



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

2 Plaintiff's in forma pauperis application makes the financial showing required by 28  
3 U.S.C. § 1915(a)(1). However, a determination that a plaintiff qualifies financially for in forma  
4 pauperis status does not complete the inquiry required by the statute. "A district court may deny  
5 leave to proceed in forma pauperis at the outset if it appears from the face of the proposed  
6 complaint that the action is frivolous or without merit." Minetti v. Port of Seattle, 152 F.3d  
7 1113, 1115 (9th Cir. 1998) (quoting Tripati v. First Nat. Bank & Trust, 821 F.2d 1368, 1370 (9th  
8 Cir. 1987)); see also McGee v. Department of Child Support Services, 584 Fed. Appx. 638 (9th  
9 Cir. 2014) ("the district court did not abuse its discretion by denying McGee's request to proceed  
10 IFP because it appears from the face of the amended complaint that McGee's action is frivolous  
11 or without merit"); Smart v. Heinze, 347 F.2d 114, 116 (9th Cir. 1965) ("It is the duty of the  
12 District Court to examine any application for leave to proceed in forma pauperis to determine  
13 whether the proposed proceeding has merit and if it appears that the proceeding is without merit,  
14 the court is bound to deny a motion seeking leave to proceed in forma pauperis.").

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

23 To state a claim on which relief may be granted, the plaintiff must allege "enough facts to  
24 state a claim to relief that is plausible on its face." Bell Atlantic Corp. v. Twombly, 550 U.S. 544,  
25 570 (2007). In considering whether a complaint states a cognizable claim, the court accepts as  
26 true the material allegations in the complaint and construes the allegations in the light most  
27 favorable to the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Hosp. Bldg. Co. v.  
28 Trustees of Rex Hosp., 425 U.S. 738, 740 (1976); Love v. United States, 915 F.2d 1242, 1245

1 (9th Cir. 1989). Pro se pleadings are held to a less stringent standard than those drafted by  
2 lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). However, the court need not accept as true  
3 conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. Western  
4 Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

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

6 A pleading which sets forth a claim for relief . . . shall contain (1) a  
7 short and plain statement of the grounds upon which the court's  
8 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.

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

## 10 **II. Plaintiff's Complaint**

11 Here, plaintiff's complaint fails to contain a short and plain statement of a claim showing  
12 that plaintiff is entitled to relief. In this regard, plaintiff's complaint alleges that after plaintiff  
13 "filed documents in the Eastern District Court . . . against government USA and members gang  
14 Russian," plaintiff was driving on the freeway when a vehicle "attempted to kill [plaintiff] on [a]  
15 federal road . . . ." (Compl. (ECF No. 1) at 2-3.) Plaintiff called 911 and "asked highway patrol  
16 to send interceptor car on the next exit," but "911 ignored requests . . . ." (Id. at 3.)

17 The only defendant named in the complaint, however, is Placer County District Attorney  
18 Ronald Owens. It is entirely unclear from reading the complaint what plaintiff believes Ronald  
19 Owens allegedly did wrong. The complaint also refers to "Government USA employees,"  
20 without providing any identifying information with respect to those alleged individuals.

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

1 defendants engaged in that support the plaintiff's claims. Jones, 733 F.2d at 649.

2 Moreover, plaintiff's complaint contains a reference to a "conspiracy." (Compl. (ECF No.  
3 1) at 1.) Plaintiff is advised that "[l]iability for civil conspiracy generally requires three elements:  
4 (1) formation of a conspiracy (an agreement to commit wrongful acts); (2) operation of a  
5 conspiracy (commission of the wrongful acts); and (3) damage resulting from operation of a  
6 conspiracy." Davenport v. Litton Loan Servicing, LP, 725 F.Supp.2d 862, 881 (N.D. Cal. 2010).  
7 "[B]are assertion of conspiracy" and a "conclusory allegation of agreement at some unidentified  
8 point" will not suffice to state a cognizable claim under federal pleading standards. Twombly,  
9 550 U.S. at 556–57; Davenport, 725 F.Supp.2d at 881 (plaintiff's conclusory allegation that  
10 defendants "agreed to hoodwink her with an unconscionable loan" did not state a cognizable  
11 conspiracy cause of action).

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

### 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 amend is proper only if it is absolutely clear that the deficiencies of the complaint could not be  
26 cured by amendment.") (quoting Schucker v. Rockwood, 846 F.2d 1202, 1203-04 (9th Cir.  
27 1988)).

28 ////

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

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

#### 20 **IV. Conclusion**

21 Accordingly, IT IS HEREBY ORDERED that:

22 1. The complaint filed October 28, 2016 (ECF No. 1) is dismissed with leave to  
23 amend.<sup>1</sup>

24 2. Within twenty-eight days from the date of this order, an amended complaint shall be  
25 filed that cures the defects noted in this order and complies with the Federal Rules of Civil  
26

---

27 <sup>1</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.

1 Procedure and the Local Rules of Practice.<sup>2</sup> The amended complaint must bear the case number  
2 assigned to this action and must be titled “Amended Complaint.”

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

5 Dated: April 10, 2017

6  
7  
8   
9 DEBORAH BARNES  
10 UNITED STATES MAGISTRATE JUDGE  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

22 DLB:6  
23 DB/orders/orders.pro se/yegorov2576.dism.lta.ord  
24  
25  
26

27 \_\_\_\_\_  
28 <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.