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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SHARP, CALYSTA, et al.,  
Plaintiffs,  
v.  
POWERS, TERESA, et al.,  
Defendants.

No. 2:17-cv-0255 KJM DB PS

ORDER AND  
FINDINGS AND RECOMMENDATIONS

Plaintiff Calysta Sharp 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). On May 3, 2017, the undersigned issued an order dismissing plaintiff’s complaint and granting plaintiff twenty-eight days to file an amended complaint. (ECF No. 3.) On October 2, 2017, the undersigned issued findings and recommendations recommending that this action be dismissed due to plaintiff’s failure to file an amended complaint. (ECF No. 9.)

However, on October 3, 2017, plaintiff filed an amended complaint. (ECF No. 11.) The October 2, 2017 findings and recommendations are, therefore, vacated. Now pending before the court are plaintiff’s motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915 and amended complaint. (ECF Nos. 2 & 11.) Therein, plaintiff complains about “all category of human suffering.” (Am. Compl. (ECF No. 11) at 4.)

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1 The court is required to screen complaints brought by parties proceeding in forma  
2 pauperis. See 28 U.S.C. § 1915(e)(2); see also Lopez v. Smith, 203 F.3d 1122, 1129 (9th Cir.  
3 2000) (en banc). Here, plaintiff’s amended complaint is deficient. Accordingly, for the reasons  
4 stated below, the undersigned will recommend that plaintiff’s motion to proceed in forma  
5 pauperis be denied and that plaintiff’s amended complaint be dismissed without leave to amend.

6 **I. Plaintiff’s Application to Proceed In Forma Pauperis**

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

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

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1 To state a claim on which relief may be granted, the plaintiff must allege “enough facts to  
2 state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544,  
3 570 (2007). In considering whether a complaint states a cognizable claim, the court accepts as  
4 true the material allegations in the complaint and construes the allegations in the light most  
5 favorable to the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Hosp. Bldg. Co. v.  
6 Trustees of Rex Hosp., 425 U.S. 738, 740 (1976); Love v. United States, 915 F.2d 1242, 1245  
7 (9th Cir. 1989). Pro se pleadings are held to a less stringent standard than those drafted by  
8 lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). However, the court need not accept as true  
9 conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. Western  
10 Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

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

12 A pleading which sets forth a claim for relief . . . shall contain (1) a  
13 short and plain statement of the grounds upon which the court’s  
14 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.

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

## 16 **II. Plaintiff’s Complaint**

17 Plaintiff’s amended complaint fails to satisfy any of the requirements of Rule 8 of the  
18 Federal Rules of Civil Procedure, quoted above. In this regard, the amended complaint alleges  
19 that this court has both federal question and diversity jurisdiction over this action despite the fact  
20 that plaintiff and defendant are citizens of California, and that the amount in controversy exceeds  
21 \$75,000 because of “excessive personal injury, dehumanized/toxicated rape; (RICO); all category  
22 of human suffering . . . \$600,000.” (Am. Compl. (ECF No. 11) at 4.) Moreover, the amended  
23 complaint’s statement of a claim is “ORDER TO SHOW CAUSE IS ATTACHED. PLEASE  
24 SEE AMENDED ORDER TO SHOW CAUSE.” (Id.) In this regard, the amended complaint is  
25 devoid of a single factual allegation.

26 Although the undersigned is cognizant of the challenges faced by pro se litigants, and that  
27 the Federal Rules of Civil Procedure adopt a flexible pleading policy, a complaint must give the  
28 defendant fair notice of the plaintiff’s claims and must allege facts that state the elements of each

1 claim plainly and succinctly. Fed. R. Civ. P. 8(a)(2); Jones v. Community Redev. Agency, 733  
2 F.2d 646, 649 (9th Cir. 1984). “A pleading that offers ‘labels and conclusions’ or ‘a formulaic  
3 recitation of the elements of cause of action will not do.’ Nor does a complaint suffice if it  
4 tenders ‘naked assertions’ devoid of ‘further factual enhancements.’” Ashcroft v. Iqbal, 556  
5 U.S.662, 678 (2009) (quoting Twombly, 550 U.S. at 555, 557). A plaintiff must allege with at  
6 least some degree of particularity overt acts which the defendants engaged in that support the  
7 plaintiff’s claims. Jones, 733 F.2d at 649.

8 Accordingly, for the reasons stated above, plaintiff’s amended complaint should be  
9 dismissed for failure to state a claim upon which relief can be granted.

### 10 **III. Leave to Amend**

11 The undersigned has carefully considered whether plaintiff may further amend the  
12 amended complaint to state a claim upon which relief can be granted. “Valid reasons for denying  
13 leave to amend include undue delay, bad faith, prejudice, and futility.” California Architectural  
14 Bldg. Prod. v. Franciscan Ceramics, 818 F.2d 1466, 1472 (9th Cir. 1988); see also Klamath-Lake  
15 Pharm. Ass’n v. Klamath Med. Serv. Bureau, 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that  
16 while leave to amend shall be freely given, the court does not have to allow futile amendments).  
17 In light of the deficiencies noted above, and plaintiff’s repeated inability to successfully amend  
18 the complaint, the undersigned finds that it would be futile to grant plaintiff further leave to  
19 amend.

### 20 **CONCLUSION**

21 Accordingly, IT IS HEREBY ORDERED that the October 2, 2017 findings and  
22 recommendations (ECF No. 9) are vacated.

23 Also, IT IS HEREBY RECOMMENDED that:

24 1. Plaintiff’s February 6, 2017 application to proceed in forma pauperis (ECF No. 2) be  
25 denied;

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1           2. Plaintiff's October 3, 2017 amended complaint (ECF No. 11) be dismissed without  
2 leave to amend; and

3           3. This action be dismissed.

4           These findings and recommendations will be submitted to the United States District Judge  
5 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)  
6 days after being served with these findings and recommendations, plaintiff may file written  
7 objections with the court. A document containing objections should be titled "Objections to  
8 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file  
9 objections within the specified time may, under certain circumstances, waive the right to appeal  
10 the District Court's order. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

11 Dated: October 18, 2017

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15 DEBORAH BARNES  
16 UNITED STATES MAGISTRATE JUDGE  
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