

1 Accordingly, the court grants Paul Blank’s request to proceed *in forma pauperis*, but declines to
2 grant such status to Paul Blank Apparel, Inc. to the extent the plaintiffs’ motion makes such a
3 request.

4 The determination that a plaintiff may proceed *in forma pauperis* does not complete the
5 required inquiry. Pursuant to 28 U.S.C. § 1915, the court is directed to dismiss the case at any
6 time if it determines that the allegation of poverty is untrue, or if the action is frivolous or
7 malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against
8 an immune defendant.

9 To avoid dismissal for failure to state a claim, a complaint must contain more than “naked
10 assertions,” “labels and conclusions,” or “a formulaic recitation of the elements of a cause of
11 action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57 (2007). In other words,
12 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
13 statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim
14 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A
15 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
16 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S.
17 at 678. When considering whether a complaint states a claim upon which relief can be granted,
18 the court must accept the factual allegations as true, Erickson v. Pardus, 551 U.S. 89, 94 (2007),
19 and construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416
20 U.S. 232, 236 (1974).

21 Pro se pleadings are liberally construed. See Haines v. Kerner, 404 U.S. 519, 520-21
22 (1972); Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1988). Unless it is clear
23 that no amendment can cure the defects of a complaint, a pro se plaintiff proceeding *in forma*
24 *pauperis* is ordinarily entitled to notice and an opportunity to amend before dismissal. See Noll
25 v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987); Franklin v. Murphy, 745 F.2d 1221, 1230 (9th
26 Cir. 1984).

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28 Blank Apparel, Inc. should be dismissed from this action with prejudice.

1 Here, plaintiffs' 4-page complaint is rambling and largely unintelligible. Construed
2 liberally, it appears from the heading and first two paragraphs of the complaint that plaintiffs
3 allege that Paul Blank is a disabled man who was denied access to a Sacramento Regional Transit
4 bus after he had offered to pay the full fare. (ECF No. 1 at 1.) However, the rest of the complaint
5 consists of allegations asserting an assortment of colorful facts that appear to have little to no
6 bearing on this core allegation. For instance, plaintiffs allege that four Sacramento Regional
7 Transit bus drivers—referred to in the complaint as “John Driver BadGuyRole,” “John Driver
8 GoodGuyRole,” “John Driver CowboyBlackBoots,” and “Jane Driver ShortyHeight”—operated
9 an “underage sexual child prostitution ring.” (Id. at 1-2.) Plaintiffs allege further that Paul Blank
10 is the sole director of Paul Blank Apparel, Inc., is in talks to make an initial public offering for
11 that company, and is designing a “bullet proof secure communication encryption” software
12 product for another company he will soon start. (Id. at 3.) Finally, plaintiffs allege that Paul
13 Blank authored the complaint on a laptop at the “Walmart near I-80 and Watt, or nicknamed the
14 [*sic*] “the Stair Way to Heaven,” and that he “refuses any medical treatment today by the
15 malpractice of [his] doctor.” (Id. at 4.) Based on these allegations, plaintiffs appear to request
16 relief in the form of \$2 million in damages, protection by the United States Marshal Service, and
17 “an immediate in chambers off-record chat with plaintiff[s'] friend nick name[d] Mr. Legal.” (Id.
18 at 2-3.) As best as the court can tell from the complaint's allegations, it appears that plaintiffs
19 attempt to allege that Paul Blank was denied access to public transportation due to an unidentified
20 disability in violation of the Americans with Disabilities Act (“ADA”), and unidentified
21 amendments to the United States Constitution. (See id. at 1-2.)

22 As an initial matter, the allegations of the complaint, even when construed in a light most
23 favorable to plaintiffs, in no way demonstrate that the corporate plaintiff, Paul Blank Apparel,
24 Inc., has even a potential cause of action. Indeed, to the extent the allegations can be construed, it
25 is clear that any harm from the wrongs plaintiffs attempt to allege was suffered by Paul Blank as
26 an individual. Nothing from the facts alleged remotely indicate that Paul Blank Apparel, Inc. was
27 involved in the events at issue involving the named defendants. Accordingly, the court
28 recommends that any claims asserted in the complaint by Paul Blank Apparel, Inc. be dismissed

1 without leave to amend.

