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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DANIEL MICHAEL KANE,
Plaintiff,
v.
STATE OF CALIFORNIA, et al.,
Defendants.

No. 2:17-cv-1051-TLN-KJN PS

ORDER

Plaintiff Daniel Kane, who proceeds without counsel in this action, has requested leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915.¹ (ECF No. 2.) Plaintiff’s application in support of his request to proceed *in forma pauperis* makes the showing required by 28 U.S.C. § 1915. Accordingly, the court grants plaintiff’s request to proceed *in forma pauperis*.

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

¹ This action proceeds before the undersigned pursuant to Local Rule 302(c)(21).

1 an immune defendant.

2 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
3 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
4 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
5 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
6 490 U.S. at 327.

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

19 Pro se pleadings are liberally construed. See Haines v. Kerner, 404 U.S. 519, 520-21
20 (1972); Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1988). Unless it is clear
21 that no amendment can cure the defects of a complaint, a pro se plaintiff proceeding *in forma*
22 *pauperis* is ordinarily entitled to notice and an opportunity to amend before dismissal. See Noll
23 v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987); Franklin v. Murphy, 745 F.2d 1221, 1230 (9th
24 Cir. 1984).

25 In this case, plaintiff’s complaint is rambling and vaguely describes interactions that
26 plaintiff allegedly had with a wide variety of individuals at what appears to be courthouses,
27 shelters, and private businesses in the Sacramento area. The court finds the allegations in
28 plaintiff’s complaint so vague and conclusory that it is unable to determine whether the current

1 action is frivolous or fails to state a claim for relief. More specifically, the complaint fails to
2 identify the specific claims being alleged against each named defendant, and fails to allege non-
3 conclusory facts that, if accepted as true, would allow the court to draw a reasonable inference
4 that the named defendants are liable for such claims.

5 In light of the above, the court dismisses plaintiff's complaint, but with leave to amend.
6 If plaintiff elects to file an amended complaint, it shall be captioned "First Amended Complaint";
7 shall address the deficiencies outlined above; and shall be filed within 28 days of this order.

8 Plaintiff is informed that the court cannot refer to a prior complaint or other filing in order
9 to make plaintiff's first amended complaint complete. Local Rule 220 requires that an amended
10 complaint be complete in itself without reference to any prior pleading. As a general rule, an
11 amended complaint supersedes the original complaint, and once the first amended complaint is
12 filed, the original complaint no longer serves any function in the case.


13 Finally, nothing in this order requires plaintiff to file a first amended complaint. If
14 plaintiff determines that he is unable to amend his complaint to state a viable claim in accordance
15 with his obligations under Federal Rule of Civil Procedure 11, he may alternatively file a notice
16 of voluntary dismissal of his claims without prejudice pursuant to Federal Rule of Civil Procedure
17 41(a)(1)(A)(i) within 28 days of this order.

18 Accordingly, IT IS HEREBY ORDERED that:

- 19 1. Plaintiff's motion to proceed *in forma pauperis* (ECF No. 2) is granted.
- 20 2. Plaintiff's complaint is dismissed with leave to amend.
- 21 3. Within 28 days of this order, plaintiff shall file either a first amended complaint in
22 compliance with this order or a request for voluntary dismissal of the action without
23 prejudice.
- 24 4. Failure to timely comply with this order may result in dismissal of the action with
25 prejudice pursuant to Federal Rule of Civil Procedure 41(b).

26 IT IS SO ORDERED.

27 Dated: June 19, 2017

28 
KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE