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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MOODY WOODROW TANKSLEY,
Plaintiff,
v.
KAISER FOUNDATION HOSPITAL, et
al.,
Defendants.

No. 2:16-cv-2800-KJM-EFB PS

ORDER

Plaintiff seeks leave to proceed *in forma pauperis* pursuant to 28 U.S.C. 1915.¹ His declaration makes the showing required by 28 U.S.C. §1915(a)(1) and (2). *See* ECF No. 2. Accordingly, the request to proceed *in forma pauperis* is granted. 28 U.S.C. § 1915(a).

Determining that plaintiff may proceed *in forma pauperis* does not complete the required inquiry. Pursuant to § 1915(e)(2), the court must dismiss the case at any time if it determines the allegation of poverty is untrue, or if the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against an immune defendant. As discussed below, plaintiff’s complaint fails to establish the court’s jurisdiction and must be dismissed.

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¹ This case, in which plaintiff is proceeding *in propria persona*, was referred to the undersigned under Local Rule 302(c)(21). *See* 28 U.S.C. § 636(b)(1).

1 Although pro se pleadings are liberally construed, *see Haines v. Kerner*, 404 U.S. 519,
2 520-21 (1972), a complaint, or portion thereof, should be dismissed for failure to state a claim if it
3 fails to set forth “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl.*
4 *Corp. v. Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41
5 (1957)); *see also* Fed. R. Civ. P. 12(b)(6). “[A] plaintiff’s obligation to provide the ‘grounds’ of
6 his ‘entitlement to relief’ requires more than labels and conclusions, and a formulaic recitation of
7 a cause of action’s elements will not do. Factual allegations must be enough to raise a right to
8 relief above the speculative level on the assumption that all of the complaint’s allegations are
9 true.” *Id.* (citations omitted). Dismissal is appropriate based either on the lack of cognizable
10 legal theories or the lack of pleading sufficient facts to support cognizable legal theories.
11 *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

12 In reviewing a complaint under this standard, the court must accept as true the allegations
13 of the complaint in question, *Hospital Bldg. Co. v. Rex Hosp. Trustees*, 425 U.S. 738, 740 (1976),
14 construe the pleading in the light most favorable to the plaintiff, and resolve all doubts in the
15 plaintiff’s favor, *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). A pro se plaintiff must satisfy
16 the pleading requirements of Rule 8(a) of the Federal Rules of Civil Procedure. Rule 8(a)(2)
17 “requires a complaint to include a short and plain statement of the claim showing that the pleader
18 is entitled to relief, in order to give the defendant fair notice of what the claim is and the grounds
19 upon which it rests.” *Twombly*, 550 U.S. at 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41
20 (1957)).

21 Additionally, a federal court is a court of limited jurisdiction, and may adjudicate only
22 those cases authorized by the Constitution and by Congress. *Kokkonen v. Guardian Life Ins. Co.*,
23 511 U.S. 375, 377 (1994). The basic federal jurisdiction statutes, 28 U.S.C. §§ 1331 & 1332,
24 confer “federal question” and “diversity” jurisdiction, respectively. Federal question jurisdiction
25 requires that the complaint (1) arise under a federal law or the U. S. Constitution, (2) allege a
26 “case or controversy” within the meaning of Article III, § 2 of the U. S. Constitution, or (3) be
27 authorized by a federal statute that both regulates a specific subject matter and confers federal
28 jurisdiction. *Baker v. Carr*, 369 U.S. 186, 198 (1962). To invoke the court’s diversity

1 jurisdiction, a plaintiff must specifically allege the diverse citizenship of all parties, and that the
2 matter in controversy exceeds \$75,000. 28 U.S.C. § 1332(a); *Bautista v. Pan American World*
3 *Airlines, Inc.*, 828 F.2d 546, 552 (9th Cir. 1987). A case presumably lies outside the jurisdiction
4 of the federal courts unless demonstrated otherwise. *Kokkonen*, 511 U.S. at 376-78. Lack of
5 subject matter jurisdiction may be raised at any time by either party or by the court. *Attorneys*
6 *Trust v. Videotape Computer Products, Inc.*, 93 F.3d 593, 594-95 (9th Cir. 1996).

