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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LEVI GARCIA STRANGE,  
  
Plaintiff,  
  
v.  
  
THE UNITED STATES ARMY,  
  
Defendant.

No. 2:17-cv-2699 JAM AC PS

ORDER

Plaintiff is proceeding in this action pro se. This matter was accordingly referred to the undersigned by E.D. Cal. R. (“Local Rule”) 302(c)(21). Plaintiff has also requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. ECF No. 6. The request will be denied because (1) plaintiff’s IFP affidavit fails to establish that he cannot afford the filing fee, and (2) the complaint, in its current form, is frivolous. Plaintiff will be given the opportunity to provide additional information to support his IFP application, and to submit an amended complaint.

I. INSUFFICIENT INFORMATION IN THE IFP APPLICATION

Plaintiff’s IFP application does not make the showing required by 28 U.S.C. § 1915(a)(1). The application does not disclose whether in the past 12 months, plaintiff has received income from “rent payments, interest or dividends,” “pension, annuity, or life insurance payments,” gifts or inheritances,” or “any other sources.” ECF No. 6 at 1 ¶¶ 3(b)-(c), 3(e)-(f).

1 To prevail on a motion to proceed IFP, plaintiff need not demonstrate that he is  
2 completely destitute, but he must show that because of his poverty, he “cannot pay the court costs  
3 and still afford the necessities of life.” Escobedo v. Applebees, 787 F.3d 1226, 1234 (9th Cir.  
4 2015) (citing Adkins v. E.I. DuPont de Nemours & Co., 335 U.S. 331, 339-40 (1948)). In  
5 addition, plaintiff “must allege poverty ‘with some particularity, definiteness and certainty.’” Id.  
6 (quoting United States v. McQuade, 647 F.2d 938, 940 (9th Cir.1981)).

7 Because of the above omissions, plaintiff’s application fails to establish that he is entitled  
8 to prosecute this case without paying the required fees. The application will therefore be denied.

## 9 II. SCREENING STANDARDS

10 The federal IFP statute requires federal courts to dismiss a case if the action is legally  
11 “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks  
12 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).  
13 Plaintiff must assist the court in determining whether or not the complaint is frivolous, by drafting  
14 the complaint so that it complies with the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”).  
15 Under the Federal Rules of Civil Procedure, the complaint must contain (1) a “short and plain  
16 statement” of the basis for federal jurisdiction (that is, the reason the case is filed in this court,  
17 rather than in a state court), (2) a short and plain statement showing that plaintiff is entitled to  
18 relief (that is, who harmed the plaintiff, and in what way), and (3) a demand for the relief sought.  
19 Fed. R. Civ. P. 8(a). Plaintiff’s claims must be set forth simply, concisely and directly. Fed. R.  
20 Civ. P. 8(d)(1).

21 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
22 Neitzke v. Williams, 490 U.S. 319, 325 (1989). In reviewing a complaint under this standard, the  
23 court will (1) accept as true all of the factual allegations contained in the complaint, unless they  
24 are clearly baseless or fanciful, (2) construe those allegations in the light most favorable to the  
25 plaintiff, and (3) resolve all doubts in the plaintiff’s favor. See Neitzke, 490 U.S. at 327; Von  
26 Saher v. Norton Simon Museum of Art at Pasadena, 592 F.3d 954, 960 (9th Cir. 2010), cert.  
27 denied, 564 U.S. 1037 (2011).

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1 to make me legal to join the service. I was 15 years old. Not old enough.” ECF No. 5 at 5. For  
2 relief, plaintiff seeks “40 million dollars.” Id. at 6.

3 The complaint does not contain a “short and plain” statement setting forth the basis for  
4 federal jurisdiction (that is, why the lawsuit is filed in this federal court rather than a state court),  
5 or plaintiff’s claims (that is, who did what to plaintiff and how he was harmed), even though  
6 those things are required by Fed. R. Civ. P. 8(a)(1), (a)(2). The court does not have enough  
7 information about what happened to plaintiff, how he was harmed, or why he is suing the  
8 defendant. Accordingly, the complaint must be dismissed as frivolous.

#### 9 IV. AMENDING THE COMPLAINT

10 Plaintiff will be provided an opportunity to amend his complaint. The court will therefore  
11 provide guidance for amendment.

12 The amended complaint must contain a short and plain statement of plaintiff’s claims.  
13 That is, it must state what the defendant did that harmed the plaintiff. The amended complaint  
14 must not force the court and the defendants to guess at what is being alleged against whom. See  
15 McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (affirming dismissal of a complaint where  
16 the district court was “literally guessing as to what facts support the legal claims being asserted  
17 against certain defendants”).

18 In setting forth the facts, plaintiff must not go overboard, however. He must avoid  
19 excessive repetition of the same allegations. He must avoid narrative and storytelling. That is,  
20 the complaint should not include every detail of what happened, nor recount the details of  
21 conversations (unless necessary to establish the claim), nor give a running account of plaintiff’s  
22 hopes and thoughts. Rather, the amended complaint should contain only those facts needed to  
23 show how the defendant legally wronged the plaintiff.

24 Also, the amended complaint must not refer to a prior pleading in order to make plaintiff’s  
25 amended complaint complete. An amended complaint must be complete in itself without  
26 reference to any prior pleading. Local Rule 220. This is because, as a general rule, an amended  
27 complaint supersedes the original complaint. See Pacific Bell Telephone Co. v. Linkline  
28 Communications, Inc., 555 U.S. 438, 456 n.4 (2009) (“[n]ormally, an amended complaint

1 supersedes the original complaint”) (citing 6 C. Wright & A. Miller, Federal Practice &  
2 Procedure § 1476, pp. 556-57 (2d ed. 1990)). Therefore, in an amended complaint, as in an  
3 original complaint, each claim and the involvement of each defendant must be sufficiently  
4 alleged.

#### 5 V. PLAIN LANGUAGE SUMMARY FOR PRO SE PLAINTIFF

6 Your application to proceed in forma pauperis and your first amended complaint are being  
7 dismissed, and you are being given an opportunity to submit an amended IFP application and an  
8 amended complaint within 30 days. The second amended complaint should be “simple, concise,  
9 and direct.” You should provide information that clearly states (1) the basis for federal  
10 jurisdiction, (2) the alleged harm you suffered, which defendant harmed you, and how their  
11 actions caused the harm, and (3) the relief you are seeking. The second amended complaint  
12 should briefly provide the necessary information, following the directions above.

#### 13 VI. CONCLUSION

14 For the reasons explained above, IT IS HEREBY ORDERED that:

- 15 1. Plaintiff’s request to proceed in forma pauperis (ECF No. 6) is DENIED without  
16 prejudice to its renewal in proper form, as explained above.
- 17 2. The first amended complaint (ECF No. 5) is DISMISSED with leave to amend; and
- 18 3. Plaintiff must file his renewed IFP application and amended complaint within 30 days  
19 of the date of this order. If plaintiff files an amended complaint, he must do his best to follow the  
20 guidance provided in this order. If plaintiff fails to timely comply with this order, the  
21 undersigned may recommend that this action be dismissed for failure to prosecute.

22 DATED: April 11, 2018

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24 ALLISON CLAIRE  
25 UNITED STATES MAGISTRATE JUDGE  
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