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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TOBY JO TODD,
Plaintiff,
v.
CITY COUNCIL OF SACTO,
Defendant.

No. 2:16-cv-2497 MCE DB PS

ORDER

Plaintiff, Toby Todd, 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 complaint and motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. (ECF Nos. 1 & 2.) Therein, plaintiff complains about receiving parking tickets.

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 complaint is deficient. Accordingly, for the reasons stated below, plaintiff’s 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 pauperis status does not complete the inquiry required by the statute. ““A district court may deny

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

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

19 To state a claim on which relief may be granted, the plaintiff must allege “enough facts to
20 state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544,
21 570 (2007). In considering whether a complaint states a cognizable claim, the court accepts as
22 true the material allegations in the complaint and construes the allegations in the light most
23 favorable to the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Hosp. Bldg. Co. v.
24 Trustees of Rex Hosp., 425 U.S. 738, 740 (1976); Love v. United States, 915 F.2d 1242, 1245
25 (9th Cir. 1989). Pro se pleadings are held to a less stringent standard than those drafted by
26 lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). However, the court need not accept as true
27 conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. Western
28 Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

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

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

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

6 **II. Plaintiff's Complaint**

7 Here, plaintiff's complaint fails to contain a short and plain statement of a claim showing
8 that plaintiff is entitled to relief. In this regard, plaintiff's complaint repeatedly asserts that this
9 action is brought pursuant to "Section 1983." (Compl. (ECF No. 1) at 4.)

10 Title 42 U.S.C. § 1983 provides that,

11 [e]very person who, under color of [state law] ... subjects, or causes
12 to be subjected, any citizen of the United States ... to the
deprivation of any rights, privileges, or immunities secured by the
13 Constitution and laws, shall be liable to the party injured in an
action at law, suit in equity, or other proper proceeding for redress.

14 A municipality may be liable under § 1983 where the municipality itself causes the
15 constitutional violation through a "policy or custom, whether made by its lawmakers or those
16 whose edicts or acts may fairly be said to represent official policy[.]" Monell v. Department of
17 Social Services, 436 U.S. 658, 694 (1978). Municipal liability in a § 1983 case may be premised
18 upon: (1) an official policy; (2) a "longstanding practice or custom which constitutes the standard
19 operating procedure of the local government entity;" (3) the act of an "official whose acts fairly
20 represent official policy such that the challenged action constituted official policy;" or (4) where
21 "an official with final policy-making authority delegated that authority to, or ratified the decision
22 of, a subordinate." Price v. Sery, 513 F.3d 962, 966 (9th Cir. 2008). To sufficiently plead a
23 Monell claim, allegations in a complaint "may not simply recite the elements of a cause of action,
24 but must contain sufficient allegations of underlying facts to give fair notice and to enable the
25 opposing party to defend itself effectively." AE ex rel. Hernandez v. Cnty. of Tulare, 666 F.3d
26 631, 637 (9th Cir. 2012) (quoting Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011)).

27 Moreover, although the Federal Rules of Civil Procedure adopt a flexible pleading policy,
28 a complaint must give the defendant fair notice of the plaintiff's claims and must allege facts that

1 state the elements of each claim plainly and succinctly. Fed. R. Civ. P. 8(a)(2); Jones v.
2 Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). “A pleading that offers ‘labels
3 and conclusions’ or ‘a formulaic recitation of the elements of cause of action will not do.’ Nor
4 does a complaint suffice if it tenders ‘naked assertions’ devoid of ‘further factual
5 enhancements.’” Ashcroft v. Iqbal, 556 U.S.662, 678 (2009) (quoting Twombly, 550 U.S. at 555,
6 557). A plaintiff must allege with at least some degree of particularity overt acts which the
7 defendants engaged in that support the plaintiff’s claims. Jones, 733 F.2d at 649.

8 Here, it is impossible from reading plaintiff’s complaint to discern how plaintiff believes
9 the Sacramento City Council violated 42 U.S.C. § 1983. In this regard, plaintiff’s complaint
10 simply contains vague and conclusory allegations related to his receipt of parking tickets.

11 Accordingly, plaintiff’s complaint will be dismissed for failure to state a cognizable
12 claim.¹

13 **III. Leave to Amend**

14 The undersigned has carefully considered whether plaintiff may amend the complaint to
15 state a claim upon which relief can be granted. “Valid reasons for denying leave to amend
16 include undue delay, bad faith, prejudice, and futility.” California Architectural Bldg. Prod. v.
17 Franciscan Ceramics, 818 F.2d 1466, 1472 (9th Cir. 1988); see also Klamath-Lake Pharm. Ass’n
18 v. Klamath Med. Serv. Bureau, 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that while leave to
19 amend shall be freely given, the court does not have to allow futile amendments).

20 However, when evaluating the failure to state a claim, the complaint of a pro se plaintiff
21 may be dismissed “only where ‘it appears beyond doubt that the plaintiff can prove no set of facts
22 in support of his claim which would entitle him to relief.’” Franklin v. Murphy, 745 F.2d 1221,
23 1228 (9th Cir. 1984) (quoting Haines v. Kerner, 404 U.S. 519, 521 (1972); see also Weilburg v.
24 Shapiro, 488 F.3d 1202, 1205 (9th Cir. 2007) (“Dismissal of a pro se complaint without leave to

25
26 ¹ To the extent plaintiff believes his receipt of parking tickets violated due process, plaintiff is
27 advised that “[f]ederal courts and California state courts have held that the Vehicle Code
28 procedures for administrative review of parking citations satisfy procedural due process
standards.” Svastics v. City of Los Angeles, Case No. CV 15-1270 GHK (AJW), 2016 WL
2641495, at *5 (C.D. Cal. Mar. 18, 2016).

1 amend is proper only if it is absolutely clear that the deficiencies of the complaint could not be
2 cured by amendment.”) (quoting Schucker v. Rockwood, 846 F.2d 1202, 1203-04 (9th Cir.
3 1988)).

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

14 Plaintiff is also reminded that the court cannot refer to a prior pleading in order to make an
15 amended complaint complete. Local Rule 220 requires that any amended complaint be complete
16 in itself without reference to prior pleadings. The amended complaint will supersede the original
17 complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Thus, in an amended complaint,
18 just as if it were the initial complaint filed in the case, each defendant must be listed in the caption
19 and identified in the body of the complaint, and each claim and the involvement of each
20 defendant must be sufficiently alleged. Any amended complaint which plaintiff may elect to file
21 must also include concise but complete factual allegations describing the conduct and events
22 which underlie plaintiff’s claims.

23 **IV. Conclusion**

24 Accordingly, IT IS HEREBY ORDERED that:


25 1. The complaint filed October 19, 2016 (ECF No. 1) is dismissed with leave to
26 amend.²

27 ² 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.

1 2. Within twenty-eight days from the date of this order, an amended complaint shall be
2 filed that cures the defects noted in this order and complies with the Federal Rules of Civil
3 Procedure and the Local Rules of Practice.³ The amended complaint must bear the case number
4 assigned to this action and must be titled “Amended Complaint.”

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

7 Dated: April 4, 2017

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11 DEBORAH BARNES
12 UNITED STATES MAGISTRATE JUDGE
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22 DLB:6
23 DB/orders/orders.pro se/todd2497.dism.lta.ord
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27 _____
28 ³ 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.