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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT LOPEZ,

Plaintiff,

v.

SACRAMENTO COUNTY CODE
ENFORCEMENT, et al.,

Defendants.

No. 2:17-cv-1476 KJM DB PS

ORDER

Plaintiff 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 of an improper building inspection. (Compl. (ECF No. 1) at 5.)

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 Here, the complaint fails to contain a short and plain statement of a claim showing that
12 plaintiff is entitled to relief. In this regard, plaintiff's complaint alleges that in October of 2016,
13 plaintiff requested a building inspection from the Sacramento County Code Enforcement due to
14 an infestation of roaches, bed bugs, and the presence of raw sewage. (Compl. (ECF No. 1) at 5.)
15 "[T]hey came out and didn't inspect the building nor any Veterans units." (Id.) The owner of the
16 property was thus permitted "to go over the 30-day requirement by law to make required repairs
17 by contracts." (Id.)

18 Although the complaint names as a defendant Jose Cortes, no allegations are asserted
19 against Jose Cortes. Although the Federal Rules of Civil Procedure adopt a flexible pleading
20 policy, a complaint must give the defendant fair notice of the plaintiff's claims and must allege
21 facts that state the elements of each claim plainly and succinctly. Fed. R. Civ. P. 8(a)(2); Jones v.
22 Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). "A pleading that offers 'labels
23 and conclusions' or 'a formulaic recitation of the elements of cause of action will not do.' Nor
24 does a complaint suffice if it tenders 'naked assertions' devoid of 'further factual
25 enhancements.'" Ashcroft v. Iqbal, 556 U.S.662, 678 (2009) (quoting Twombly, 550 U.S. at 555,
26 557). A plaintiff must allege with at least some degree of particularity overt acts which the
27 defendants engaged in that support the plaintiff's claims. Jones, 733 F.2d at 649.

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1 Moreover, with respect to the Sacramento County Code Enforcement, plaintiff is advised
2 that a local government unit may not be held liable for the acts of its employees or officials under
3 a theory of respondeat superior. See Bd. of County Comm’rs v. Brown, 520 U.S. 397, 403
4 (1997). Instead, a plaintiff must allege that the constitutional deprivation complained of resulted
5 from a policy or custom of the municipality. See Id.

6 A municipality may be liable under 42 U.S.C. § 1983 where the municipality itself causes
7 the constitutional violation through a “policy or custom, whether made by its lawmakers or those
8 whose edicts or acts may fairly be said to represent official policy[.]” Monell v. Department of
9 Social Services, 436 U.S. 658, 694 (1978). Municipal liability in a § 1983 case may be premised
10 upon: (1) an official policy; (2) a “longstanding practice or custom which constitutes the standard
11 operating procedure of the local government entity;” (3) the act of an “official whose acts fairly
12 represent official policy such that the challenged action constituted official policy;” or (4) where
13 “an official with final policy-making authority delegated that authority to, or ratified the decision
14 of, a subordinate.” Price v. Sery, 513 F.3d 962, 966 (9th Cir. 2008). To sufficiently plead a
15 Monell claim, allegations in a complaint “may not simply recite the elements of a cause of action,
16 but must contain sufficient allegations of underlying facts to give fair notice and to enable the
17 opposing party to defend itself effectively.” AE ex rel. Hernandez v. Cnty. of Tulare, 666 F.3d
18 631, 637 (9th Cir. 2012) (quoting Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011)).

19 **III. Leave to Amend**

20 For the reasons stated above, plaintiff’s complaint must be dismissed. The undersigned
21 has carefully considered whether plaintiff may amend the complaint to state a claim upon which
22 relief can be granted. “Valid reasons for denying leave to amend include undue delay, bad faith,
23 prejudice, and futility.” California Architectural Bldg. Prod. v. Franciscan Ceramics, 818 F.2d
24 1466, 1472 (9th Cir. 1988); see also Klamath-Lake Pharm. Ass’n v. Klamath Med. Serv. Bureau,
25 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that while leave to amend shall be freely given, the
26 court does not have to allow futile amendments).

27 However, when evaluating the failure to state a claim, the complaint of a pro se plaintiff
28 may be dismissed “only where ‘it appears beyond doubt that the plaintiff can prove no set of facts

1 in support of his claim which would entitle him to relief.” Franklin v. Murphy, 745 F.2d 1221,
2 1228 (9th Cir. 1984) (quoting Haines v. Kerner, 404 U.S. 519, 521 (1972); see also Weilburg v.
3 Shapiro, 488 F.3d 1202, 1205 (9th Cir. 2007) (“Dismissal of a pro se complaint without leave to
4 amend is proper only if it is absolutely clear that the deficiencies of the complaint could not be
5 cured by amendment.”) (quoting Schucker v. Rockwood, 846 F.2d 1202, 1203-04 (9th Cir.
6 1988)).

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

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

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1 **IV. Conclusion**


2 Accordingly, IT IS HEREBY ORDERED that:

3 1. The complaint filed July 17, 2017 (ECF No. 1) is dismissed with leave to amend.¹

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

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

10 Dated: October 19, 2017

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13 DEBORAH BARNES
14 UNITED STATES MAGISTRATE JUDGE
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26 ¹ Plaintiff need not file another application to proceed in forma pauperis at this time unless
27 plaintiff's financial condition has improved since the last such application was submitted.

28 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.