

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

TONYA ENGELBRECHT,

No. 2:17-cv-01231 JAM AC (PS)

Plaintiff,

ORDER

KERN COUNTY ADULT PROTECTIVE
SERVICES, et al.,

Defendants.

Plaintiff is proceeding in this action pro se. This matter was accordingly referred to the undersigned by E.D. Cal. 302(c)(21). Plaintiff has filed a request for leave to proceed in forma pauperis (“IFP”) pursuant to 28 U.S.C. § 1915, and has submitted the affidavit required by that statute. See 28 U.S.C. § 1915(a)(1). The motion to proceed IFP will therefore be granted.

I. SCREENING

Granting IFP status does not end the court's inquiry. The federal IFP statute requires federal courts to dismiss a case if the action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

Plaintiff must assist the court in determining whether the complaint is frivolous or not, by drafting the complaint so that it complies with the Federal Rules of Civil Procedure (“Fed. R. Civ.

1 P.”). The Federal Rules of Civil Procedure are available online at www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-civil-procedure. Under the Federal Rules
2 of Civil Procedure, the complaint must contain (1) a “short and plain statement” of the basis for
3 federal jurisdiction (that is, the reason the case is filed in this court, rather than in a state court),
4 (2) a short and plain statement showing that plaintiff is entitled to relief (that is, who harmed the
5 plaintiff, and in what way), and (3) a demand for the relief sought. Fed. R. Civ. P. (“Rule”) 8(a).
6 Plaintiff’s claims must be set forth simply, concisely and directly. Rule 8(d)(1). Forms are
7 available to help pro se plaintiffs organize their complaint in the proper way. They are available
8 at the Clerk’s Office, 501 I Street, 4th Floor (Rm. 4-200), Sacramento, CA 95814, or online at
9 www.uscourts.gov/forms/pro-se-forms.

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

22 Pro se pleadings are held to a less stringent standard than those drafted by lawyers.
23 Haines v. Kerner, 404 U.S. 519, 520 (1972). Pro se complaints are construed liberally and may
24 only be dismissed if it appears beyond doubt that the plaintiff can prove no set of facts in support
25 of his claim which would entitle him to relief. Nordstrom v. Ryan, 762 F.3d 903, 908 (9th
26 Cir. 2014). A pro se litigant is entitled to notice of the deficiencies in the complaint and an
27 opportunity to amend, unless the complaint’s deficiencies could not be cured by amendment. See

Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987).

A. The Complaint

Plaintiff's complaint does not make any clear allegations against any defendants. Under the "Statement of Claim" section in the complaint form, she writes "Despite 'irrefutable evidence' of financial crimes, vandalism, false arrest, Kern County Adult Protective Services denied my case five times. Brand New Day and Kern CO. Adult Protective Services are in collusion, committing fraud, identity theft, and harming disabled persons." ECF No. 1 at 5. Under the "Relief" section, plaintiff states that she is seeking criminal prosecution against all parties involved. *Id.* at 6.

B. Analysis

Plaintiff has failed to state a legal claim, and therefore her complaint must be dismissed. In order to survive IFP screening, the complaint must allege facts showing that defendant engaged in some conduct that the law prohibits (or failed to do something the law requires), and that in doing so, defendant harmed plaintiff. Plaintiff has not met this threshold. Additionally, to the extent plaintiff seeks criminal prosecution against defendants, plaintiff is unable to do so. There is no right of private prosecution in federal court; a private individual cannot criminally prosecute, or cause the government to criminally prosecute, another private individual. Leeke v. Timmerman, 454 U.S. 83, 86–87 (1981), citing Linda R.S. v. Richard D., 410 U.S. 614, 618-19 (1973).

Plaintiff has not alleged the violation of any particular law, or made any particular allegation against any defendant. It is not clear from the few factual allegations of the complaint whether plaintiff could possibly state a claim that can be heard in this court, and that would entitle her to relief. Plaintiff will therefore be given an opportunity to amend her complaint.

II. AMENDING THE COMPLAINT

If plaintiff chooses to amend his complaint, the amended complaint must allege facts establishing the existence of federal jurisdiction. In addition, it must contain a short and plain statement of plaintiff's claims. The allegations of the complaint must be set forth in sequentially numbered paragraphs, with each paragraph number being one greater than the one before, each

1 paragraph having its own number, and no paragraph number being repeated anywhere in the
2 complaint. Each paragraph should be limited “to a single set of circumstances” where
3 possible. Rule 10(b). As noted above, forms are available to help plaintiffs organize their
4 complaint in the proper way. They are available at the Clerk’s Office, 501 I Street, 4th Floor
5 (Rm. 4-200), Sacramento, CA 95814, or online at www.uscourts.gov/forms/pro-se-forms.

6 Plaintiff must avoid excessive repetition of the same allegations. Plaintiff must avoid
7 narrative and storytelling. That is, the complaint should not include every detail of what
8 happened, nor recount the details of conversations (unless necessary to establish the claim), nor
9 give a running account of plaintiff’s hopes and thoughts. Rather, the amended complaint should
10 contain only those facts needed to show how the defendant legally wronged the plaintiff.

11 The amended complaint must not force the court and the defendants to guess at what is
12 being alleged against whom. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996)
13 (affirming dismissal of a complaint where the district court was “literally guessing as to what
14 facts support the legal claims being asserted against certain defendants”). The amended
15 complaint must not require the court to spend its time “preparing the ‘short and plain statement’
16 which Rule 8 obligated plaintiffs to submit.” Id. at 1180. The amended complaint must not
17 require the court and defendants to prepare lengthy outlines “to determine who is being sued for
18 what.” Id. at 1179.

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

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III. PRO SE PLAINTIFF'S SUMMARY

2 Plaintiff's complaint is being dismissed because (1) she cannot bring a private lawsuit for
3 the criminal prosecution of another person, and (2) she fails to tell the court what was done to her,
4 by whom, and how she was harmed. Plaintiff has 30 days to file an amended complaint that
5 meets the requirements described above. If plaintiff does not file an amended complaint within
6 this timeframe, her case may be dismissed.

IV. CONCLUSION

Accordingly, IT IS HEREBY ORDERED that:

- 9 1. Plaintiff's request to proceed in forma pauperis (ECF No. 2) is GRANTED.

10 2. The complaint (ECF No. 1), is DISMISSED because it fails to make allegations that

11 demonstrate plaintiff can make a legal claim that can be heard by this court.

12 3. Plaintiff shall have 30 days from the date of this order to file an amended complaint that

13 names defendants who are amenable to suit, and which complies with the instructions

14 given above. If plaintiff fails to timely comply with this order, the undersigned may

15 recommend that this action be dismissed.

DATED: June 16, 2017

Allison Claire
ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE