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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DERRICK LEWIS,  
Plaintiff,  
v.  
MONICA WILLIAMS, et al.,  
Defendants.

No. 2:17-cv-0939 GEB DB PS

ORDER

Plaintiff, Derrick Lewis, 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 electronic surveillance.

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.

**I. Plaintiff’s Application to Proceed In Forma Pauperis**

Plaintiff’s in forma pauperis application makes the financial showing required by 28 U.S.C. § 1915(a)(1). However, a determination that a plaintiff qualifies financially for in forma pauperis status does not complete the inquiry required by the statute. “A district court may deny

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

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

19 To state a claim on which relief may be granted, the plaintiff must allege “enough facts to  
20 state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544,  
21 570 (2007). In considering whether a complaint states a cognizable claim, the court accepts as  
22 true the material allegations in the complaint and construes the allegations in the light most  
23 favorable to the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Hosp. Bldg. Co. v.  
24 Trustees of Rex Hosp., 425 U.S. 738, 740 (1976); Love v. United States, 915 F.2d 1242, 1245  
25 (9th Cir. 1989). Pro se pleadings are held to a less stringent standard than those drafted by  
26 lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). However, the court need not accept as true  
27 conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. Western  
28 Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

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

2 A pleading which sets forth a claim for relief . . . shall contain (1) a  
3 short and plain statement of the grounds upon which the court's  
4 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.

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

6 **II. Plaintiff's Complaint**

7 Plaintiff's complaint fails to contain a short and plain statement of a claim showing that  
8 plaintiff is entitled to relief. In this regard, the complaint's factual allegations consist of a single  
9 paragraph alleging that "Monica Williams sold a computer that had [plaintiff's] imagine and  
10 writings on it with a transaction through Chase Bank," and that the Sacramento Sherriff's  
11 Department's "electric eye (SPE) had surveillance on [plaintiff] through various parts of the  
12 county . . . ." (Compl. (ECF No. 1) at 6. )

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

22 **III. Leave to Amend**

23 For the reasons stated above, plaintiff's complaint must be dismissed. The undersigned  
24 has carefully considered whether plaintiff may amend the complaint to state a claim upon which  
25 relief can be granted. "Valid reasons for denying leave to amend include undue delay, bad faith,  
26 prejudice, and futility." California Architectural Bldg. Prod. v. Franciscan Ceramics, 818 F.2d  
27 1466, 1472 (9th Cir. 1988); see also Klamath-Lake Pharm. Ass'n v. Klamath Med. Serv. Bureau,  
28 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that while leave to amend shall be freely given, the

1 court does not have to allow futile amendments).

2           However, when evaluating the failure to state a claim, the complaint of a pro se plaintiff  
3 may be dismissed “only where ‘it appears beyond doubt that the plaintiff can prove no set of facts  
4 in support of his claim which would entitle him to relief.’” Franklin v. Murphy, 745 F.2d 1221,  
5 1228 (9th Cir. 1984) (quoting Haines v. Kerner, 404 U.S. 519, 521 (1972)); see also Weilburg v.  
6 Shapiro, 488 F.3d 1202, 1205 (9th Cir. 2007) (“Dismissal of a pro se complaint without leave to  
7 amend is proper only if it is absolutely clear that the deficiencies of the complaint could not be  
8 cured by amendment.”) (quoting Schucker v. Rockwood, 846 F.2d 1202, 1203-04 (9th Cir.  
9 1988)).

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

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

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1 **IV. Conclusion**


2 Accordingly, IT IS HEREBY ORDERED that:

3 1. The complaint filed May 4, 2017 (ECF No. 1) is dismissed with leave to  
4 amend.<sup>1</sup>

5 2. Within twenty-eight days from the date of this order, an amended complaint shall be  
6 filed that cures the defects noted in this order and complies with the Federal Rules of Civil  
7 Procedure and the Local Rules of Practice.<sup>2</sup> The amended complaint must bear the case number  
8 assigned to this action and must be titled “Amended Complaint.”

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

11 Dated: September 29, 2017

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15 DEBORAH BARNES  
16 UNITED STATES MAGISTRATE JUDGE  
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27 <sup>1</sup> 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.

<sup>2</sup> 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.