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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MONICA STAAR,

Plaintiff,

v.

JERRY FOSTER,

Defendant.

No. 2:17-cv-0083 KJM AC PS

ORDER

Plaintiff is proceeding in this action pro se. This matter was accordingly referred to the undersigned by E.D. Cal. R. (“Local Rule”) 302(c)(21). Plaintiff has also requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. ECF No. 2. The request will be denied because (1) plaintiff’s IFP application fails to make a showing required by 28 U.S.C. § 1915(a)(1), and (2) the complaint, in its current form, is frivolous.

I. INSUFFICIENT INFORMATION IN THE IFP APPLICATION

Plaintiff’s in forma pauperis application fails to disclose whether in the “past twelve months [she has] received any money from any” “business, profession or other self-employment, rent payments, interest or dividends, pensions annuities or life insurance payments, gifts or inheritances, or any other sources.” ECF No. 2 at 1 ¶ 3. Because of this omissions, plaintiff’s application fails to establish that she is entitled to prosecute this case without paying the required fees. Furthermore, where “plaintiff’s claim appears to be frivolous on the face of the complaint,”

1 the district court may “deny[] plaintiff leave to file *in forma pauperis*.” O’Loughlin v. Doe, 920
2 F.2d 614, 617 (9th Cir. 1990).

3 II. SCREENING STANDARDS

4 The IFP statute requires federal courts to dismiss a case if the action is legally “frivolous”
5 or fails to state a claim upon which relief may be granted. 28 U.S.C. § 1915(e)(2). Plaintiff must
6 assist the court in determining whether the complaint is frivolous or not, by drafting the complaint
7 so that it complies with the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”). Under the
8 Federal Rules of Civil Procedure, the complaint must contain (1) a “short and plain statement” of
9 the basis for federal jurisdiction (that is, the reason the case is filed in this court, rather than in a
10 state court), (2) a short and plain statement showing that plaintiff is entitled to relief (that is, who
11 harmed the plaintiff, and in what way), and (3) a demand for the relief sought. Fed. R. Civ.
12 P. (“Rule”) 8(a). Plaintiff’s claims must be set forth simply, concisely and directly. Rule 8(d)(1).
13 The federal IFP statute requires federal courts to dismiss a case if the action is legally “frivolous
14 or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief
15 from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

16 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
17 Neitzke v. Williams, 490 U.S. 319, 325 (1989). In reviewing a complaint under this standard, the
18 court will (1) accept as true all of the factual allegations contained in the complaint, unless they
19 are clearly baseless or fanciful, (2) construe those allegations in the light most favorable to the
20 plaintiff, and (3) resolve all doubts in the plaintiff’s favor. See Neitzke, 490 U.S. at 327;
21 Erickson v. Pardus, 551 U.S. 89, 94 (2007); Von Saher v. Norton Simon Museum of Art at
22 Pasadena, 592 F.3d 954, 960 (9th Cir. 2010), cert. denied, 564 U.S. 1037 (2011); Hebbe v. Pliler,
23 627 F.3d 338, 340 (9th Cir. 2010). However, the court need not accept as true, legal conclusions
24 cast in the form of factual allegations, or allegations that contradict matters properly subject to
25 judicial notice. See Western Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981);
26 Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir.), as amended, 275 F.3d 1187
27 (2001).

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1 Pro se pleadings are held to a less stringent standard than those drafted by lawyers.
2 Haines v. Kerner, 404 U.S. 519, 520 (1972). Pro se complaints are construed liberally and may
3 only be dismissed if it appears beyond doubt that the plaintiff can prove no set of facts in support
4 of his claim which would entitle him to relief. Nordstrom v. Ryan, 762 F.3d 903, 908 (9th
5 Cir. 2014). A pro se litigant is entitled to notice of the deficiencies in the complaint and an
6 opportunity to amend, unless the complaint’s deficiencies could not be cured by amendment. See
7 Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987).

8 III. THE COMPLAINT

9 The complaint alleges violations of the “Americans with Disabilities Act [(ADA)],
10 Violent Crime Control and Law Enforcement Act, and Matthew Shepard and James Byrd Hate
11 Crimes Prevention Act.” ECF No. 1 at 4 ¶ A. These statutes are asserted as the basis for federal
12 question jurisdiction. Id.

