



1 an immune defendant.

2 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
3 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
4 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
5 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
6 490 U.S. at 327.

7 To avoid dismissal for failure to state a claim, a complaint must contain more than “naked  
8 assertions,” “labels and conclusions,” or “a formulaic recitation of the elements of a cause of  
9 action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57 (2007). In other words,  
10 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory  
11 statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim  
12 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A  
13 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw  
14 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S.  
15 at 678. When considering whether a complaint states a claim upon which relief can be granted,  
16 the court must accept the well-pled factual allegations as true, Erickson v. Pardus, 551 U.S. 89, 94  
17 (2007), and construe the complaint in the light most favorable to the plaintiff, see Scheuer v.  
18 Rhodes, 416 U.S. 232, 236 (1974).

19 Pro se pleadings are liberally construed. See Haines v. Kerner, 404 U.S. 519, 520-21  
20 (1972); Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1988). Unless it is clear  
21 that no amendment can cure the defects of a complaint, a pro se plaintiff proceeding *in forma*  
22 *pauperis* is ordinarily entitled to notice and an opportunity to amend before dismissal. See Noll  
23 v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987); Franklin v. Murphy, 745 F.2d 1221, 1230 (9th  
24 Cir. 1984).

25 In this case, plaintiff’s complaint is rambling, confusing, and in parts unintelligible.  
26 Liberally construed, plaintiff appears to allege that she got into some type of dispute with the  
27 tenants or co-tenants at her residence, Edward Wright and Kara Ann Thompson; that she was  
28 physically attacked by Mr. Wright and Ms. Thompson; that the police were called as a result of

1 the altercation; that the police only listened to Mr. Wright and Ms. Thompson, and not to  
2 plaintiff's version of the story; and that the police ultimately removed plaintiff from the residence.  
3 According to plaintiff, she was also arrested and ultimately pled no contest to misdemeanor  
4 trespassing so that she could get out of jail, even though she had a right to be present at the  
5 residence. She appears to name the "Sacramento County Police Department" and the Sacramento  
6 County Sheriff as defendants, although it is unclear exactly what legal claim(s) are being asserted.  
7 For the reasons discussed below, plaintiff's complaint is subject to dismissal.

8 As an initial matter, plaintiff's complaint is ambiguous as to which police agency was  
9 involved in the incident, i.e., whether it was the City of Sacramento Police Department or the  
10 Sacramento County Sheriff's Department. In order to potentially direct service of process on the  
11 proper defendant, the court must know which specific police agency was involved.

12 More fundamentally, plaintiff's complaint fails to allege facts from which the court can  
13 draw a reasonable inference that the defendants are liable for any misconduct. The mere fact that  
14 the police responded to the incident, removed plaintiff from the residence, and arrested plaintiff,  
15 without more, does not in itself give rise to any cognizable claim.

16 Therefore, the court dismisses plaintiff's complaint, but with leave to amend. If plaintiff  
17 elects to file an amended complaint, it shall be captioned "First Amended Complaint"; shall be  
18 typed or written in legible handwriting; shall address the deficiencies outlined in this order; and  
19 shall be filed within 28 days of this order.

20 Plaintiff is informed that the court cannot refer to a prior complaint or other filing in order  
21 to make plaintiff's first amended complaint complete. Local Rule 220 requires that an amended  
22 complaint be complete in itself without reference to any prior pleading. As a general rule, an  
23 amended complaint supersedes the original complaint, and once the first amended complaint is  
24 filed, the original complaint no longer serves any function in the case.

25 Finally, nothing in this order requires plaintiff to file a first amended complaint. If  
26 plaintiff determines that she is unable to amend her complaint in compliance with the court's  
27 order at this juncture, she may alternatively file a notice of voluntary dismissal of her claims  
28 without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) within 28 days of

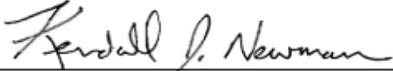
1 this order.

2 Accordingly, IT IS HEREBY ORDERED that:

- 3 1. Plaintiff's amended motion to proceed *in forma pauperis* (ECF No. 4) is granted.
- 4 2. Plaintiff's complaint is dismissed with leave to amend.
- 5 3. Within 28 days of this order, plaintiff shall file either a first amended complaint in  
6 compliance with this order or a request for voluntary dismissal of the action without  
7 prejudice.
- 8 4. Failure to timely comply with this order may result in dismissal of the action with  
9 prejudice pursuant to Federal Rule of Civil Procedure 41(b).

10 IT IS SO ORDERED.

11 Dated: October 12, 2016

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14 KENDALL J. NEWMAN  
15 UNITED STATES MAGISTRATE JUDGE  
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