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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

FRANK BRETT,
Plaintiff,
v.
JERRY BROWN, et al.,
Defendants.

No. 2:16-cv-1797-TLN-EFB PS

ORDER

Plaintiff has filed a motion for appointment of counsel, a motion to file this case under seal, and an application to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915.¹ For the reasons explained below, plaintiff’s application to proceed *in forma pauperis* is granted, his motions for appointment of counsel and to seal are denied, and the complaint is dismissed with leave to amend.

I. Appointment of Counsel

28 U.S.C. § 1915(e)(1) authorizes the appointment of counsel to represent an indigent civil litigant in certain exceptional circumstances. *See Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir.1991); *Wood v. Housewright*, 900 F.2d 1332, 1335–36 (9th Cir.1990); *Richards v. Harper*, 864 F.2d 85, 87 (9th Cir.1988). In considering whether exceptional circumstances exist,

¹ 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 the court must evaluate (1) the plaintiff's likelihood of success on the merits; and (2) the ability of
2 the plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved.
3 *Terrell*, 935 F.2d at 1017. None of these circumstances are present here. Accordingly, plaintiff's
4 request for appointment of counsel is denied.

5 II. Request to Seal

6 Plaintiff also request that this case be filed under seal. ECF No. 4. The basis for this
7 request is not clear, but plaintiff appears to contend that sealing the case is appropriate due to
8 threats made against him. *Id.* Plaintiff has not shown any justification for sealing his complaint
9 and there is a strong presumption against doing so.

10 Courts have recognized "a general right to inspect and copy public records and
11 documents, including judicial records and documents." *Nixon v. Warner Commc'ns, Inc.* 435
12 U.S. 589 (1978). "Unless a particular court record is one 'traditionally kept secret,' a 'strong
13 presumption in favor of access' is the starting point." *Kamakana v. City and County of Honolulu*,
14 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Foltz v. State Farm Mutual Auto. Insurance*
15 *Company*, 331 F.3d 1122, 1135 (9th Cir. 2003). A party seeking to file a document under seal
16 "bears the burden of overcoming this strong presumption by" articulating "compelling reasons
17 supported by specific factual findings that outweigh the general history of access and the public
18 policies favoring disclosure" *Id.* (citations omitted).

19 Furthermore, the court's local rules provide that "[d]ocuments may be sealed only by
20 written order of the Court, upon a showing required by applicable law." E.D. Cal. L.R. 141(a). A
21 party seeking to file documents under seal must submit a Request to Seal Documents, which
22 "shall set forth the statutory or other authority for sealing, the requested duration, the identity, by
23 name or category, of persons to be permitted access to the documents, and all other relevant
24 information." E.D. Cal. L.R. 141(b).

25 Plaintiff has failed to provide an adequate basis for filing this case under seal. He
26 generally claims that a man threatened him at a park and that he had been poisoned, but does not

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1 indicate how these facts relate to the allegations in the complaint.² Moreover, he has failed to
2 comply with the court’s local rules for obtaining a sealing order. He does not set forth any
3 statutory basis for filing his complaint under seal, nor does he identify the duration the complaint
4 should be sealed. Accordingly, plaintiff’s request to file his complaint under seal is denied.³

5 **III. Request to Proceed In Forma Pauperis and Screening Requirement**

6 Plaintiff’s application to proceed *in forma pauperis* makes the financial showing required
7 by 28 U.S.C. §1915(a)(1) and (2). See ECF No. 2. Accordingly, the request to proceed *in forma*
8 *pauperis* is granted, see 28 U.S.C. § 1915(a).

9 Determining that plaintiff may proceed *in forma pauperis* does not complete the required
10 inquiry. Pursuant to § 1915(e)(2), the court must dismiss the case at any time if it determines the
11 allegation of poverty is untrue, or if the action is frivolous or malicious, fails to state a claim on
12 which relief may be granted, or seeks monetary relief against an immune defendant. As discussed
13 below, plaintiff’s complaint fails to state a claim and must be dismissed.

14 Although pro se pleadings are liberally construed, see *Haines v. Kerner*, 404 U.S. 519,
15 520-21 (1972), a complaint, or portion thereof, should be dismissed for failure to state a claim if it
16 fails to set forth “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl.*
17 *Corp. v. Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41
18 (1957)); see also Fed. R. Civ. P. 12(b)(6). “[A] plaintiff’s obligation to provide the ‘grounds’ of
19 his ‘entitlement to relief’ requires more than labels and conclusions, and a formulaic recitation of
20 a cause of action’s elements will not do. Factual allegations must be enough to raise a right to
21 relief above the speculative level on the assumption that all of the complaint’s allegations are

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23 ² As explained below, it is impossible to discern the factual basis underlying plaintiff’s
24 complaint.

25 ³ Plaintiff’s request to seal also indicates that he wants an injunction against a “Racist
26 Black Criminal Gang.” ECF No. 4. Plaintiff, however, does not seek any particular form of
27 injunctive relief directed at any particular party, but merely indicates he wants an injunction. *Id.*
28 In any event, plaintiff cannot obtain injunctive relief at this juncture because, as explained herein,
his complaint fails to state a claim. See *Stormans, Inc. v. Selecky*, 586 F.3d 1045, 1045 (9th Cir.
2010) (to obtain a preliminary injunction a party must demonstrate “that he is likely to succeed on
the merits . . .”).

