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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN JOHN,

Plaintiff,

v.

COUNTY OF SACRAMENTO,

Defendant.

No. 2:16-cv-1640 JAM DB PS

ORDER

Plaintiff, John John, 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 amended complaint and motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. (ECF Nos. 5 & 6.) Therein, plaintiff complains about an illegally obtained search warrant.

The court is required to screen complaints brought by parties proceeding in forma pauperis. See 28 U.S.C. § 1915(e)(2); see also Lopez v. Smith, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc). Here, plaintiff’s amended complaint is deficient. Accordingly, for the reasons stated below, plaintiff’s amended complaint will be dismissed with leave to amend.

I. Plaintiff’s Application to Proceed In Forma Pauperis

Plaintiff’s in forma pauperis application makes the financial showing required by 28 U.S.C. § 1915(a)(1). However, a determination that a plaintiff qualifies financially for in forma

1 pauperis status does not complete the inquiry required by the statute. ““A district court may deny
2 leave to proceed in forma pauperis at the outset if it appears from the face of the proposed
3 complaint that the action is frivolous or without merit.”” Minetti v. Port of Seattle, 152 F.3d
4 1113, 1115 (9th Cir. 1998) (quoting Tripati v. First Nat. Bank & Trust, 821 F.2d 1368, 1370 (9th
5 Cir. 1987)); see also McGee v. Department of Child Support Services, 584 Fed. Appx. 638 (9th
6 Cir. 2014) (“the district court did not abuse its discretion by denying McGee’s request to proceed
7 IFP because it appears from the face of the amended complaint that McGee’s action is frivolous
8 or without merit”); Smart v. Heinze, 347 F.2d 114, 116 (9th Cir. 1965) (“It is the duty of the
9 District Court to examine any application for leave to proceed in forma pauperis to determine
10 whether the proposed proceeding has merit and if it appears that the proceeding is without merit,
11 the court is bound to deny a motion seeking leave to proceed in forma pauperis.”).

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

20 To state a claim on which relief may be granted, the plaintiff must allege “enough facts to
21 state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544,
22 570 (2007). In considering whether a complaint states a cognizable claim, the court accepts as
23 true the material allegations in the complaint and construes the allegations in the light most
24 favorable to the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Hosp. Bldg. Co. v.
25 Trustees of Rex Hosp., 425 U.S. 738, 740 (1976); Love v. United States, 915 F.2d 1242, 1245
26 (9th Cir. 1989). Pro se pleadings are held to a less stringent standard than those drafted by
27 lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). However, the court need not accept as true
28 conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. Western

1 Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

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

3 A pleading which sets forth a claim for relief . . . shall contain (1) a
4 short and plain statement of the grounds upon which the court's
5 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.

6 Fed. R. Civ. P. 8(a).

7 **II. Plaintiff's Complaint**

8 Here, plaintiff's complaint fails to contain a short and plain statement of a claim showing
9 that plaintiff is entitled to relief. In this regard, plaintiff's complaint alleges that this "action is
10 brought pursuant to 42 U.S.C. section 1983," against the County of Sacramento. (Am Compl.
11 (ECF No. 5) at 1.)

12 A municipality may be liable under § 1983 where the municipality itself causes the
13 constitutional violation through a "policy or custom, whether made by its lawmakers or those
14 whose edicts or acts may fairly be said to represent official policy[.]" Monell v. Department of
15 Social Services, 436 U.S. 658, 694 (1978). Municipal liability in a § 1983 case may be premised
16 upon: (1) an official policy; (2) a "longstanding practice or custom which constitutes the standard
17 operating procedure of the local government entity;" (3) the act of an "official whose acts fairly
18 represent official policy such that the challenged action constituted official policy;" or (4) where
19 "an official with final policy-making authority delegated that authority to, or ratified the decision
20 of, a subordinate." Price v. Sery, 513 F.3d 962, 966 (9th Cir. 2008).

21 Here, the complaint fails to contain sufficient allegations of underlying facts. Specifically,
22 the complaint simply alleges in a vague and conclusory manner that the defendant was
23 "implementing official policies under color of state law or local law in doing the acts alleged in
24 this complaint." (Am. Compl. (ECF No. 5) at 2.) To sufficiently plead a Monell claim,
25 allegations in a complaint "may not simply recite the elements of a cause of action, but must
26 contain sufficient allegations of underlying facts to give fair notice and to enable the opposing
27 party to defend itself effectively." AE ex rel. Hernandez v. Cnty. of Tulare, 666 F.3d 631, 637
28 (9th Cir. 2012) (quoting Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011)). In this regard, the

1 amended complaint fails to identify any official policy of the County of Sacramento that is
2 allegedly wrongful.

3 Plaintiff's amended complaint also alleges that defendant Joyce Thorgrimson, an
4 employee of the County of Sacramento, "obtained a search warrant by making false statements of
5 fact in the affidavit supporting the application for the search warrant in March, 2014." (Am.
6 Compl. (ECF No. 5) at 2.) "It is clearly established that judicial deception may not be employed
7 to obtain a search warrant." KRL v. Moore, 384 F.3d 1105, 1117 (9th Cir. 2004) (citing Franks v.
8 Delaware, 438 U.S. 154, 155-56 (1978)).

