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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRIAN GARCIA,
Plaintiff,
v.
THE PROCTER & GABLE COMPANY,
Defendant.

No. 2:17-cv-2591-JAM-EFB PS

ORDER

Plaintiff seeks leave to proceed *in forma pauperis* pursuant to 28 U.S.C. 1915.¹ His declaration makes the showing required by 28 U.S.C. §1915(a)(1) and (2). *See* ECF No. 2. Accordingly, the request to proceed *in forma pauperis* is granted. 28 U.S.C. § 1915(a).

Determining that plaintiff may proceed *in forma pauperis* does not complete the required inquiry. Pursuant to § 1915(e)(2), the court must dismiss the case at any time if it determines 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 an immune defendant. As discussed below, plaintiff's complaint fails to state a claim and must be dismissed.

Although pro se pleadings are liberally construed, *see Haines v. Kerner*, 404 U.S. 519, 520-21 (1972), a complaint, or portion thereof, should be dismissed for failure to state a claim if it

¹ This case, in which plaintiff is proceeding *in propria persona*, was referred to the undersigned under Local Rule 302(c)(21). *See* 28 U.S.C. § 636(b)(1).

1 fails to set forth “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl.*
2 *Corp. v. Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41
3 (1957)); *see also* Fed. R. Civ. P. 12(b)(6). “[A] plaintiff’s obligation to provide the ‘grounds’ of
4 his ‘entitlement to relief’ requires more than labels and conclusions, and a formulaic recitation of
5 a cause of action’s elements will not do. Factual allegations must be enough to raise a right to
6 relief above the speculative level on the assumption that all of the complaint’s allegations are
7 true.” *Id.* (citations omitted). Dismissal is appropriate based either on the lack of cognizable
8 legal theories or the lack of pleading sufficient facts to support cognizable legal theories.
9 *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

10 Under this standard, the court must accept as true the allegations of the complaint in
11 question, *Hospital Bldg. Co. v. Rex Hosp. Trustees*, 425 U.S. 738, 740 (1976), construe the
12 pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff’s favor,
13 *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). A pro se plaintiff must satisfy the pleading
14 requirements of Rule 8(a) of the Federal Rules of Civil Procedure. Rule 8(a)(2) requires a
15 complaint to include “a short and plain statement of the claim showing that the pleader is entitled
16 to relief, in order to give the defendant fair notice of what the claim is and the grounds upon
17 which it rests.” *Twombly*, 550 U.S. at 555 (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).

18 Plaintiff brings this action against his former employer, The Procter & Gamble Company.
19 His one-page complaint alleges that he was subjected to discrimination on account of his race,
20 gender, and marital status. ECF No. 1. He also alleges that his employment was terminated in
21 retaliation for asking his manager to address the harassment and discrimination he was
22 experiencing. *Id.* He claims that he filed a complaint with the Equal Employment Opportunity
23 Commission, but that complaint was dismissed without a proper investigation. *Id.*

24 These allegations are too vague and conclusory to state a claim upon which relief may be
25 granted. Although the Federal Rules adopt a flexible pleading policy, a complaint must give fair
26 notice and state the elements of the claim plainly and succinctly. *Jones v. Community Redev.*
27 *Agency*, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least some degree of
28 particularity overt acts which defendants engaged in that support plaintiff’s claim. *Id.* The

1 allegations must be short and plain, simple and direct and describe the relief plaintiff seeks. Fed.
2 R. Civ. P. 8(a); *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002); *Galbraith v. County of*
3 *Santa Clara*, 307 F.3d 1119, 1125 (9th Cir. 2002).

4 Plaintiff's complaint is devoid of any specific factual allegations concerning the alleged
5 discriminatory conduct. Furthermore, the complaint does not identify any specific cause of
6 action, nor does it identify the specific statute defendant purported violated. Accordingly,
7 plaintiff's complaint must be dismissed for failure to state a claim.

8 Plaintiff is granted leave to file an amended complaint, if he can allege a cognizable legal
9 theory against a proper defendant and sufficient facts in support of that cognizable legal theory.
10 *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (district courts must afford pro
11 se litigants an opportunity to amend to correct any deficiency in their complaints). Should
12 plaintiff choose to file an amended complaint, the amended complaint shall clearly set forth the
13 allegations against defendant and shall specify a basis for this court's subject matter jurisdiction.
14 Any amended complaint shall plead plaintiff's claims in "numbered paragraphs, each limited as
15 far as practicable to a single set of circumstances," as required by Federal Rule of Civil Procedure
16 10(b), and shall be in double-spaced text on paper that bears line numbers in the left margin, as
17 required by Eastern District of California Local Rules 130(b) and 130(c). Any amended
18 complaint shall also use clear headings to delineate each claim alleged and against which
19 defendant or defendants the claim is alleged, as required by Rule 10(b), and must plead clear facts
20 that support each claim under each header.

21 Additionally, plaintiff is informed that the court cannot refer to prior pleadings in order to
22 make an amended complaint complete. Local Rule 220 requires that an amended complaint be
23 complete in itself. This is because, as a general rule, an amended complaint supersedes the
24 original complaint. *See Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967). Accordingly, once
25 plaintiff files an amended complaint, the original no longer serves any function in the case.
26 Therefore, "a plaintiff waives all causes of action alleged in the original complaint which are not
27 alleged in the amended complaint," *London v. Coopers & Lybrand*, 644 F.2d 811, 814 (9th Cir.
28 1981), and defendants not named in an amended complaint are no longer defendants. *Ferdik v.*

1 *Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). Finally, the court cautions plaintiff that failure to
2 comply with the Federal Rules of Civil Procedure, this court's Local Rules, or any court order
3 may result in a recommendation that this action be dismissed. *See* E.D. Cal. L.R. 110.

4 Accordingly, IT IS ORDERED that:

- 5 1. Plaintiff's request for leave to proceed *in forma pauperis* (ECF No. 2) is granted.
- 6 2. Plaintiff's complaint is dismissed with leave to amend, as provided herein.
- 7 3. Plaintiff is granted thirty days from the date of service of this order to file an amended
8 complaint. The amended complaint must bear the docket number assigned to this case and must
9 be labeled "First Amended Complaint." Failure to timely file an amended complaint in
10 accordance with this order will result in a recommendation this action be dismissed.

11 DATED: February 20, 2019.



EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE