

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

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

20 To state a claim on which relief may be granted, the plaintiff must allege “enough facts to
21 state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544,
22 570 (2007). In considering whether a complaint states a cognizable claim, the court accepts as
23 true the material allegations in the complaint and construes the allegations in the light most
24 favorable to the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Hosp. Bldg. Co. v.
25 Trustees of Rex Hosp., 425 U.S. 738, 740 (1976); Love v. United States, 915 F.2d 1242, 1245
26 (9th Cir. 1989). Pro se pleadings are held to a less stringent standard than those drafted by
27 lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). However, the court need not accept as true
28 conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. Western

1 Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

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

3 A pleading which sets forth a claim for relief . . . shall contain (1) a
4 short and plain statement of the grounds upon which the court's
5 jurisdiction depends . . . , (2) a short and plain statement of the
6 claim showing that the pleader is entitled to relief, and (3) a demand
7 for judgment for the relief the pleader seeks.

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

9 **II. Plaintiff's Complaint**

10 Here, plaintiff's complaint fails to contain a short and plain statement of a claim showing
11 that plaintiff is entitled to relief. In this regard, plaintiff's complaint consists of a single page of
12 vague and conclusory allegations. For example, the complaint alleges that plaintiff was
13 wrongfully imprisoned "on trumped up felony charges," subject to an illegal search, that the
14 "District Attorney committed (sic) intentional perjury and the Rocklin Police Department lied on
15 the police report, a crime." (Compl. (ECF No. 1) at 1.)

16 Plaintiff's complaint, however, fails to contain any factual allegations, such as when and
17 where the events at issue occurred, as well as the identities of those involved. Although the
18 Federal Rules of Civil Procedure adopt a flexible pleading policy, a complaint must give the
19 defendant fair notice of the plaintiff's claims and must allege facts that state the elements of each
20 claim plainly and succinctly. Fed. R. Civ. P. 8(a)(2); Jones v. Community Redev. Agency, 733
21 F.2d 646, 649 (9th Cir. 1984). "A pleading that offers 'labels and conclusions' or 'a formulaic
22 recitation of the elements of cause of action will not do.' Nor does a complaint suffice if it
23 tenders 'naked assertions' devoid of 'further factual enhancements.'" Ashcroft v. Iqbal, 556
24 U.S.662, 678 (2009) (quoting Twombly, 550 U.S. at 555, 557). A plaintiff must allege with at
25 least some degree of particularity overt acts which the defendants engaged in that support the
26 plaintiff's claims. Jones, 733 F.2d at 649.

27 Moreover, the only defendant named in the complaint is the Rocklin Police Department.
28 "[A] municipality may not be held liable under § 1983 solely because it employs a tortfeasor."
Board of County Com'rs of Bryan County, Okl. v. Brown, 520 U.S. 397, 403 (1997). However, a
municipality may be liable under § 1983 where the municipality itself causes the constitutional

1 violation through a “policy or custom, whether made by its lawmakers or those whose edicts or
2 acts may fairly be said to represent official policy[.]” Monell v. Department of Social Services,
3 436 U.S. 658, 694 (1978). Municipal liability in a § 1983 case may be premised upon: (1) an
4 official policy; (2) a “longstanding practice or custom which constitutes the standard operating
5 procedure of the local government entity;” (3) the act of an “official whose acts fairly represent
6 official policy such that the challenged action constituted official policy;” or (4) where “an
7 official with final policy-making authority delegated that authority to, or ratified the decision of, a
8 subordinate.” Price v. Sery, 513 F.3d 962, 966 (9th Cir. 2008). To sufficiently plead a Monell
9 claim, allegations in a complaint “may not simply recite the elements of a cause of action, but
10 must contain sufficient allegations of underlying facts to give fair notice and to enable the
11 opposing party to defend itself effectively.” AE ex rel. Hernandez v. Cnty. of Tulare, 666 F.3d
12 631, 637 (9th Cir. 2012) (quoting Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011)).

13 Accordingly, plaintiff’s complaint will be dismissed for failure to state a cognizable claim.

14 **III. Leave to Amend**

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

21 However, when evaluating the failure to state a claim, the complaint of a pro se plaintiff
22 may be dismissed “only where ‘it appears beyond doubt that the plaintiff can prove no set of facts
23 in support of his claim which would entitle him to relief.’” Franklin v. Murphy, 745 F.2d 1221,
24 1228 (9th Cir. 1984) (quoting Haines v. Kerner, 404 U.S. 519, 521 (1972)); see also Weilburg v.
25 Shapiro, 488 F.3d 1202, 1205 (9th Cir. 2007) (“Dismissal of a pro se complaint without leave to
26 amend is proper only if it is absolutely clear that the deficiencies of the complaint could not be
27 cured by amendment.”) (quoting Schucker v. Rockwood, 846 F.2d 1202, 1203-04 (9th Cir.
28 1988)).

1 Here, the undersigned cannot yet say that it appears beyond doubt that leave to amend
2 would be futile. Plaintiff's complaint will therefore be dismissed, and plaintiff will be granted
3 leave to file an amended complaint. Plaintiff is cautioned, however, that if plaintiff elects to file
4 an amended complaint "the tenet that a court must accept as true all of the allegations contained
5 in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause
6 of action, supported by mere conclusory statements, do not suffice." Ashcroft, 556 U.S. at 678.
7 "While legal conclusions can provide the complaint's framework, they must be supported by
8 factual allegations." Id. at 679. Those facts must be sufficient to push the claims "across the line
9 from conceivable to plausible[.]" Id. at 680 (quoting Twombly, 550 U.S. at 557).

10 Plaintiff is also reminded that the court cannot refer to a prior pleading in order to make an
11 amended complaint complete. Local Rule 220 requires that any amended complaint be complete
12 in itself without reference to prior pleadings. The amended complaint will supersede the original
13 complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Thus, in an amended complaint,
14 just as if it were the initial complaint filed in the case, each defendant must be listed in the caption
15 and identified in the body of the complaint, and each claim and the involvement of each
16 defendant must be sufficiently alleged. Any amended complaint which plaintiff may elect to file
17 must also include concise but complete factual allegations describing the conduct and events
18 which underlie plaintiff's claims.

19 **IV. Conclusion**

20 Accordingly, IT IS HEREBY ORDERED that:

21 1. The complaint filed February 8, 2017 (ECF No. 1) is dismissed with leave to
22 amend.¹

23 2. Within twenty-eight days from the date of this order, an amended complaint shall be
24 filed that cures the defects noted in this order and complies with the Federal Rules of Civil
25 Procedure and the Local Rules of Practice.² The amended complaint must bear the case number

26 _____
27 ¹ Plaintiff need not file another application to proceed in forma pauperis at this time unless
28 plaintiff's financial condition has improved since the last such application was submitted.

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

1 assigned to this action and must be titled "Amended Complaint."

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

4 DATED: May 2, 2017

/s/ DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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