13 Plaintiff alleges that while she was “dragging [her] older neighbor’s garbage can to the
14 street for collection” the defendant drove rapidly towards her, pulled up alongside her and
15 “lowered the passenger side window and began cursing [], threatening [], and calling [her]
16 derogatory names.” Id. at 5 ¶ III. Plaintiff “began edging along the side of [the] truck to cross
17 the road” to leave and when she was behind defendant’s truck, “he threw the truck into reverse,
18 accelerated, striking [plaintiff] on the left side of [her] knee. Upon impact, [defendant] shifted
19 into drive and sped away.” Id. As “relief,” plaintiff asks for “medical bills and surgery now
20 required for [her] torn lateral meniscus.” Id. at 6 ¶ IV.

21 These allegations do not establish federal question jurisdiction. Plaintiff’s statement of
22 her claim does not include any facts that establish (or indicate the existence of) a violation of
23 federal law, but rather suggests a personal injury claim that would be governed by state law and
24 must be filed in state court.

25 The complaint does not contain any facts showing that plaintiff has a claim entitling her to
26 relief under the statutes she invokes. The ADA prohibits discrimination against persons with
27 disabilities in areas of employment (Title I); public services (Title II); and public
28 accommodations (Title III). See Tennessee v. Lane, 541 U.S. 509, 516 (2004). The complaint

1 does not allege any acts of discrimination on the basis of disability, and does not involve
2 employment, public services, or public accommodations. Neither the Violent Crime Control and
3 Law Enforcement Act nor the Matthew Shepard and James Byrd Hate Crimes Prevention Act
4 create a private right of action. The complaint fails to explain how these statutes are implicated in
5 the alleged personal injury. Even if defendant was motivated by prejudice of some kind (he is
6 alleged to have used derogatory language), that would not transform a personal injury caused by a
7 private citizen into a violation of federal law. So-called “hate crime” laws are criminal laws that
8 do not give individuals a right to sue.

9 IV. AMENDING THE COMPLAINT

10 Plaintiff will be provided an opportunity to amend his complaint. The court will therefore
11 provide guidance for amendment.

12 The amended complaint must contain a short and plain statement of plaintiff’s claims.
13 That is, it must state what the defendant did that harmed the plaintiff. The amended complaint
14 must not force the court and the defendants to guess at what is being alleged against whom. See
15 McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (affirming dismissal of a complaint where
16 the district court was “literally guessing as to what facts support the legal claims being asserted
17 against certain defendants”).

18 In setting forth the facts, plaintiff must not go overboard, however. He must avoid
19 excessive repetition of the same allegations. He must avoid narrative and storytelling. That is,
20 the complaint should not include every detail of what happened, nor recount the details of
21 conversations (unless necessary to establish the claim), nor give a running account of plaintiff’s
22 hopes and thoughts. Rather, the amended complaint should contain only those facts needed to
23 show how the defendant legally wronged the plaintiff.

24 Also, the amended complaint must not refer to a prior pleading in order to make plaintiff’s
25 amended complaint complete. An amended complaint must be complete in itself without
26 reference to any prior pleading. Local Rule 220. This is because, as a general rule, an amended
27 complaint supersedes the original complaint. See Pacific Bell Telephone Co. v. Linkline
28 Communications, Inc., 555 U.S. 438, 456 n.4 (2009) (“[n]ormally, an amended complaint


1 supersedes the original complaint”) (citing 6 C. Wright & A. Miller, Federal Practice &
2 Procedure § 1476, pp. 556-57 (2d ed. 1990)). Therefore, in an amended complaint, as in an
3 original complaint, each claim and the involvement of each defendant must be sufficiently
4 alleged.

5 V. CONCLUSION

6 For the reasons explained above, IT IS HEREBY ORDERED that:

- 7 1. Plaintiff’s request to proceed in forma pauperis (ECF No. 2) is DENIED without
8 prejudice to its renewal in proper form, as explained above;
- 9 2. The complaint (ECF No. 1), is DISMISSED with leave to amend;
- 10 3. Plaintiff must file her renewed IFP application and amended complaint within 30 days
11 of the date of this order. If plaintiff files an amended complaint, she must comply with the
12 instructions given above. If plaintiff fails to timely comply with this order, the undersigned may
13 recommend that this action be dismissed.

14 DATED: July 13, 2017

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16 ALLISON CLAIRE
17 UNITED STATES MAGISTRATE JUDGE
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