 519, 521 (1972). See also Weilburg v. Shapiro, 488 F.3d 1202, 1205

1 (9th Cir. 2007) (“Dismissal of a pro se complaint without leave to amend is proper only if it is  
2 absolutely clear that the deficiencies of the complaint could not be cured by amendment.”)  
3 (quoting Schucker v. Rockwood, 846 F.2d 1202, 1203-04 (9th Cir. 1988)).

4 Here, the court cannot yet say that it appears beyond doubt that leave to amend would be  
5 futile. Plaintiff’s complaint will therefore be dismissed, and he will be granted leave to file an  
6 amended complaint. Plaintiff is cautioned, however, that if he elects to file an amended  
7 complaint in this action “the tenet that a court must accept as true all of the allegations contained  
8 in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause  
9 of action, supported by mere conclusory statements, do not suffice.” Ashcroft, 556 U.S. at 678.  
10 “While legal conclusions can provide the complaint’s framework, they must be supported by  
11 factual allegations.” Id. at 679. Those facts must be sufficient to push the claims “across the line  
12 from conceivable to plausible[.]” Id. at 680 (quoting Twombly, 550 U.S. at 557).

13 Plaintiff is also reminded that the court cannot refer to a prior pleading in order to make an  
14 amended complaint complete. Local Rule 220 requires that any amended complaint be complete  
15 in itself without reference to prior pleadings. The amended complaint will supersede the original  
16 complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Thus, in an amended complaint,  
17 just as if it were the initial complaint filed in the case, each defendant must be listed in the caption  
18 and identified in the body of the complaint, and each claim and the involvement of each  
19 defendant must be sufficiently alleged. Any amended complaint which plaintiff may elect to file  
20 must also include concise but complete factual allegations describing the conduct and events  
21 which underlie plaintiff’s claims.

## 22 CONCLUSION

23 Accordingly, IT IS HEREBY ORDERED that:

- 24 1. Plaintiff’s December 22, 2014, application to proceed in forma pauperis (Dkt.  
25 No. 2) is granted.
- 26 2. The complaint filed December 22, 2014 (Dkt. No. 1) is dismissed with leave to  
27 amend.

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3. Within twenty-eight days from the date of this order, an amended complaint shall be filed that cures the defects noted in this order and complies with the Federal Rules of Civil Procedure and the Local Rules of Practice. The amended complaint must bear the case number assigned to this action and must be titled "Amended Complaint."<sup>1</sup>

4. Failure to comply with this order in a timely manner may result in a recommendation that this action be dismissed.

Dated: May 29, 2015

  
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DALE A. DROZD  
UNITED STATES MAGISTRATE JUDGE

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<sup>1</sup> Alternatively, if plaintiff no longer wishes to pursue this action, plaintiff may file a notice of voluntary dismissal without prejudice pursuant to Rule 41 of the Federal Rules of Civil Procedure.