1		
2		
3		
4		
5		
6		
7		
8	UNITED STATES DISTRICT COURT	
9	FOR THE EASTERN DISTRICT OF CALIFORNIA	
10		
11	TOBY JO TODD,	No. 2:16-cv-2496 TLN AC PS
12	Plaintiff,	
13	v.	<u>ORDER</u>
14	MARK TUSS,	
15	Defendant.	
16		
17	Plaintiff is proceeding in this action pro se. This matter was accordingly referred to the	
18	undersigned by E.D. Cal. 302(c)(21). Plaintiff has filed a request for leave to proceed in forma	
19	pauperis ("IFP") pursuant to 28 U.S.C. § 1915, and has submitted the affidavit required by that	
20	statute. See 28 U.S.C. § 1915(a)(1). The motion to proceed IFP will therefore be granted.	
21	I. SCREENING	
22	Granting IFP status does not end the court's inquiry. The federal IFP statute requires	
23	federal courts to dismiss a case if the action is legally "frivolous or malicious," fails to state a	
24	claim upon which relief may be granted, or seeks monetary relief from a defendant who is	
25	immune from such relief. 28 U.S.C. § 1915(e)(2).	
26	Plaintiff must assist the court in determining whether the complaint is frivolous or not, by	
27	drafting the complaint so that it complies with the Federal Rules of Civil Procedure ("Fed. R. Civ.	
28	P."). The Federal Rules of Civil Procedure are available online at www.uscourts.gov/rules-	
		1

(PS) Todd v. Tuss

Doc. 3

policies/current-rules-practice-procedure/federal-rules-civil-procedure. Under the Federal Rules 2 of Civil Procedure, the complaint must contain (1) a "short and plain statement" of the basis for 3 federal jurisdiction (that is, the reason the case is filed in this court, rather than in a state court), 4 (2) a short and plain statement showing that plaintiff is entitled to relief (that is, who harmed the 5 plaintiff, and in what way), and (3) a demand for the relief sought. Fed. R. Civ. P. ("Rule") 8(a). 6 Plaintiff's claims must be set forth simply, concisely and directly. Rule 8(d)(1). Forms are 7 available to help pro se plaintiffs organize their complaint in the proper way. They are available 8 at the Clerk's Office, 501 I Street, 4th Floor (Rm. 4-200), Sacramento, CA 95814, or online at 9 www.uscourts.gov/forms/pro-se-forms.

1

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

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

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

A. The Complaint

Plaintiff names Mark Tuss as the sole defendant in this lawsuit. ECF No. 1 at 2 ¶ I. The complaint primarily requests relief from an Ohio state court order relating to issues of family law.

The allegations of the complaint are taken as true only for purposes of this screening. Although it is difficult to comprehend the allegations against the defendant, it appears that plaintiff is contesting the contents of an Ohio state court order relating to the custody of the plaintiff's children. The only factual allegations plaintiff states against the defendant is that the defendant, an Ohio attorney, "did not do [his] 'due diligence'" or "reasonable effort" in discovering that there was a court order in Sacramento County Superior Court that showed that "Ohio [did not] have" jurisdiction "to make rulings" on issues relating to the plaintiff's children. ECF No. 1 at 6, 16.

B. Analysis

The complaint alleges diversity jurisdiction as the basis for federal jurisdiction. See 28 U.S.C. § 1332. However, it has long been held that when the relief sought primarily relates to issues of domestic relations, the domestic relations exception divests federal courts of jurisdiction. See In re Burrus, 136 U.S. 586, 10 S. Ct. 850, 34 L. Ed. 500 (1890); Barber v. Barber, 62 U.S. (21 How.) 582, 16 L. Ed. 226 (1858). The Supreme Court has further emphasized that in cases brought under diversity jurisdiction, the domestic relations exception "divests the federal courts of power to issue divorce, alimony and child custody decrees." Ankenbrandt v. Richards, 504 U.S. 689, 703, 112 S. Ct. 2206, 2214 (1992). Accordingly, this court lacks jurisdiction over this lawsuit, and accordingly it must be dismissed.

II. AMENDING THE COMPLAINT

If plaintiff chooses to amend his complaint, the amended complaint must allege facts establishing the existence of federal jurisdiction. In addition, it must contain a short and plain statement of plaintiff's claims. The allegations of the complaint must be set forth in sequentially numbered paragraphs, with each paragraph number being one greater than the one before, each paragraph having its own number, and no paragraph number being repeated anywhere in the complaint. Each paragraph should be limited "to a single set of circumstances" where

possible. Rule 10(b). As noted above, forms are available to help plaintiffs organize their complaint in the proper way. They are available at the Clerk's Office, 501 I Street, 4th Floor (Rm. 4-200), Sacramento, CA 95814, or online at www.uscourts.gov/forms/pro-se-forms.

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

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

Also, the amended complaint must not refer to a prior pleading in order to make plaintiff's amended complaint complete. An amended complaint must be complete in itself without reference to any prior pleading. Local Rule 220. This is because, as a general rule, an amended complaint supersedes the original complaint. See Pacific Bell Tel. Co. v. Linkline

Communications, Inc., 555 U.S. 438, 456 n.4 (2009) ("[n]ormally, an amended complaint supersedes the original complaint") (citing 6 C. Wright & A. Miller, Federal Practice & Procedure § 1476, pp. 556-57 (2d ed. 1990)). Therefore, in an amended complaint, as in an original complaint, each claim and the involvement of each defendant must be sufficiently alleged.

III. CONCLUSION

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's request to proceed in forma pauperis (ECF No. 2) is GRANTED.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

28

- 2. The complaint (ECF No. 1), is DISMISSED because it fails to allege federal jurisdiction.
- 3. Plaintiff shall have 30 days from the date of this order to file an amended complaint that names defendants who are amenable to suit, and which complies with the instructions given above. If plaintiff fails to timely comply with this order, the undersigned may recommend that this action be dismissed.

DATED: July 10, 2017

ALLISON CLAIRE

UNITED STATES MAGISTRATE JUDGE