2 With regard to Paul Blank, it appears that plaintiffs inartfully attempt to assert
3 unidentified constitutional civil rights claims under 42 U.S.C. § 1983, and claims under the
4 Americans with Disabilities Act (“ADA”). However, as currently constructed, the complaint
5 contains allegations that in no way support a cognizable cause of action under either the ADA or
6 § 1983. For instance, with regard to the apparent claim or claims under the ADA, plaintiffs in no
7 way allege the nature of Paul Blank’s disability, that he was denied the benefits of the services,
8 programs, or activities of a public entity or otherwise subjected to discrimination by such an
9 entity, or that that denial or discrimination was by reason of his disability, all of which are
10 necessary to sustain such a claim. See, e.g., Simmons v. Navajo County, Arizona, 609 F.3d 1011,
11 1021 (9th Cir. 2010). Similarly, although the complaint broadly alleges that this is a civil rights
12 action, Paul Blank fails to allege which constitutional or statutory right or rights he is seeking to
13 vindicate through his apparent § 1983 claim or claims. Accordingly, plaintiffs fail to allege
14 factual content that support Paul Blank’s apparent claims against defendants. However, while the
15 court is highly skeptical that Paul Blank can allege facts sufficient to support a viable civil rights
16 claim under § 1983 and/or a claim under the ADA against any of the named defendants, in an
17 abundance of caution, the court will grant him leave to amend the complaint.

18 Given the above-mentioned deficiencies, Paul Blank’s apparent claims are subject to
19 dismissal. Nevertheless, in light of Paul Blank’s *pro se* status, and because it is at least
20 conceivable that he could cure such deficiencies, the court finds it appropriate to grant Paul Blank
21 an opportunity to amend the complaint.

22 If Paul Blank elects to file an amended complaint, it shall be captioned “First Amended
23 Complaint”; shall clearly identify the named defendant(s); shall clearly identify under which
24 federal statutes and constitutional amendments his claims are brought; shall outline the specific
25 factual allegations in support of each claim; shall specify the relief sought; and shall be typed or
26 written in legible handwriting.

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1 Importantly, nothing in this order requires Paul Blank to file a first amended complaint. If
2 Paul Blank concludes that he is unable to state a viable claim or no longer wishes to pursue this
3 action in federal court, he may instead file a notice of voluntary dismissal of the action without
4 prejudice.³

5 Accordingly, IT IS HEREBY ORDERED that:

- 6 1. Paul Blank’s motion to proceed *in forma pauperis* (ECF No. 2) is granted.
- 7 2. Paul Blank’s claims asserted in the complaint are dismissed, but with leave to amend.
- 8 3. Within 28 days of this order, Paul Blank shall file either (a) a first amended complaint
9 in accordance with the requirements of this order or (b) a notice of voluntary dismissal
10 of the action without prejudice.
- 11 4. Failure to file either a first amended complaint or a notice of voluntary dismissal by
12 the required deadline may result in the imposition of sanctions, including potential
13 dismissal of the action with prejudice pursuant to Federal Rule of Civil Procedure
14 41(b).
- 15 5. Plaintiffs’ “motion for continuation of case” (ECF No. 3) is DENIED.

16 Furthermore, IT IS HEREBY RECOMMENDED that Paul Blank Apparel, Inc.’s claims
17 asserted in the complaint be dismissed without leave to amend.

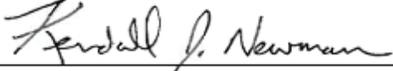
18 These findings and recommendations are submitted to the United States District Judge
19 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
20 days after being served with these findings and recommendations, any party may file written
21 objections with the court and serve a copy on all parties. Such a document should be captioned
22 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections
23 shall be served on all parties and filed with the court within fourteen (14) days after service of the
24 objections. The parties are advised that failure to file objections within the specified time may

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26 ³ Plaintiffs also filed a motion styled as a “motion for continuation of case” on March 1, 2017.
27 (ECF No. 3.) That filing appears to consist of little more than complaints with regard to
28 individuals and entities wholly unrelated to the allegations of the complaint, or this action more
generally. (See *id.*) Moreover, the filing appears to contain no request for cognizable relief from
the court. Accordingly, the court denies this motion.

1 waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th
2 Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

3 IT IS SO ORDERED AND RECOMMENDED.

4 Dated: April 19, 2017

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7 KENDALL J. NEWMAN
8 UNITED STATES MAGISTRATE JUDGE
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