7 It is unclear from the complaint whether this court has subject matter jurisdiction over the
8 case. Plaintiff brings this action against defendant Kaiser Foundation Hospital and unnamed
9 physicians, nurses, and security officers. ECF No. 1. Plaintiff alleges that on November 17,
10 2016, he received medical treatment at the Kaiser Foundation Hospital in Sacramento for blood
11 clots and congestive heart failure. ECF No. 1 at 3. He alleges that while he was at the hospital,
12 he was subjected to verbal, mental, and medical abuse by unnamed doctors and nurses. *Id.* Based
13 on these conclusory allegations, he requests the court award him 15 million dollars and enjoin
14 defendants from harming him and his family and friends. *Id.*

15 It is unclear how such allegations support a claim for federal relief. The complaint
16 indicates that this is action is brought under 42 U.S.C. § 1983. *Id.* at 1. To assert a section 1983
17 claim, plaintiff must allege two essential elements: (1) that a right secured by the Constitution or
18 laws of the United States was violated, and (2) that the alleged violation was committed by a
19 person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988). Plaintiff does
20 not identify a specific constitutional right that defendants allegedly violated, nor does he allege
21 facts demonstrating that defendants are state actors. Accordingly, plaintiff's fails to state a
22 federal claim.

23 Plaintiff also purports to assert claims for medical malpractice and "personal injury tort,"
24 but fails to establish that this court has diversity jurisdiction his state law claims. ECF No. 1 at 1.
25 As noted above, to establish diversity jurisdiction plaintiff is requires to allege diverse citizenship
26 of all parties, and that the matter in controversy exceeds \$75,000. 28 U.S.C. § 1332(a). Plaintiff
27 does not allege the citizenship of any of the defendants. Thus, plaintiff has failed to establish this

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1 court's jurisdiction over his claims. Accordingly, plaintiff's complaint must be dismissed for lack
2 of jurisdiction.

3 Plaintiff will be granted leave to file an amended complaint, if he can allege a cognizable
4 legal theory against a proper defendant and with sufficient facts in support of that cognizable
5 legal theory. *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (district courts
6 must afford pro se litigants an opportunity to amend to correct any deficiency in their
7 complaints). Should plaintiff choose to file an amended complaint, the amended complaint shall
8 clearly set forth the claims and allegations against each defendant. Any amended complaint must
9 cure the deficiencies identified above and also adhere to the following requirements:

10 Any amended complaint must identify as a defendant only persons who personally
11 participated in a substantial way in depriving him of a federal constitutional right. *Johnson v.*
12 *Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a
13 constitutional right if he does an act, participates in another's act or omits to perform an act he is
14 legally required to do that causes the alleged deprivation). It must also contain a caption
15 including the names of all defendants. Fed. R. Civ. P. 10(a).

16 Any amended complaint must be written or typed so that it so that it is complete in itself
17 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended
18 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the
19 earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114
20 F.3d 1467, 1474 (9th Cir. 1997) (the "'amended complaint supersedes the original, the latter
21 being treated thereafter as non-existent.'" (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.
22 1967)).

23 Finally, plaintiff is cautioned that failure to comply with the Federal Rules of Civil
24 Procedure, this court's Local Rules, or any court order may result in this action being dismissed.
25 *See* E.D. Cal. L.R. 110.

26 Accordingly, IT IS HEREBY ORDERED that:

27 1. Plaintiff's request to proceed in form pauperis (ECF No. 2) is granted.

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2. Plaintiff's complaint is dismissed with leave to amend, as provided herein.

3. Plaintiff is granted thirty days from the date of service of this order to file an amended complaint. The amended complaint must bear the docket number assigned to this case and be titled "First Amended Complaint." Failure to timely file an amended complaint in accordance with this order will result in a recommendation this action be dismissed.

DATED: October 4, 2017.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE