

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

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

22 To state a claim on which relief may be granted, the plaintiff must allege "enough facts to
23 state a claim to relief that is plausible on its face." Bell Atlantic Corp. v. Twombly, 550 U.S. 544,
24 570 (2007). In considering whether a complaint states a cognizable claim, the court accepts as
25 true the material allegations in the complaint and construes the allegations in the light most
26 favorable to the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Hosp. Bldg. Co. v.
27 Trustees of Rex Hosp., 425 U.S. 738, 740 (1976); Love v. United States, 915 F.2d 1242, 1245
28 (9th Cir. 1989). Pro se pleadings are held to a less stringent standard than those drafted by

1 lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). However, the court need not accept as true
2 conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. Western
3 Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

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

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

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

9 **II. Plaintiffs' Complaint**

10 Here, plaintiffs' complaint fails to contain a short and plain statement of a claim showing
11 that plaintiff is entitled to relief. In this regard, plaintiffs' complaint is entirely devoid of any
12 factual allegations or clearly asserted causes of action. Although the Federal Rules of Civil
13 Procedure adopt a flexible pleading policy, a complaint must give the defendant fair notice of the
14 plaintiff's claims and must allege facts that state the elements of each claim plainly and
15 succinctly. Fed. R. Civ. P. 8(a)(2); Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th
16 Cir. 1984). "A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the
17 elements of cause of action will not do.' Nor does a complaint suffice if it tenders 'naked
18 assertions' devoid of 'further factual enhancements.'" Ashcroft v. Iqbal, 556 U.S.662, 678 (2009)
19 (quoting Twombly, 550 U.S. at 555, 557). A plaintiff must allege with at least some degree of
20 particularity overt acts which the defendants engaged in that support the plaintiff's claims. Jones,
21 733 F.2d at 649.

22 Moreover, plaintiffs' complaint is signed only by plaintiff Calysta Sharp. However, the
23 right to represent oneself pro se is personal to the plaintiff and does not extend to other parties.
24 Simon v. Hartford Life, Inc., 546 F.3d 661, 664 (9th Cir. 2008); see also Russell v. United States,
25 308 F.2d 78, 79 (9th Cir. 1962) ("A litigant appearing in propria persona has no authority to
26 represent anyone other than himself."). A non-attorney "has no authority to appear as an attorney
27 for others than himself." C.E. Pope Equity Trust v. U.S., 818 F.2d 696, 697 (9th Cir. 1987).
28 Individuals who are representing themselves in this court may not delegate the litigation of their

1 claims to any other individual. Local Rule 183(a). Accordingly, all pleadings and non-
2 evidentiary documents filed with the court must be signed by each pro se party. See Local Rule
3 131(b).

4 Accordingly, plaintiffs' complaint will be dismissed for failure to state a cognizable claim.

5 **III. Leave to Amend**

6 The undersigned has carefully considered whether plaintiffs may amend the complaint to
7 state a claim upon which relief can be granted. "Valid reasons for denying leave to amend
8 include undue delay, bad faith, prejudice, and futility." California Architectural Bldg. Prod. v.
9 Franciscan Ceramics, 818 F.2d 1466, 1472 (9th Cir. 1988); see also Klamath-Lake Pharm. Ass'n
10 v. Klamath Med. Serv. Bureau, 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that while leave to
11 amend shall be freely given, the court does not have to allow futile amendments).

12 However, when evaluating the failure to state a claim, the complaint of a pro se plaintiff
13 may be dismissed "only where 'it appears beyond doubt that the plaintiff can prove no set of facts
14 in support of his claim which would entitle him to relief.'" Franklin v. Murphy, 745 F.2d 1221,
15 1228 (9th Cir. 1984) (quoting Haines v. Kerner, 404 U.S. 519, 521 (1972); see also Weilburg v.
16 Shapiro, 488 F.3d 1202, 1205 (9th Cir. 2007) ("Dismissal of a pro se complaint without leave to
17 amend is proper only if it is absolutely clear that the deficiencies of the complaint could not be
18 cured by amendment.") (quoting Schucker v. Rockwood, 846 F.2d 1202, 1203-04 (9th Cir.
19 1988)).

20 Here, given the complaint's total lack of allegations, the undersigned cannot yet say that it
21 appears beyond doubt that leave to amend would be futile. Plaintiffs' complaint will therefore be
22 dismissed, and plaintiffs will be granted leave to file an amended complaint. Plaintiffs are
23 cautioned, however, that if plaintiffs elect to file an amended complaint "the tenet that a court
24 must accept as true all of the allegations contained in a complaint is inapplicable to legal
25 conclusions. Threadbare recitals of the elements of a cause of action, supported by mere
26 conclusory statements, do not suffice." Ashcroft, 556 U.S. at 678. "While legal conclusions can
27 provide the complaint's framework, they must be supported by factual allegations." Id. at 679.
28 Those facts must be sufficient to push the claims "across the line from conceivable to

1 plausible[.]” Id. at 680 (quoting Twombly, 550 U.S. at 557).

2 Plaintiffs are also reminded that the court cannot refer to a prior pleading in order to make
3 an amended complaint complete. Local Rule 220 requires that any amended complaint be
4 complete in itself without reference to prior pleadings. The amended complaint will supersede
5 the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Thus, in an amended
6 complaint, just as if it were the initial complaint filed in the case, each defendant must be listed in
7 the caption and identified in the body of the complaint, and each claim and the involvement of
8 each defendant must be sufficiently alleged. Any amended complaint which plaintiffs may elect
9 to file must also include concise but complete factual allegations describing the conduct and
10 events which underlie plaintiffs’ claims.

11 **IV. Conclusion**

12 Accordingly, IT IS HEREBY ORDERED that:

13 1. The complaint filed February 6, 2017 (ECF No. 1) is dismissed with leave to
14 amend.¹

15 2. Within twenty-eight days from the date of this order, an amended complaint shall be
16 filed that cures the defects noted in this order and complies with the Federal Rules of Civil
17 Procedure and the Local Rules of Practice.² The amended complaint must bear the case number
18 assigned to this action and must be titled “Amended Complaint.”³

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

21 DATED: May 2, 2017

/s/ DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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23
24 _____
25 ¹ Plaintiff Calysta Sharp need not file another application to proceed in forma pauperis at this
26 time unless plaintiff Sharp’s financial condition has improved since the last such application was
submitted.

27 ² Alternatively, if plaintiffs no longer wish to pursue this action plaintiffs may file a notice of
voluntary dismissal of this action pursuant to Rule 41 of the Federal Rules of Civil Procedure.

28 ³ If plaintiffs elect to file an amended complaint, plaintiff Caitlyn Howard shall either file an
application to proceed in forma pauperis or pay the applicable filing fee.