1 true.” *Id.* (citations omitted). Dismissal is appropriate based either on the lack of cognizable
2 legal theories or the lack of pleading sufficient facts to support cognizable legal theories.
3 *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

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

13 Additionally, a federal court is a court of limited jurisdiction, and may adjudicate only
14 those cases authorized by the Constitution and by Congress. *Kokkonen v. Guardian Life Ins. Co.*,
15 511 U.S. 375, 377 (1994). The basic federal jurisdiction statutes, 28 U.S.C. §§ 1331 & 1332,
16 confer “federal question” and “diversity” jurisdiction, respectively. Federal question jurisdiction
17 requires that the complaint (1) arise under a federal law or the U. S. Constitution, (2) allege a
18 “case or controversy” within the meaning of Article III, § 2 of the U. S. Constitution, or (3) be
19 authorized by a federal statute that both regulates a specific subject matter and confers federal
20 jurisdiction. *Baker v. Carr*, 369 U.S. 186, 198 (1962). To invoke the court’s diversity
21 jurisdiction, a plaintiff must specifically allege the diverse citizenship of all parties, and that the
22 matter in controversy exceeds \$75,000. 28 U.S.C. § 1332(a); *Bautista v. Pan American World
23 Airlines, Inc.*, 828 F.2d 546, 552 (9th Cir. 1987). A case presumably lies outside the jurisdiction
24 of the federal courts unless demonstrated otherwise. *Kokkonen*, 511 U.S. at 376-78. Lack of
25 subject matter jurisdiction may be raised at any time by either party or by the court. *Attorneys
26 Trust v. Videotape Computer Products, Inc.*, 93 F.3d 593, 594-95 (9th Cir. 1996).

27 As a threshold matter, plaintiff’s complaint is largely illegible, which preclude the court
28 from discerning whether it sufficiently alleges a basis for the court’s jurisdiction or states a claim

1 for relief. *See generally* ECF No. 1. As for the few allegations that are readable, they are
2 disjointed and incoherent. For example, among his extravagant assertions plaintiff alleges that
3 Governor Jerry Brown followed him into a courthouse in July 2016. While plaintiff was in the
4 courthouse, individuals were taking pictures and spying on him in an effort to destroy a
5 corruption case. *Id.* at 6. Plaintiff also alleges that he caught a federal court clerk committing
6 felonies, and that he “used a 5 foot doll named Sandy [and] 2 plums to catch her.” *Id.* at 9. He
7 also claims a federal judge “put [a] case on the internet,” which almost lead to plaintiff’s death.
8 *Id.* at 11. Plaintiff also makes references to catholic priests, and appears to allege the existence of
9 an insurance scandal involving the vice president of France. *Id.* at 9 at 10. The disjointed nature
10 of plaintiff’s allegations, coupled with the significant volume of illegible statements, makes it
11 impossible to discern the factual basis of any potential claim.

12 The 28-page complaint also contains numerous pages consisting solely of miscellaneous
13 lists. *Id.* at 15-16, 18-21, 23-28. Some of the lists appear to contain license plate numbers, but
14 other lists are filled with random words appearing to have no relation. The relevance of these
15 lists is not apparent.⁴

16 Simply put, the complaint is so incoherent that the court is unable ascertain the factual
17 basis for plaintiff’s dispute, much less identify any potential cause of action or determine whether
18 jurisdiction is present. Accordingly, plaintiff’s complaint must be dismissed. Plaintiff, however,
19 will be granted leave to file an amended complaint, if he can allege a cognizable legal theory
20 against a proper defendant and with sufficient facts in support of that theory. *Lopez v. Smith*, 203
21 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (district courts must afford pro se litigants an
22 opportunity to amend to correct any deficiency in their complaints). Should plaintiff choose to
23 file an amended complaint, the amended complaint shall clearly set forth the claims and
24 allegations against each defendant. Any amended complaint must cure the deficiencies identified
25 above and also adhere to the following requirements:

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27 ⁴ One page of the complaints consists solely of 12 pictures of topless women and the
28 words “Diamond Dolls.” *Id.* at 12. The relevance of this page is also unclear.

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

7 Any amended complaint must be written or typed so that it so that it is complete in itself
8 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended
9 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the
10 earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114
11 F.3d 1467, 1474 (9th Cir. 1997) (the “amended complaint supersedes the original, the latter
12 being treated thereafter as non-existent.”) (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.
13 1967)).

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

17 Accordingly, IT IS HEREBY ORDERED that:

- 18 1. Plaintiff's request to proceed in forma pauperis (ECF No. 2) is granted.
- 19 2. Plaintiff's request for appointment of counsel (ECF No. 3) is denied.
- 20 3. Plaintiff's request to seal (ECF No. 4) is denied.
- 21 4. Plaintiff's complaint is dismissed with leave to amend, as provided herein.
- 22 5. Plaintiff is granted thirty days from the date of service of this order to file an amended

23 complaint. The amended complaint must bear the docket number assigned to this case and be
24 titled “First Amended Complaint.” Failure to timely file an amended complaint in accordance
25 with this order will result in a recommendation this action be dismissed.

26 DATED: March 30, 2017.

27 
28 EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE