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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL ARTHUR MORROW,
Plaintiff,
v.
DEA OF SACRAMENTO,
Defendant.

No. 2:16-cv-0395 TLN DB PS

ORDER

Plaintiff, Michael Morrow, 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). Pending before the court is plaintiff’s complaint and motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. (ECF Nos. 1 & 3.) For the reasons stated below, plaintiff’s complaint will be dismissed with leave to amend.

In this regard, plaintiff’s in forma pauperis application makes the showing required by 28 U.S.C. § 1915(a)(1). However, a determination that a plaintiff qualifies financially for in forma pauperis status does not complete the inquiry required by the statute. ““A district court may deny leave to proceed in forma pauperis at the outset if it appears from the face of the proposed complaint that the action is frivolous or without merit.”” Minetti v. Port of Seattle, 152 F.3d 1113, 1115 (9th Cir. 1998) (quoting Tripati v. First Nat. Bank & Trust, 821 F.2d 1368, 1370 (9th Cir. 1987)); see also McGee v. Department of Child Support Services, 584 Fed. Appx. 638 (9th

1 Cir. 2014) (“the district court did not abuse its discretion by denying McGee’s request to proceed
2 IFP because it appears from the face of the amended complaint that McGee’s action is frivolous
3 or without merit”); Smart v. Heinze, 347 F.2d 114, 116 (9th Cir. 1965) (“It is the duty of the
4 District Court to examine any application for leave to proceed in forma pauperis to determine
5 whether the proposed proceeding has merit and if it appears that the proceeding is without merit,
6 the court is bound to deny a motion seeking leave to proceed in forma pauperis.”).

7 Moreover, the court must dismiss an in forma pauperis case at any time if the allegation of
8 poverty is found to be untrue or if it is determined that the action is frivolous or malicious, fails to
9 state a claim on which relief may be granted, or seeks monetary relief against an immune
10 defendant. See 28 U.S.C. § 1915(e)(2). A complaint is legally frivolous when it lacks an
11 arguable basis in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v.
12 Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). Under this standard, a court must dismiss a
13 complaint as frivolous where it is based on an indisputably meritless legal theory or where the
14 factual contentions are clearly baseless. Neitzke, 490 U.S. at 327; 28 U.S.C. § 1915(e).

15 To state a claim on which relief may be granted, the plaintiff must allege “enough facts to
16 state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544,
17 570 (2007). In considering whether a complaint states a cognizable claim, the court accepts as
18 true the material allegations in the complaint and construes the allegations in the light most
19 favorable to the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Hosp. Bldg. Co. v.
20 Trustees of Rex Hosp., 425 U.S. 738, 740 (1976); Love v. United States, 915 F.2d 1242, 1245
21 (9th Cir. 1989). Pro se pleadings are held to a less stringent standard than those drafted by
22 lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). However, the court need not accept as true
23 conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. Western
24 Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

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

26 A pleading which sets forth a claim for relief . . . shall contain (1) a
27 short and plain statement of the grounds upon which the court’s
28 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.

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

2 Moreover, jurisdiction is a threshold inquiry that must precede the adjudication of any
3 case before the district court. Morongo Band of Mission Indians v. Cal. State Bd. of
4 Equalization, 858 F.2d 1376, 1380 (9th Cir. 1988). Federal courts are courts of limited
5 jurisdiction and may adjudicate only those cases authorized by federal law. Kokkonen v.
6 Guardian Life Ins. Co., 511 U.S. 375, 377 (1994); Willy v. Coastal Corp., 503 U.S. 131, 136-37
7 (1992). “Federal courts are presumed to lack jurisdiction, ‘unless the contrary appears
8 affirmatively from the record.’” Casey v. Lewis, 4 F.3d 1516, 1519 (9th Cir. 1993) (quoting
9 Bender v. Williamsport Area Sch. Dist., 475 U.S. 534, 546 (1986)).

10 Lack of subject matter jurisdiction may be raised by the court at any time during the
11 proceedings. Attorneys Trust v. Videotape Computer Prods., Inc., 93 F.3d 593, 594-95 (9th Cir.
12 1996). A federal court “ha[s] an independent obligation to address sua sponte whether [it] has
13 subject-matter jurisdiction.” Dittman v. California, 191 F.3d 1020, 1025 (9th Cir. 1999). It is the
14 obligation of the district court “to be alert to jurisdictional requirements.” Grupo Dataflux v.
15 Atlas Global Group, L.P., 541 U.S. 567, 593 (2004). Without jurisdiction, the district court
16 cannot decide the merits of a case or order any relief. See Morongo, 858 F.2d at 1380.

17 The burden of establishing jurisdiction rests upon plaintiff as the party asserting
18 jurisdiction. Kokkonen, 511 U.S. at 377; see also Hagans v. Lavine, 415 U.S. 528, 543 (1974)
19 (acknowledging that a claim may be dismissed for lack of jurisdiction if it is “so insubstantial,
20 implausible, . . . or otherwise completely devoid of merit as not to involve a federal controversy
21 within the jurisdiction of the District Court”); Bell v. Hood, 327 U.S. 678, 682-83 (1946)
22 (recognizing that a claim is subject to dismissal for want of jurisdiction where it is “wholly
23 insubstantial and frivolous” and so patently without merit as to justify dismissal for lack of
24 jurisdiction); Franklin v. Murphy, 745 F.2d 1221, 1227 n.6 (9th Cir. 1984) (holding that even
25 “[a] paid complaint that is ‘obviously frivolous’ does not confer federal subject matter jurisdiction
26 . . . and may be dismissed sua sponte before service of process.”).

27 Here, plaintiff’s complaint fails to contain a short and plain statement of the grounds upon
28 which the court’s jurisdiction depends or a short and plain statement of a claim showing that

1 plaintiff is entitled to relief. In this regard, plaintiff's complaint simply asserts that this court has
2 jurisdiction over this action because plaintiff's "civil and constitutional rights have been
3 violated." (ECF No. 1 at 4.) Moreover, the allegations found in plaintiff's complaint fail to
4 identify the wrongful actions of any defendant or the date on which any wrongful activity
5 occurred. Instead, the complaint simply alleges that "[t]hrough out the entire year of 2015"
6 plaintiff was stalked and harassed. (Id. at 5.) The complaint then proceeds to recite a series of
7 vague incidents in which something harmful happened to plaintiff, he contacted law enforcement,
8 and the wrongful party "was taken down." (Id. at 6.) The complaint also alleges that
9 "transmitters were put in [plaintiff's] leg, thigh and buttock." (Id.)

10 Although the Federal Rules of Civil Procedure adopt a flexible pleading policy, a
11 complaint must give the defendant fair notice of the plaintiff's claims and must allege facts that
12 state the elements of each claim plainly and succinctly. FED. R. CIV. P. 8(a)(2); Jones v.
13 Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). "A pleading that offers 'labels
14 and conclusions' or 'a formulaic recitation of the elements of cause of action will not do.' Nor
15 does a complaint suffice if it tenders 'naked assertions' devoid of 'further factual
16 enhancements.'" Ashcroft v. Iqbal, 556 U.S.662, 678 (2009) (quoting Twombly, 550 U.S. at 555,
17 557. A plaintiff must allege with at least some degree of particularity overt acts which the
18 defendants engaged in that support the plaintiff's claims. Jones, 733 F.2d at 649.

19 Accordingly, in light of the deficiencies noted above, plaintiff's complaint will be
20 dismissed for failure to state a cognizable claim. The undersigned has carefully considered
21 whether plaintiff may amend the complaint to state a claim upon which relief can be granted.
22 "Valid reasons for denying leave to amend include undue delay, bad faith, prejudice, and futility."
23 California Architectural Bldg. Prod. v. Franciscan Ceramics, 818 F.2d 1466, 1472 (9th Cir.
24 1988); see also Klamath-Lake Pharm. Ass'n v. Klamath Med. Serv. Bureau, 701 F.2d 1276, 1293
25 (9th Cir. 1983) (holding that while leave to amend shall be freely given, the court does not have
26 to allow futile amendments). However, when evaluating the failure to state a claim, the
27 complaint of a pro se plaintiff may be dismissed "only where 'it appears beyond doubt that the
28 plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'"

1 Franklin v. Murphy, 745 F.2d 1221, 1228 (9th Cir. 1984) (quoting Haines v. Kerner, 404 U.S.
2 519, 521 (1972); see also Weilburg v. Shapiro, 488 F.3d 1202, 1205 (9th Cir. 2007) (“Dismissal
3 of a pro se complaint without leave to amend is proper only if it is absolutely clear that the
4 deficiencies of the complaint could not be cured by amendment.”) (quoting Schucker v.
5 Rockwood, 846 F.2d 1202, 1203-04 (9th Cir. 1988)).

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

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

24 Accordingly, IT IS HEREBY ORDERED that:


25 1. The complaint filed February 24, 2016 (ECF No. 1) is dismissed with leave to
26 amend.¹

27 _____
28 ¹ Plaintiff need not file another application to proceed in forma pauperis at this time unless
plaintiff’s financial condition has improved since the last such application was submitted.

1 2. Within twenty-eight days from the date of this order, an amended complaint
2 shall be filed that cures the defects noted in this order and complies with the Federal Rules of
3 Civil Procedure and the Local Rules of Practice.² The amended complaint must bear the case
4 number assigned to this action and must be titled "Amended Complaint."

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

7 Dated: November 17, 2016

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11 DEBORAH BARNES
12 UNITED STATES MAGISTRATE JUDGE
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27 ² Alternatively, if plaintiff no longer wishes to pursue this action he may file a notice of
28 voluntary dismissal of this action pursuant to Rule 41 of the Federal Rules of Civil Procedure.