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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES R. SMITH,
Plaintiff,
v.
MILLIGAN, et. al.,
Defendants.

No. 2:17-cv-0582 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 plaintiff’s IFP affidavit fails to establish that he cannot afford the filing fee.

I. INSUFFICIENT INFORMATION IN THE IFP APPLICATION

According to the application, plaintiff received money from “disability or workers compensation payments” during the past 12 months. ECF No. 2 at 1 ¶ 3. However, plaintiff fails to disclose “the amount received and what you expect you will receive.” See id. at 1-2. Because of this omission, plaintiff’s application fails to establish that he is entitled to prosecute this case without paying the required fees.

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1 II. SCREENING STANDARDS

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

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

26 III. THE COMPLAINT

27 The complaint alleges that on May 24, 2016, plaintiff experienced a seizure when he was
28 “at [his] gate pushing [his] number.” ECF No. 1 at 5 ¶ III. It seems that when plaintiff’s manager

1 called the ambulance, the police also arrived. Id. Plaintiff was asked by “the police” “to put [his]
2 hand behind [his] back” because he was under arrest. Id. When plaintiff asked “him” “why what
3 did I do wrong,” plaintiff was “teased”¹ and taken to jail. Id. As “relief,” plaintiff asks for
4 \$100,000. Id. at 6 ¶ IV.

5 The complaint does not contain a “short and plain statement” setting forth the basis for
6 plaintiff’s claim (that is, who did what to plaintiff) as required by Fed. R. Civ. P. 8(a)(2).
7 Although the complaint suggests that plaintiff may be attempting to assert a claim under 42
8 U.S.C. § 1983 for use of excessive force and unlawful arrest in violation of the Fourth
9 Amendment to the U.S Constitution, the court cannot decipher which defendant inflicted the
10 alleged harm on the plaintiff. Accordingly, the complaint must be dismissed for failure to state a
11 claim.

12 IV. AMENDING THE COMPLAINT

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

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

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

27 ¹ The court is unsure whether plaintiff means to allege that he was verbally taunted or that a
28 Taser was used to subdue him.

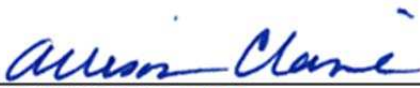
1 Also, the amended complaint must not refer to a prior pleading in order to make plaintiff's
2 amended complaint complete. An amended complaint must be complete in itself without
3 reference to any prior pleading. Local Rule 220. This is because, as a general rule, an amended
4 complaint supersedes the original complaint. See Pacific Bell Telephone Co. v. Linkline
5 Communications, Inc., 555 U.S. 438, 456 n.4 (2009) (“[n]ormally, an amended complaint
6 supersedes the original complaint”) (citing 6 C. Wright & A. Miller, Federal Practice &
7 Procedure § 1476, pp. 556-57 (2d ed. 1990)). Therefore, in an amended complaint, as in an
8 original complaint, each claim and the involvement of each defendant must be sufficiently
9 alleged.

10 V. CONCLUSION

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

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

19 DATED: July 20, 2017

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21 ALLISON CLAIRE
22 UNITED STATES MAGISTRATE JUDGE
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