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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHARLES LEWIS BOBO,
Plaintiff,
v.
FRESNO RESCUE MISSION,
Defendant.

No. 2:16-cv-2341 TLN AC (PS)

ORDER

Plaintiff is proceeding in this action pro se. This matter was accordingly referred to the undersigned by E.D. Cal. R. (“Local Rule”) 302(c)(21). Plaintiff has requested leave to proceed in forma pauperis (“IFP”) pursuant to 28 U.S.C. § 1915. ECF No. 2. The request will be denied because the complaint, in its current form, is frivolous. Where “plaintiff’s claim appears to be frivolous on the face of the complaint,” the district court may “deny[] plaintiff leave to file *in forma pauperis*.” O’Loughlin v. Doe, 920 F.2d 614, 617 (9th Cir. 1990).

I. SCREENING

Plaintiff must assist the court in determining whether the complaint is frivolous or not, by drafting his complaint so that it complies with the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”). The Federal Rules of Civil Procedure are available online at www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-civil-procedure. Under the Federal Rules of Civil Procedure, the complaint must contain (1) a “short and plain statement” of the basis for

1 federal jurisdiction (that is, the reason the case is filed in this court, rather than in a state court),
2 (2) a short and plain statement showing that plaintiff is entitled to relief (that is, who harmed the
3 plaintiff, and in what way), and (3) a demand for the relief sought. Fed. R. Civ. P. 8(a).

4 Plaintiff's claims must be set forth simply, concisely and directly. Fed. R. Civ. P. 8(d)(1). Forms
5 are available to help pro se plaintiffs organize their complaint in the proper way. They are
6 available at the Clerk's Office, 501 I Street, 4th Floor (Rm. 4-200), Sacramento, CA 95814, or
7 online at www.uscourts.gov/forms/pro-se-forms.

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

20 Pro se pleadings are held to a less stringent standard than those drafted by lawyers.
21 Haines v. Kerner, 404 U.S. 519, 520 (1972). Pro se complaints are construed liberally and may
22 only be dismissed if it appears beyond doubt that the plaintiff can prove no set of facts in support
23 of his claim which would entitle him to relief. Nordstrom v. Ryan, 762 F.3d 903, 908 (9th
24 Cir. 2014). A pro se litigant is entitled to notice of the deficiencies in the complaint and an
25 opportunity to amend, unless the complaint's deficiencies could not be cured by amendment. See
26 Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987).

27 A. The Complaint

28 The complaint alleges that defendant has a policy of some sort governing who can stay at

1 its facility. Complaint (ECF No. 1). Apparently, plaintiff does not have the paperwork needed to
2 stay at the facility. Plaintiff asks this court to grant him the necessary paperwork, or in the
3 alternative, to award him \$2 million.

4 B. Analysis

5 The complaint does not contain any facts showing that plaintiff has a claim entitling him
6 to relief. The fact that defendant apparently will not permit plaintiff to stay at its facility does not,
7 in itself, violate any state law, or federal right, of which this court is aware. In addition, the
8 complaint does not contain any facts showing that federal jurisdiction exists, that is, that the case
9 is properly filed in this court, rather than in a state court.

10 In order to survive IFP screening, the complaint must allege facts showing that defendant
11 engaged in some conduct that the law prohibits (or failed to do something the law requires), and
12 that in doing so, defendant harmed plaintiff. In addition, if a state law alone is at issue, plaintiff
13 must allege facts showing that “diversity” jurisdiction exists, that is, that the amount in
14 controversy exceeds \$75,000, and that he is a citizen of a different state than the defendant. See
15 28 U.S.C. § 1332.

16 It is not clear from the few factual allegations of the complaint whether plaintiff could
17 possibly state a claim that can be heard in this court, and that would entitle him to relief. Plaintiff
18 will therefore be given an opportunity to amend his complaint.

19 C. Amending the Complaint

20 The amended complaint, in addition to alleging facts establishing the existence of federal
21 jurisdiction, must contain a short and plain statement of plaintiff’s claim. The allegations of the
22 complaint must be set forth in sequentially numbered paragraphs, with each paragraph number
23 being one greater than the one before, each paragraph having its own number, and no paragraph
24 number being repeated anywhere in the complaint. Each paragraph should be limited “to a single
25 set of circumstances” where possible. Fed. R. Civ. P. 10(b). As noted above, forms are available
26 to help plaintiffs organize their complaint in the proper way. They are available at the Clerk’s
27 Office, 501 I Street, 4th Floor (Rm. 4-200), Sacramento, CA 95814, or online at
28 www.uscourts.gov/forms/pro-se-forms.

1 Plaintiff must avoid excessive repetition of the same allegations. Plaintiff must avoid
2 narrative and storytelling. That is, the complaint should not include every detail of what
3 happened, nor recount the details of conversations (unless necessary to establish the claim), nor
4 give a running account of plaintiff's hopes and thoughts. Rather, the amended complaint should
5 contain only those facts needed to show how the defendant legally wronged the plaintiff.

6 The amended complaint must not force the court and the defendants to guess at what is
7 being alleged against whom. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996)
8 (affirming dismissal of a complaint where the district court was "literally guessing as to what
9 facts support the legal claims being asserted against certain defendants"). The amended
10 complaint must not require the court to spend its time "preparing the 'short and plain statement'
11 which Rule 8 obligated plaintiffs to submit." Id. at 1180. The amended complaint must not
12 require the court and defendants to prepare lengthy outlines "to determine who is being sued for
13 what." Id. at 1179.

14 Also, the amended complaint must not refer to a prior pleading in order to make plaintiff's
15 amended complaint complete. An amended complaint must be complete in itself without
16 reference to any prior pleading. Local Rule 220. This is because, as a general rule, an amended
17 complaint supersedes the original complaint. See Pacific Bell Telephone Co. v. Linkline
18 Communications, Inc., 555 U.S. 438, 456 n.4 (2009) ("[n]ormally, an amended complaint
19 supersedes the original complaint") (citing 6 C. Wright & A. Miller, Federal Practice &
20 Procedure § 1476, pp. 556-57 (2d ed. 1990)). Therefore, in an amended complaint, as in an
21 original complaint, each claim and the involvement of each defendant must be sufficiently
22 alleged.

23 II. CONCLUSION

24 Accordingly, IT IS HEREBY ORDERED that:

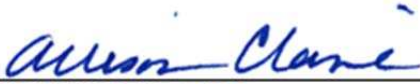
25 1. Plaintiff's request to proceed in forma pauperis (ECF No. 2) is DENIED, because the
26 complaint is frivolous.

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1 2. Plaintiff shall have 30 days from the date of this order to file an amended complaint
2 that complies with the instructions given above, or to pay the filing fee.¹ If plaintiff fails to
3 timely comply with this order, the undersigned may recommend that this action be dismissed.

4 DATED: October 25, 2016

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6 ALLISON CLAIRE
7 UNITED STATES MAGISTRATE JUDGE
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27 ¹ However, if plaintiff chooses to pay the filing fee without amending his complaint, the
28 undersigned may recommend that the action be dismissed for lack of federal jurisdiction. See
Fed. R. Civ. P. 12(h) (court may dismiss at any time for lack of jurisdiction).