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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

PATRICK BLACKSHIRE,  
Plaintiff,  
v.  
NAPA STATE HOSPITAL,  
Defendant.

No. 2:16-cv-2536 TLN DB PS

ORDER

Plaintiff, Patrick Blackshire, 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 being excessively medicated.

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 application to proceed in forma pauperis and complaint are deficient. Accordingly, for the reasons stated below, plaintiff's application to proceed in forma pauperis will be denied without prejudice and plaintiff's complaint will be dismissed with leave to amend.

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1 **I. Plaintiff's Application to Proceed In Forma Pauperis**

2 Plaintiff's in forma pauperis application is incomplete. In this regard, plaintiff's in forma  
3 pauperis application states that plaintiff is currently employed but fails to provide the amount of  
4 plaintiff's "take-home salary or wages and pay period and give the name and address of"  
5 plaintiff's employer. (ECF No. 2 at 1.) Moreover, even a determination that a plaintiff qualifies  
6 financially for in forma pauperis status does not complete the inquiry required by the statute.

7 "A district court may deny leave to proceed in forma pauperis at the outset if it appears  
8 from the face of the proposed complaint that the action is frivolous or without merit." Minetti v.  
9 Port of Seattle, 152 F.3d 1113, 1115 (9th Cir. 1998) (quoting Tripati v. First Nat. Bank & Trust,  
10 821 F.2d 1368, 1370 (9th Cir. 1987)); see also McGee v. Department of Child Support Services,  
11 584 Fed. Appx. 638 (9th Cir. 2014) ("the district court did not abuse its discretion by denying  
12 McGee's request to proceed IFP because it appears from the face of the amended complaint that  
13 McGee's action is frivolous or without merit"); Smart v. Heinze, 347 F.2d 114, 116 (9th Cir.  
14 1965) ("It is the duty of the District Court to examine any application for leave to proceed in  
15 forma pauperis to determine whether the proposed proceeding has merit and if it appears that the  
16 proceeding is without merit, the court is bound to deny a motion seeking leave to proceed in  
17 forma pauperis.").

18 The court must dismiss an in forma pauperis case at any time if the allegation of poverty is  
19 found to be untrue or if it is determined that the action is frivolous or malicious, fails to state a  
20 claim on which relief may be granted, or seeks monetary relief against an immune defendant. See  
21 28 U.S.C. § 1915(e)(2). A complaint is legally frivolous when it lacks an arguable basis in law or  
22 in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221,  
23 1227-28 (9th Cir. 1984). Under this standard, a court must dismiss a complaint as frivolous  
24 where it is based on an indisputably meritless legal theory or where the factual contentions are  
25 clearly baseless. Neitzke, 490 U.S. at 327; 28 U.S.C. § 1915(e).

26 To state a claim on which relief may be granted, the plaintiff must allege "enough facts to  
27 state a claim to relief that is plausible on its face." Bell Atlantic Corp. v. Twombly, 550 U.S. 544,  
28 570 (2007). In considering whether a complaint states a cognizable claim, the court accepts as

1 true the material allegations in the complaint and construes the allegations in the light most  
2 favorable to the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Hosp. Bldg. Co. v.  
3 Trustees of Rex Hosp., 425 U.S. 738, 740 (1976); Love v. United States, 915 F.2d 1242, 1245  
4 (9th Cir. 1989). Pro se pleadings are held to a less stringent standard than those drafted by  
5 lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). However, the court need not accept as true  
6 conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. Western  
7 Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

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

9 A pleading which sets forth a claim for relief . . . shall contain (1) a  
10 short and plain statement of the grounds upon which the court’s  
11 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.

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

## 13 **II. Plaintiff’s Complaint**

14 Here, plaintiff’s complaint fails to contain a short and plain statement of a claim showing  
15 that plaintiff is entitled to relief. In this regard, plaintiff’s complaint alleges that he was “treated  
16 with excessive medication by an unwarranted force . . . .” (Compl. (ECF No. 1) at 6.) Plaintiff’s  
17 complaint, however, does not allege any facts—such as the dates of the events at issue and the  
18 identities of those involved—that underlie the complaint’s allegations.

19 Although the Federal Rules of Civil Procedure adopt a flexible pleading policy, a  
20 complaint must give the defendant fair notice of the plaintiff’s claims and must allege facts that  
21 state the elements of each claim plainly and succinctly. Fed. R. Civ. P. 8(a)(2); Jones v.  
22 Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). “A pleading that offers ‘labels  
23 and conclusions’ or ‘a formulaic recitation of the elements of cause of action will not do.’ Nor  
24 does a complaint suffice if it tenders ‘naked assertions’ devoid of ‘further factual  
25 enhancements.’” Ashcroft v. Iqbal, 556 U.S.662, 678 (2009) (quoting Twombly, 550 U.S. at 555,  
26 557). A plaintiff must allege with at least some degree of particularity overt acts which the  
27 defendants engaged in that support the plaintiff’s claims. Jones, 733 F.2d at 649.

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

1 **III. Leave to Amend**

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

8 However, when evaluating the failure to state a claim, the complaint of a pro se plaintiff  
9 may be dismissed “only where ‘it appears beyond doubt that the plaintiff can prove no set of facts  
10 in support of his claim which would entitle him to relief.’” Franklin v. Murphy, 745 F.2d 1221,  
11 1228 (9th Cir. 1984) (quoting Haines v. Kerner, 404 U.S. 519, 521 (1972); see also Weilburg v.  
12 Shapiro, 488 F.3d 1202, 1205 (9th Cir. 2007) (“Dismissal of a pro se complaint without leave to  
13 amend is proper only if it is absolutely clear that the deficiencies of the complaint could not be  
14 cured by amendment.”) (quoting Schucker v. Rockwood, 846 F.2d 1202, 1203-04 (9th Cir.  
15 1988)).

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

26 Plaintiff is also reminded that the court cannot refer to a prior pleading in order to make an  
27 amended complaint complete. Local Rule 220 requires that any amended complaint be complete  
28 in itself without reference to prior pleadings. The amended complaint will supersede the original

1 complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Thus, in an amended complaint,  
2 just as if it were the initial complaint filed in the case, each defendant must be listed in the caption  
3 and identified in the body of the complaint, and each claim and the involvement of each  
4 defendant must be sufficiently alleged. Any amended complaint which plaintiff may elect to file  
5 must also include concise but complete factual allegations describing the conduct and events  
6 which underlie plaintiff's claims.

7 **IV. Conclusion**

8 Accordingly, IT IS HEREBY ORDERED that:

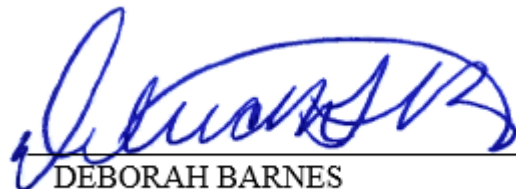
9 1. Plaintiff's October 25, 2016 motion to proceed in forma pauperis (ECF No. 2) is  
10 denied without prejudice.

11 2. The complaint filed October 25, 2016 (ECF No. 1) is dismissed with leave to  
12 amend.<sup>1</sup>

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

17 4. Failure to comply with this order in a timely manner may result in a recommendation  
18 that this action be dismissed.

19 Dated: April 10, 2017

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22 DEBORAH BARNES  
23 UNITED STATES MAGISTRATE JUDGE

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25 DB/orders/orders.pro se/blackshire2536.dism.lta.ord

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27 <sup>1</sup> If plaintiff elects to file an amended complaint, plaintiff must either file a completed application  
28 to proceed in forma pauperis or pay the applicable filing fee.

<sup>2</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.