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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LEERTESE BEIRGE,  
Plaintiff,  
v.  
THE CITY OF SACRAMENTO, et al.,  
Defendants.

No. 2:16-cv-2505 JAM DB PS

ORDER

Plaintiff, Leertese Beirge, 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 an unlawful arrest.

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 alleges that the "Sacramento  
9 Police Department" unlawfully arrested plaintiff, that "[t]hey assaulted [plaintiff] along with  
10 Sacramento County Sheriff's Department within Sacramento County Main Jail," and that "[t]hey  
11 stole [plaintiff's] private property and extorted [plaintiff] to get it back . . . ." (Compl. (ECF No.  
12 1) at 5.)

13 Plaintiff's complaint, however, does not allege any facts—such as the dates of the events  
14 at issue and the identities of those involved—that underlie the complaint's allegations. In this  
15 regard, although the Federal Rules of Civil Procedure adopt a flexible pleading policy, a  
16 complaint must give the defendant fair notice of the plaintiff's claims and must allege facts that  
17 state the elements of each claim plainly and succinctly. Fed. R. Civ. P. 8(a)(2); Jones v.  
18 Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). "A pleading that offers 'labels  
19 and conclusions' or 'a formulaic recitation of the elements of cause of action will not do.' Nor  
20 does a complaint suffice if it tenders 'naked assertions' devoid of 'further factual  
21 enhancements.'" Ashcroft v. Iqbal, 556 U.S.662, 678 (2009) (quoting Twombly, 550 U.S. at 555,  
22 557). A plaintiff must allege with at least some degree of particularity overt acts which the  
23 defendants engaged in that support the plaintiff's claims. Jones, 733 F.2d at 649.

24 Moreover, supervisory personnel are generally not liable under § 1983 for the actions of  
25 their employees under a theory of respondeat superior and, therefore, when a named defendant  
26 holds a supervisory position, the causal link between him or her and the claimed constitutional  
27 violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979);  
28 Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S. 941 (1979).

1 A municipality may be liable under § 1983 where the municipality itself causes the  
2 constitutional violation through a “policy or custom, whether made by its lawmakers or those  
3 whose edicts or acts may fairly be said to represent official policy[.]” Monell v. Department of  
4 Social Services, 436 U.S. 658, 694 (1978). Municipal liability in a § 1983 case may be premised  
5 upon: (1) an official policy; (2) a “longstanding practice or custom which constitutes the standard  
6 operating procedure of the local government entity;” (3) the act of an “official whose acts fairly  
7 represent official policy such that the challenged action constituted official policy;” or (4) where  
8 “an official with final policy-making authority delegated that authority to, or ratified the decision  
9 of, a subordinate.” Price v. Sery, 513 F.3d 962, 966 (9th Cir. 2008). To sufficiently plead a  
10 Monell claim, allegations in a complaint “may not simply recite the elements of a cause of action,  
11 but must contain sufficient allegations of underlying facts to give fair notice and to enable the  
12 opposing party to defend itself effectively.” AE ex rel. Hernandez v. Cnty. of Tulare, 666 F.3d  
13 631, 637 (9th Cir. 2012) (quoting Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011)).

14 Accordingly, plaintiff’s complaint will be dismissed for failure to state a cognizable  
15 claim.<sup>1</sup>

### 16 **III. Leave to Amend**

17 The undersigned has carefully considered whether plaintiff may amend the complaint to  
18 state a claim upon which relief can be granted. “Valid reasons for denying leave to amend  
19 include undue delay, bad faith, prejudice, and futility.” California Architectural Bldg. Prod. v.  
20 Franciscan Ceramics, 818 F.2d 1466, 1472 (9th Cir. 1988); see also Klamath-Lake Pharm. Ass’n  
21 v. Klamath Med. Serv. Bureau, 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that while leave to  
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23 <sup>1</sup> On November 10, 2016, plaintiff filed a document pertaining to a Sacramento County Superior  
24 Court action. (ECF No. 6.) Plaintiff is advised that the Younger abstention doctrine forbids  
25 federal courts from interfering with pending state criminal proceedings by granting injunctive or  
26 declaratory relief, absent extraordinary circumstances that create a threat of irreparable injury.  
27 See Younger v. Harris, 401 U.S. 37, 53-54 (1971); Kenneally v. Lungren, 967 F.2d 329, 331 (9th  
28 Cir. 1992). Moreover, under the Rooker-Feldman doctrine, a federal district court is precluded  
from hearing “cases brought by state-court losers complaining of injuries caused by state-court  
judgments rendered before the district court proceedings commenced and inviting district court  
review and rejection of those judgments.” Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544  
U.S. 280, 284 (2005).

1 amend shall be freely given, the court does not have to allow futile amendments).

2           However, when evaluating the failure to state a claim, the complaint of a pro se plaintiff  
3 may be dismissed “only where ‘it appears beyond doubt that the plaintiff can prove no set of facts  
4 in support of his claim which would entitle him to relief.’” Franklin v. Murphy, 745 F.2d 1221,  
5 1228 (9th Cir. 1984) (quoting Haines v. Kerner, 404 U.S. 519, 521 (1972); see also Weilburg v.  
6 Shapiro, 488 F.3d 1202, 1205 (9th Cir. 2007) (“Dismissal of a pro se complaint without leave to  
7 amend is proper only if it is absolutely clear that the deficiencies of the complaint could not be  
8 cured by amendment.”) (quoting Schucker v. Rockwood, 846 F.2d 1202, 1203-04 (9th Cir.  
9 1988)).

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

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

1 **IV. Conclusion**

2 Accordingly, IT IS HEREBY ORDERED that:

3 1. The complaint filed October 20, 2016 (ECF No. 1) is dismissed with leave to  
4 amend.<sup>2</sup>

5 2. Within twenty-eight days from the date of this order, an amended complaint shall be  
6 filed that cures the defects noted in this order and complies with the Federal Rules of Civil  
7 Procedure and the Local Rules of Practice.<sup>3</sup> The amended complaint must bear the case number  
8 assigned to this action and must be titled "Amended Complaint."

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

11 Dated: April 10, 2017

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14 DEBORAH BARNES  
15 UNITED STATES MAGISTRATE JUDGE  
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27 <sup>2</sup> 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.

<sup>3</sup> 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.