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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL EDWARD WICKLAND,
Plaintiff,
v.
THE JUSTICE DEPARTMENT OF THE
UNITED STATES OF AMERICA,
Defendants.

No. 2:17-cv-0933 MCE DB PS

ORDER

Plaintiff, Michael Wickland, 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). Pending before the court is plaintiff's complaint and motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. (ECF Nos. 1 & 2.) Therein, plaintiff complains about state court criminal proceedings.

The court is required to screen complaints brought by parties proceeding in forma pauperis. See 28 U.S.C. § 1915(e)(2); see also Lopez v. Smith, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc). Here, plaintiff's complaint is deficient. Accordingly, for the reasons stated below, plaintiff's complaint will be dismissed with leave to amend.

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1 **I. Plaintiff's Application to Proceed In Forma Pauperis**

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

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

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

1 (9th Cir. 1989). Pro se pleadings are held to a less stringent standard than those drafted by
2 lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). However, the court need not accept as true
3 conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. Western
4 Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

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

6 A pleading which sets forth a claim for relief . . . shall contain (1) a
7 short and plain statement of the grounds upon which the court's
8 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.

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

10 **II. Plaintiff's Complaint**

11 As noted below, plaintiff's complaint is deficient in several respects.

12 **A) Rule 8**

13 Plaintiff's complaint fails to contain a short and plain statement of a claim showing that
14 plaintiff is entitled to relief. In this regard, plaintiff's complaint fails to allege a cause of action.
15 Instead, the complaint generally consists of a two-page recounting of mistreatment plaintiff
16 allegedly received pursuant to an arrest in Alabama. (Compl. (ECF No. 1) at 7-8.) The
17 complaint, however, fails to assert a cause of action against a named defendant.

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

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1 **B) Statute of Limitations**

2 The complaint makes a vague and conclusory allegation with respect to plaintiff’s “rights”
3 and the “Constitution of The United States of America Amendment VI.” (Compl. (ECF No. 1) at
4 6.) Title 42 U.S.C. § 1983 provides that,

5 [e]very person who, under color of [state law] ... subjects, or causes
6 to be subjected, any citizen of the United States ... to the
7 deprivation of any rights, privileges, or immunities secured by the
8 Constitution and laws, shall be liable to the party injured in an
9 action at law, suit in equity, or other proper proceeding for redress.

10 42 U.S.C. § 1983 does not contain a specific statute of limitations. “Without a federal
11 limitations period, the federal courts ‘apply the forum state’s statute of limitations for personal
12 injury actions, along with the forum state’s law regarding tolling, including equitable tolling,
13 except to the extent any of these laws is inconsistent with federal law.’” Butler v. National
14 Community Renaissance of California, 766 F.3d 1191, 1198 (9th Cir. 2014) (quoting Canatella v.
15 Van De Kamp, 486 F.3d 1128, 1132 (9th Cir. 2007)); see also Jones v. Blanas, 393 F.3d 918, 927
16 (9th Cir. 2004). Before 2003, California’s statute of limitations for personal injury actions was
17 one year. See Jones, 393 F.3d at 927. Effective January 1, 2003, however, in California that
18 limitations period became two years. See id.; Cal. Code Civ. P. § 335.1.

19 Here, it appears the only dates alleged in the complaint are “May 4, 2008,” and “Talladega
20 Alabama 2008.” This action was filed on May 3, 2017. (ECF No. 1.)

21 **C) Judicial Immunity**

22 Although the “Justice Department of the United States of America,” is listed in the
23 complaint’s caption, the only defendant identified in the complaint is “Williams E.
24 Hollingsworth III, Circuit Judge, Talladega Talladega, Alabama.” (Compl. (ECF No. 1) at 3.)
25 Plaintiff is advised that “[j]udges are absolutely immune from damage actions for judicial acts
26 taken within the jurisdiction of their courts A judge loses absolute immunity only when [the
27 judge] acts in the clear absence of all jurisdiction or performs an act that is not judicial in nature.”
28 Schucker v. Rockwood, 846 F.2d 1202, 1204 (9th Cir. 1988) (per curiam).

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1 **III. Leave to Amend**

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

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

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

26 Plaintiff is also reminded that the court cannot refer to a prior pleading in order to make an
27 amended complaint complete. Local Rule 220 requires that any amended complaint be complete
28 in itself without reference to prior pleadings. The amended complaint will supersede the original

1 complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Thus, in an amended complaint,
2 just as if it were the initial complaint filed in the case, each defendant must be listed in the caption
3 and identified in the body of the complaint, and each claim and the involvement of each
4 defendant must be sufficiently alleged. Any amended complaint which plaintiff may elect to file
5 must also include concise but complete factual allegations describing the conduct and events
6 which underlie plaintiff's claims.

7 **IV. Conclusion**


8 Accordingly, IT IS HEREBY ORDERED that:

9 1. The complaint filed May 3, 2017 (ECF No. 1) is dismissed with leave to
10 amend.¹

11 2. Within twenty-eight days from the date of this order, an amended complaint shall be
12 filed that cures the defects noted in this order and complies with the Federal Rules of Civil
13 Procedure and the Local Rules of Practice.² The amended complaint must bear the case number
14 assigned to this action and must be titled "Amended Complaint."

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

17 Dated: September 25, 2017

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21 DEBORAH BARNES
22 UNITED STATES MAGISTRATE JUDGE

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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.