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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MOODY WOODROW TANKSLEY,  
Plaintiff,  
v.  
LANGSTON,  
Defendant.

No. 2:15-cv-1610-TLN-EFB PS

ORDER

Plaintiff seeks leave to proceed *in forma pauperis* pursuant to 28 U.S.C. 1915.<sup>1</sup> His declaration makes the showing required by 28 U.S.C. §1915(a)(1) and (2). *See* ECF No. 2. Accordingly, the request to proceed *in forma pauperis* is granted. 28 U.S.C. § 1915(a).

Determining that plaintiff may proceed *in forma pauperis* does not complete the required inquiry. Pursuant to § 1915(e)(2), the court must 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. As discussed below, plaintiff's complaint fails to state a claim and must be dismissed.

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<sup>1</sup> This case, in which plaintiff is proceeding *in propria persona*, was referred to the undersigned under Local Rule 302(c)(21), pursuant to 28 U.S.C. § 636(b)(1).

1           Although pro se pleadings are liberally construed, *see Haines v. Kerner*, 404 U.S. 519,  
2 520-21 (1972), a complaint, or portion thereof, should be dismissed for failure to state a claim if it  
3 fails to set forth “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl.*  
4 *Corp. v. Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41  
5 (1957)); *see also* Fed. R. Civ. P. 12(b)(6). “[A] plaintiff’s obligation to provide the ‘grounds’ of  
6 his ‘entitlement to relief’ requires more than labels and conclusions, and a formulaic recitation of  
7 a cause of action’s elements will not do. Factual allegations must be enough to raise a right to  
8 relief above the speculative level on the assumption that all of the complaint’s allegations are  
9 true.” *Id.* (citations omitted). Dismissal is appropriate based either on the lack of cognizable  
10 legal theories or the lack of pleading sufficient facts to support cognizable legal theories.  
11 *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

12           In reviewing a complaint under this standard, the court must accept as true the allegations  
13 of the complaint in question, *Hospital Bldg. Co. v. Rex Hosp. Trustees*, 425 U.S. 738, 740 (1976),  
14 construe the pleading in the light most favorable to the plaintiff, and resolve all doubts in the  
15 plaintiff’s favor, *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). A pro se plaintiff must satisfy  
16 the pleading requirements of Rule 8(a) of the Federal Rules of Civil Procedure. Rule 8(a)(2)  
17 “requires a complaint to include a short and plain statement of the claim showing that the pleader  
18 is entitled to relief, in order to give the defendant fair notice of what the claim is and the grounds  
19 upon which it rests.” *Twombly*, 550 U.S. at 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41  
20 (1957)).

21           Additionally, a federal court is a court of limited jurisdiction, and may adjudicate only  
22 those cases authorized by the Constitution and by Congress. *Kokkonen v. Guardian Life Ins. Co.*,  
23 511 U.S. 375, 377 (1994). The basic federal jurisdiction statutes, 28 U.S.C. §§ 1331 & 1332,  
24 confer “federal question” and “diversity” jurisdiction, respectively. Federal question jurisdiction  
25 requires that the complaint (1) arise under a federal law or the U. S. Constitution, (2) allege a  
26 “case or controversy” within the meaning of Article III, § 2 of the U. S. Constitution, or (3) be  
27 authorized by a federal statute that both regulates a specific subject matter and confers federal  
28 jurisdiction. *Baker v. Carr*, 369 U.S. 186, 198 (1962). To invoke the court’s diversity

1 jurisdiction, a plaintiff must specifically allege the diverse citizenship of all parties, and that the  
2 matter in controversy exceeds \$75,000. 28 U.S.C. § 1332(a); *Bautista v. Pan American World*  
3 *Airlines, Inc.*, 828 F.2d 546, 552 (9th Cir. 1987). A case presumably lies outside the jurisdiction  
4 of the federal courts unless demonstrated otherwise. *Kokkonen*, 511 U.S. at 376-78. Lack of  
5 subject matter jurisdiction may be raised at any time by either party or by the court. *Attorneys*  
6 *Trust v. Videotape Computer Products, Inc.*, 93 F.3d 593, 594-95 (9th Cir. 1996).

7 Here, it is unclear from the complaint whether this court has jurisdiction over the case.  
8 The complaint is nearly illegible and the court is unable to discern the precise basis for plaintiff's  
9 claim(s). See ECF No. 1 at 3. The court (and defendant) should be able to read and understand  
10 plaintiff's pleading within minutes. See *McHenry v. Renne*, 84 F.3d 1172, 1177 (9th Cir. 1996).  
11 Because the complaint is so poorly drafted, the court is unable to discern whether it contains a  
12 viable claim for relief.

13 As for the allegations that the court is able to read, it is unclear how such allegations  
14 support a claim for federal relief. The complaint indicates that this is a class action lawsuit  
15 brought under 42 U.S.C. § 1983. *Id.* at 3. Plaintiff appears to allege that he is a former inmate  
16 that currently resides in a transitional home owned by defendant Langston. *Id.* at 3. As far as the  
17 court can discern, plaintiff appears to allege that defendant Langston had the residence sprayed  
18 for various bugs and/or pests, and plaintiff became ill due to the pesticides. *Id.* The complaint,  
19 however, does not identify a specific claim(s) against defendant Langston.<sup>2</sup>

20 Although plaintiff identifies this case as a class action, his class allegations are not  
21 cognizable. A layperson cannot ordinarily represent the interest of a class. See *McShane v.*  
22 *United States*, 366 F.2d 286 (9th Cir. 1996). Although plaintiff may represent himself in regards  
23 to his own claims, he may not represent others. *Fymbo v. State Farm Fire & Casualty Co.*, 213  
24 F.3d 1320, 1321 (2000) (finding that pro se litigant could not adequately represent a punitive  
25 class); *C.E. Pope Equity Trust v. United States*, 818 F.2d 696, 697 (9th Cir. 1987) (holding that a  
26 pro se litigant "has no authority to appear as an attorney for others"). In any event, the complaint  
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28 <sup>2</sup> Or if it does, the claim is hidden among the illegible portions of the complaint.

1 does not identify any other individuals that were harmed by the alleged use of pesticides. Thus,  
2 there appears not basis for this case to proceed as a class action.

3 Furthermore, plaintiff has failed to state a claim under section 1983. To assert a section  
4 1983 claim, plaintiff must allege two essential elements: (1) that a right secured by the  
5 Constitution or laws of the United States was violated, and (2) that the alleged violation was  
6 committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48  
7 (1988). Plaintiff does not identify a specific constitutional right that defendant allegedly violated,  
8 nor does he allege facts demonstrating that defendant is a state actor. Accordingly, plaintiff's  
9 complaint must be dismissed for failure to state a claim.

10 Plaintiff will be granted leave to file an amended complaint, if he can allege a cognizable  
11 legal theory against a proper defendant and with sufficient facts in support of that cognizable  
12 legal theory. *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (district courts  
13 must afford pro se litigants an opportunity to amend to correct any deficiency in their  
14 complaints). Should plaintiff choose to file an amended complaint, the amended complaint shall  
15 clearly set forth the claims and allegations against each defendant. Any amended complaint must  
16 cure the deficiencies identified above and also adhere to the following requirements:

17 Any amended complaint must identify as a defendant only persons who personally  
18 participated in a substantial way in depriving him of a federal constitutional right. *Johnson v.*  
19 *Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a  
20 constitutional right if he does an act, participates in another's act or omits to perform an act he is  
21 legally required to do that causes the alleged deprivation). It must also contain a caption  
22 including the names of all defendants. Fed. R. Civ. P. 10(a).

23 Any amended complaint must be written or typed so that it so that it is complete in itself  
24 without reference to any earlier filed complaint. L.R. 220. This is because an amended  
25 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the  
26 earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114  
27 F.3d 1467, 1474 (9th Cir. 1997) (the "amended complaint supersedes the original, the latter

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1 being treated thereafter as non-existent.”) (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.  
2 1967)).

3 Finally, plaintiff is cautioned that failure to comply with the Federal Rules of Civil  
4 Procedure, this court’s Local Rules, or any court order may result in this action being dismissed.  
5 See E.D. Cal. L.R. 110.

6 Accordingly, IT IS HEREBY ORDERED that:

- 7 1. Plaintiff’s request to proceed in form pauperis (ECF No. 2) is granted.
- 8 2. Plaintiff’s complaint is dismissed with leave to amend, as provided herein.
- 9 3. Plaintiff is granted thirty days from the date of service of this order to file an amended  
10 complaint. The amended complaint must bear the docket number assigned to this case and be  
11 titled “First Amended Complaint.” Failure to timely file an amended complaint in accordance  
12 with this order will result in a recommendation this action be dismissed.

13 DATED: November 23, 2015.

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15 EDMUND F. BRENNAN  
16 UNITED STATES MAGISTRATE JUDGE  
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