

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

10 Under this standard, the court must accept as true the allegations of the complaint in
11 question, *Hospital Bldg. Co. v. Rex Hosp. Trustees*, 425 U.S. 738, 740 (1976), construe the
12 pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff’s favor,
13 *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). A pro se plaintiff must satisfy the pleading
14 requirements of Rule 8(a) of the Federal Rules of Civil Procedure. Rule 8(a)(2) requires a
15 complaint to include “a short and plain statement of the claim showing that the pleader is entitled
16 to relief, in order to give the defendant fair notice of what the claim is and the grounds upon
17 which it rests.” *Twombly*, 550 U.S. at 555 (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).

18 Additionally, a federal court is a court of limited jurisdiction, and may adjudicate only
19 those cases authorized by the Constitution and by Congress. *Kokkonen v. Guardian Life Ins. Co.*,
20 511 U.S. 375, 377 (1994). The basic federal jurisdiction statutes, 28 U.S.C. §§ 1331 & 1332,
21 confer “federal question” and “diversity” jurisdiction, respectively. Federal question jurisdiction
22 requires that the complaint (1) arise under a federal law or the U. S. Constitution, (2) allege a
23 “case or controversy” within the meaning of Article III, § 2 of the U. S. Constitution, or (3) be
24 authorized by a federal statute that both regulates a specific subject matter and confers federal
25 jurisdiction. *Baker v. Carr*, 369 U.S. 186, 198 (1962). To invoke the court’s diversity
26 jurisdiction, a plaintiff must specifically allege the diverse citizenship of all parties, and that the
27 matter in controversy exceeds \$75,000. 28 U.S.C. § 1332(a); *Bautista v. Pan American World*
28 *Airlines, Inc.*, 828 F.2d 546, 552 (9th Cir. 1987). A case presumably lies outside the jurisdiction

1 of the federal courts unless demonstrated otherwise. *Kokkonen*, 511 U.S. at 376-78. Lack of
2 subject matter jurisdiction may be raised at any time by either party or by the court. *Attorneys*
3 *Trust v. Videotape Computer Products, Inc.*, 93 F.3d 593, 594-95 (9th Cir. 1996).

4 The original complaint alleged that plaintiff called defendant Dr. Yshay Shlesinger's
5 office to make a medical appointment, but defendant's staff refused to talk to plaintiff. Plaintiff
6 alleged that she drove to defendant's office the following day, but defendant refused to make an
7 appointment or otherwise meet with plaintiff. The order dismissing the complaint pointed out
8 that plaintiff's sole claim alleged a violation of 18 U.S.C. § 241, but that this criminal statute does
9 not create a private right of action. ECF No. 3. Accordingly, the complaint was dismissed with
10 leave to amend.

11 The first amended complaint again names Yshay Shlesinger as the only defendant but
12 asserts no factual allegations against Dr. Shlesinger. ECF No. 4. Instead, the complaint consists
13 of seemingly delusional allegations concerning various government conspiracies having nothing
14 to do with the named defendant. Plaintiff alleges that President Trump stopped her social security
15 disability payments in early 2017. She also claims that the United States government is requiring
16 all citizens of Ukraine to report to the United States embassy in Moscow for a "refugee status
17 interview." *Id.* at 3. She further alleges that FBI employees have blocked her case at the embassy
18 in Moscow, and that "Mr. Putin (employee KGB in Germany)" has bribed embassy officials since
19 1989 to adversely impact plaintiff's health. *Id.* Mr. Putin has also allegedly continued to pay
20 money to the FBI, the Secret Service, and President Trump to damages plaintiff's health "with
21 shot red light in Costco Store." *Id.* at 3-4. Based on these allegations, the complaint seeks 500
22 billion dollars in damages against defendant Shlesinger. Plaintiff also seeks damages against the
23 State of California for providing Dr. Shlesinger a license to practice medicine in California.³

24
25 ³ Plaintiff's also contends that the undersigned ignored her right to due process by "not
26 scheduling a hearing in order to continue crimes against [plaintiff], since 2016." ECF No. 4 at 2.
27 She also claims that the undersigned paid money to "all members [of the] California Bar
28 Association." *Id.* The relevance of such allegations is not evident. Plaintiff does not purport to
allege a claim against the undersigned, nor does she request recusal. Moreover, dismissing
plaintiff's original complaint without a hearing does not provide a basis for recusal. *Mayer v.*
Leipziger, 729 F.2d 605, 607 (9th Cir. 1984) ("A judge's previous adverse ruling alone is not

1 The complaint does not, however, identify any specific cause of action. Nor does it
2 contain coherent factual allegations that could plausibly support a cognizable claim for relief
3 against Yshay Shlesinger, the only defendant identified in the amended complaint's caption
4 page.⁴ Accordingly, plaintiff's complaint must be dismissed.

5 Given plaintiff's complete failure to remedy the deficiencies identified by the court in the
6 prior dismissal order and the lack of any plausible claim in the amended complaint, the court
7 finds that further amended would be futile. Accordingly, plaintiff's first amended complaint
8 should be dismissed without leave to amend. *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir.
9 1987) (While the court ordinarily would permit a pro se plaintiff leave to amend, leave to amend
10 should not be granted where it appears amendment would be futile).

11 Accordingly, it is ORDERED that plaintiff's request to subpoena documents from
12 defendant Ysnay Shlesinger's employees is denied.

13 Further, it is RECOMMENDED that plaintiff's first amended complaint (ECF Nos. 4) be
14 dismissed without leave to amend and the Clerk be directed to close the case.

15 These findings and recommendations are submitted to the United States District Judge
16 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
17 after being served with these findings and recommendations, any party may file written
18 objections with the court and serve a copy on all parties. Such a document should be captioned
19 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections

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22 sufficient bias."). Further, plaintiff's claim that the undersigned paid money to every member of
23 the California Bar Association, even if true, fails to demonstrate bias or a lack of impartiality over
24 plaintiff's case. See 28 U.S.C. § 455(a) ("Any justice, judge, or magistrate judge of the United
25 States shall disqualify himself in any proceeding in which his impartiality might reasonably be
26 questioned."); 28 U.S.C § 455(b)(1) (recusal required where judge has "a personal bias or
27 prejudice concerning a party . . .").

28 ⁴ Plaintiff does seek damages from the State of California for providing Dr. Shlesinger a
medical license. Even if the court were to construe such allegations as an attempt to name
California as a defendant, the amended complaint still fails to state a claim against California.
Plaintiff does not allege any specific cause of action against California, nor does he allege any
facts that could support a claim for relief against the state.

1 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
2 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

3 DATED: May 21, 2018.

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5 EDMUND F. BRENNAN
6 UNITED STATES MAGISTRATE JUDGE
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