

1 I. SCREENING STANDARDS

2 The IFP statute requires federal courts to dismiss a case if the action is legally “frivolous”
3 or fails to state a claim upon which relief may be granted. 28 U.S.C. § 1915(e)(2). Plaintiff must
4 assist the court in determining whether the complaint is frivolous or not, by drafting his complaint
5 so that it complies with the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”). Under the
6 Federal Rules of Civil Procedure, the complaint must contain (1) a “short and plain statement” of
7 the basis for federal jurisdiction (that is, the reason the case is filed in this court, rather than in a
8 state court), (2) a short and plain statement showing that plaintiff is entitled to relief (that is, who
9 harmed the plaintiff, and in what way), and (3) a demand for the relief sought. Fed. R. Civ. P.
10 8(a). Plaintiff’s claims must be set forth simply, concisely and directly. Fed. R. Civ. P. 8(d)(1).
11 The federal IFP statute requires federal courts to dismiss a case if the action is legally “frivolous
12 or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief
13 from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

14 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
15 Neitzke v. Williams, 490 U.S. 319, 325 (1989). In reviewing a complaint under this standard, the
16 court will (1) accept as true all of the factual allegations contained in the complaint, unless they
17 are clearly baseless or fanciful, (2) construe those allegations in the light most favorable to the
18 plaintiff, and (3) resolve all doubts in the plaintiff’s favor. See Neitzke, 490 U.S. at 327;
19 Erickson v. Pardus, 551 U.S. 89, 94 (2007); Von Saher v. Norton Simon Museum of Art at
20 Pasadena, 592 F.3d 954, 960 (9th Cir. 2010), cert. denied, 564 U.S. 1037 (2011); Hebbe v. Pliler,
21 627 F.3d 338, 340 (9th Cir. 2010). However, the court need not accept as true, legal conclusions
22 cast in the form of factual allegations, or allegations that contradict matters properly subject to
23 judicial notice. See Western Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981);
24 Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir.), as amended, 275 F.3d 1187
25 (2001).

26 Pro se pleadings are held to a less stringent standard than those drafted by lawyers.
27 Haines v. Kerner, 404 U.S. 519, 520 (1972). Pro se complaints are construed liberally and may
28 only be dismissed if it appears beyond doubt that the plaintiff can prove no set of facts in support

1 of his claim which would entitle him to relief. Nordstrom v. Ryan, 762 F.3d 903, 908 (9th
2 Cir. 2014). A pro se litigant is entitled to notice of the deficiencies in the complaint and an
3 opportunity to amend, unless the complaint's deficiencies could not be cured by amendment. See
4 Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987).

5 II. THE SECOND AMENDED COMPLAINT

6 Although the Second Amended Complaint ("SAC") utilizes the court's form Complaint
7 for Employment Discrimination, plaintiff's allegations are so vague and conclusory that the court
8 is unable to determine whether the current action is frivolous or fails to state a claim for relief.
9 Plaintiff alleges violations of Title VII, the Age Discrimination in Employment Act, and the
10 Americans with Disabilities Act, due to an alleged but unspecified failure to promote, retaliation,
11 harassment, and hostile work environment based on plaintiff's race, color, gender, age, and
12 disability. ECF No. 6 at 5-6. Plaintiff's statement of supporting facts reads, in its entirety, as
13 follows:

14 Reference made to Title VII of the Civil Rights Act of 1964 as
15 amended, 42 U.S.C. 2000 et seq to 2000 e- 17- in 2008 and 2011, I
16 was denied positions of promotions for which I was very qualified.
17 Also, American with Disabilities Act of 1990 42 U.S.C. 12112 to
18 12117 Darphus J. O'Neal- September 20, 2011 25 24 incident and
19 others which violated my civil rights. Age Discrimination Act of
20 1990, as codified, 42 U.S.C. 2112 to 12117 in which the
21 supervisors sought to deceive and willfully obstruct my ability to
22 compete for employment by taking well sought after projects,
presentations, programs that were created by me. Retaliatory
Actions- with the Union, for filing an EEO Complaint, also
initiating the office staff to cause a Hostile Environment. Several
incidents of employees actually showing this behavior in front of
the Director. The incidents were in staff meetings, with computer
specialist and Admin Officer and newly selected supervisor of
Loan Specialist GS 13 position on February 29, 2012.

23 ECF No. 6 at 2.

24 The information provided is conclusory, incomplete, confusing and vague. The SAC fails
25 to provide the basic operative facts of any adverse employment decision(s). For this reason, the
26 complaint does not contain the short and plain statement required by Federal Rule of Civil
27 Procedure 8(a)(2). Although the Federal Rules adopt a flexible pleading policy, a complaint must
28 give fair notice and state the elements of the claim plainly and succinctly. Jones v. Community

1 Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least some
2 degree of particularity overt acts which the defendant engaged in that support plaintiff's claim.
3 Id. Because plaintiff has failed to comply with the requirements of Federal Rule of Civil
4 Procedure 8(a)(2), the complaint must be dismissed.

5 III. FUTILITY OF FURTHER AMENDMENT


6 This is the third time that the court has found a wholesale failure to comply with Rule 8.
7 Plaintiff has twice been granted leave to amend, with instructions on how to satisfy Rule 8.
8 Plaintiff was warned that failure to adhere to these standards would result in a dismissal of her
9 complaint without further leave to amend. ECF No. 5 at 5. Nevertheless, plaintiff has failed to
10 allege facts sufficient to state any claim against. As plaintiff has had ample opportunity to correct
11 the deficiencies in her complaint, and she continues to make conclusory allegations which the
12 court previously advised her are insufficient, the court finds that any further attempt to amend
13 would be futile. See Lipton v. Pathogenesis Corp., 284 F.3d 1027, 1039 (9th Cir. 2002) (further
14 amendment need not be permitted when it would be futile).

15 III. CONCLUSION

16 In accordance with the above, IT IS HEREBY RECOMMENDED that plaintiff's second
17 amended complaint (ECF No. 6), be DISMISSED without leave to amend.

18 These findings and recommendations are submitted to the United States District Judge
19 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty one days
20 after being served with these findings and recommendations, plaintiff may file written objections
21 with the court. Such a document should be captioned "Objections to Magistrate Judge's Findings
22 and Recommendations." Plaintiff is advised that failure to file objections within the specified
23 time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153
24 (9th Cir. 1991).

25 DATED: July 11, 2017

26 
27 ALLISON CLAIRE
28 UNITED STATES MAGISTRATE JUDGE