9 To support a claim for judicial deception, "a § 1983 plaintiff must show that the
10 investigator 'made deliberately false statements or recklessly disregarded the truth in the
11 affidavit' and that the falsifications were 'material' to the finding of probable cause." Galbraith
12 v. County of Santa Clara, 307 F.3d 1119, 1126 (9th Cir. 2002) (quoting Hervey v. Estes 65 F.3d
13 784, 790 (9th Cir. 1995)). "'Omissions or misstatements resulting from negligence or good faith
14 mistakes will not invalidate an affidavit which on its face establishes probable cause.'" Ewing v.
15 City of Stockton, 588 F.3d 1218, 1224 (9th Cir. 2009) (quoting United States v. Smith, 588 F.2d
16 737, 740 (9th Cir. 1978)). Here, plaintiff's amended complaint simply alleges that defendant
17 Thorgrimson made false statements. Moreover, the amended complaint fails to clearly explain
18 how the allegedly false statements were material to the finding of probable cause.

19 Plaintiff is advised that an additional hurdle implicated by the allegations found in the
20 amended complaint is that the statute of limitations for a § 1983 claim arising in California is two
21 years. See Wallace v. Kato, 549 U.S. at 384, 387 (2007); Colony Cove Props., LLC v. City of
22 Carson, 640 F.3d 948, 956 (9th Cir. 2011) (applying California's two-year statute of limitations to
23 § 1983 action). In this regard, the amended complaint alleges that the actions at issue occurred in
24 March of 2014. This action was not filed until July of 2016.

25 Accordingly, plaintiff's amended complaint will be dismissed for failure to state a
26 cognizable claim.

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1 **III. Leave to Amend**

2 The undersigned has carefully considered whether plaintiff may further amend the
3 complaint to state a claim upon which relief can be granted. “Valid reasons for denying leave to
4 amend include undue delay, bad faith, prejudice, and futility.” California Architectural Bldg.
5 Prod. v. Franciscan Ceramics, 818 F.2d 1466, 1472 (9th Cir. 1988); see also Klamath-Lake
6 Pharm. Ass’n v. Klamath Med. Serv. Bureau, 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that
7 while leave to amend shall be freely given, the court does not have to allow futile amendments).
8 However, when evaluating the failure to state a claim, the complaint of a pro se plaintiff may be
9 dismissed “only where ‘it appears beyond doubt that the plaintiff can prove no set of facts in
10 support of his claim which would entitle him to relief.’” Franklin v. Murphy, 745 F.2d 1221,
11 1228 (9th Cir. 1984) (quoting Haines v. Kerner, 404 U.S. 519, 521 (1972); see also Weilburg v.
12 Shapiro, 488 F.3d 1202, 1205 (9th Cir. 2007) (“Dismissal of a pro se complaint without leave to
13 amend is proper only if it is absolutely clear that the deficiencies of the complaint could not be
14 cured by amendment.”) (quoting Schucker v. Rockwood, 846 F.2d 1202, 1203-04 (9th Cir.
15 1988)).

16 Here, given the extremely vague and conclusory nature of the complaint’s allegations, the
17 undersigned cannot yet say that it appears beyond doubt that further leave to amend would be
18 futile. Plaintiff’s amended complaint will therefore be dismissed, and plaintiff will be granted
19 leave to file a second amended complaint. Plaintiff is cautioned, however, that if plaintiff elects
20 to file a second amended complaint “the tenet that a court must accept as true all of the
21 allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of
22 the elements of a cause of action, supported by mere conclusory statements, do not suffice.”
23 Ashcroft, 556 U.S. at 678. “While legal conclusions can provide the complaint’s framework, they
24 must be supported by factual allegations.” Id. at 679. Those facts must be sufficient to push the
25 claims “across the line from conceivable to plausible[.]” Id. at 680 (quoting Twombly, 550 U.S.
26 at 557).

27 Plaintiff is also reminded that the court cannot refer to a prior pleading in order to make an
28 amended complaint complete. Local Rule 220 requires that any amended complaint be complete

1 in itself without reference to prior pleadings. The second amended complaint will supersede the
2 amended complaint just as the amended complaint superseded the original complaint. See Loux
3 v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Thus, in a second amended complaint, just as if it were
4 the initial complaint filed in the case, each defendant must be listed in the caption and identified
5 in the body of the complaint, and each claim and the involvement of each defendant must be
6 sufficiently alleged. Any second amended complaint which plaintiff may elect to file must also
7 include concise but complete factual allegations describing the conduct and events which underlie
8 plaintiff's claims.

9 **IV. Conclusion**

10 Accordingly, IT IS HEREBY ORDERED that:

11 1. The amended complaint filed December 22, 2016 (ECF No. 6) is dismissed with leave
12 to amend.¹

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

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

19 DATED: April 20, 2017

/s/ DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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

² Alternatively, if plaintiff no longer wishes to pursue this action plaintiff may file a notice of
voluntary dismissal of this action pursuant to Rule 41 of the Federal Rules of Civil Procedure.