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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARK PETERSON,
Plaintiff,
v.
RAM PARKASH,
Defendant.

No. 2:18-cv-0514 TLN 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 are plaintiff’s complaint and motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. (ECF Nos. 1 & 2.) The complaint alleges simply that the defendant has been “uncooperative” and caused plaintiff “harm.” (Compl. (ECF No. 1) at 4.)

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.

I. Plaintiff’s Application to Proceed In Forma Pauperis

Plaintiff’s in forma pauperis application makes the financial showing required by 28 U.S.C. § 1915(a)(1). However, a determination that a plaintiff qualifies financially for in forma

1 pauperis status does not complete the inquiry required by the statute. ““A district court may deny
2 leave to proceed in forma pauperis at the outset if it appears from the face of the proposed
3 complaint that the action is frivolous or without merit.”” Minetti v. Port of Seattle, 152 F.3d
4 1113, 1115 (9th Cir. 1998) (quoting Tripati v. First Nat. Bank & Trust, 821 F.2d 1368, 1370 (9th
5 Cir. 1987)); see also McGee v. Department of Child Support Services, 584 Fed. Appx. 638 (9th
6 Cir. 2014) (“the district court did not abuse its discretion by denying McGee’s request to proceed
7 IFP because it appears from the face of the amended complaint that McGee’s action is frivolous
8 or without merit”); Smart v. Heinze, 347 F.2d 114, 116 (9th Cir. 1965) (“It is the duty of the
9 District Court to examine any application for leave to proceed in forma pauperis to determine
10 whether the proposed proceeding has merit and if it appears that the proceeding is without merit,
11 the court is bound to deny a motion seeking leave to proceed in forma pauperis.”).

12 Moreover, the court must dismiss an in forma pauperis case at any time if the allegation of
13 poverty is found to be untrue or if it is determined that the action is frivolous or malicious, fails to
14 state a claim on which relief may be granted, or seeks monetary relief against an immune
15 defendant. See 28 U.S.C. § 1915(e)(2). A complaint is legally frivolous when it lacks an
16 arguable basis in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v.
17 Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). Under this standard, a court must dismiss a
18 complaint as frivolous where it is based on an indisputably meritless legal theory or where the
19 factual contentions are clearly baseless. Neitzke, 490 U.S. at 327; 28 U.S.C. § 1915(e).

20 To state a claim on which relief may be granted, the plaintiff must allege “enough facts to
21 state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544,
22 570 (2007). In considering whether a complaint states a cognizable claim, the court accepts as
23 true the material allegations in the complaint and construes the allegations in the light most
24 favorable to the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Hosp. Bldg. Co. v.
25 Trustees of Rex Hosp., 425 U.S. 738, 740 (1976); Love v. United States, 915 F.2d 1242, 1245
26 (9th Cir. 1989). Pro se pleadings are held to a less stringent standard than those drafted by
27 lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). However, the court need not accept as true
28 conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. Western

1 Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

2 The minimum requirements for a civil complaint in federal court are as follows:

3 A pleading which sets forth a claim for relief . . . shall contain (1) a
4 short and plain statement of the grounds upon which the court's
5 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.

6 Fed. R. Civ. P. 8(a).

7 II. Plaintiff's Complaint

8 Here, the complaint fails to contain a short and plain statement of a claim showing that
9 plaintiff is entitled to relief. In this regard, the complaint is entirely devoid of factual allegations
10 or asserted claims. As noted above, the complaint simply states that the defendant violated
11 plaintiff's rights by being uncooperative, causing plaintiff harm. (Compl. (ECF No. 1) at 4.)

12 Although the Federal Rules of Civil Procedure adopt a flexible pleading policy, a
13 complaint must give the defendant fair notice of the plaintiff's claims and must allege facts that
14 state the elements of each claim plainly and succinctly. Fed. R. Civ. P. 8(a)(2); Jones v.
15 Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). "A pleading that offers 'labels
16 and conclusions' or 'a formulaic recitation of the elements of cause of action will not do.' Nor
17 does a complaint suffice if it tenders 'naked assertions' devoid of 'further factual
18 enhancements.'" Ashcroft v. Iqbal, 556 U.S.662, 678 (2009) (quoting Twombly, 550 U.S. at 555,
19 557). A plaintiff must allege with at least some degree of particularity overt acts which the
20 defendants engaged in that support the plaintiff's claims. Jones, 733 F.2d at 649.

21 Moreover, the complaint states that it is brought pursuant to 42 U.S.C. § 1983, but fails to
22 allege how the defendant acted under color of state law. (Compl. (ECF No. 1) at 3.) Plaintiff is
23 advised that to state a cause of action under 42 U.S.C. § 1983, a complaint must allege: "(1) that
24 defendant was acting 'under color of state law' at the time of the acts complained of, and (2) that
25 defendant deprived plaintiff of [a] right, privilege, or immunity secured by the Constitution or
26 Laws of the United States." Freier v. New York Life Insurance Co., 679 F.2d 780, 783 (9th Cir.
27 1982); see also Cobine v. City of Eureka, 250 F.Supp.3d 423, 437 (N.D. Cal. 2017) ("In order to
28 state a claim under Section 1983 for violation of the Constitution, a plaintiff must allege two

1 essential elements: (1) that a right secured by the Constitution or laws of the United States was
2 violated and (2) that the alleged violation was committed by a person acting under the color of
3 state law.”). “[P]rivate parties are not generally acting under color of state law, and . . .
4 ‘conclusionary allegations, unsupported by facts, will be rejected as insufficient to state a claim
5 under the Civil Rights Act.’” Price v. State of Hawaii, 939 F.2d 702, 707-08 (9th Cir. 1991)
6 (quoting Jones, 733 F.2d at 649).

7 III. Leave to Amend

8 For the reasons stated above, plaintiff’s complaint must be dismissed. The undersigned
9 has carefully considered whether plaintiff may amend the complaint to state a claim upon which
10 relief can be granted. “Valid reasons for denying leave to amend include undue delay, bad faith,
11 prejudice, and futility.” California Architectural Bldg. Prod. v. Franciscan Ceramics, 818 F.2d
12 1466, 1472 (9th Cir. 1988); see also Klamath-Lake Pharm. Ass’n v. Klamath Med. Serv. Bureau,
13 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that while leave to amend shall be freely given, the
14 court does not have to allow futile amendments).

15 However, when evaluating the failure to state a claim, the complaint of a pro se plaintiff
16 may be dismissed “only where ‘it appears beyond doubt that the plaintiff can prove no set of facts
17 in support of his claim which would entitle him to relief.’” Franklin v. Murphy, 745 F.2d 1221,
18 1228 (9th Cir. 1984) (quoting Haines v. Kerner, 404 U.S. 519, 521 (1972)); see also Weilburg v.
19 Shapiro, 488 F.3d 1202, 1205 (9th Cir. 2007) (“Dismissal of a pro se complaint without leave to
20 amend is proper only if it is absolutely clear that the deficiencies of the complaint could not be
21 cured by amendment.”) (quoting Schucker v. Rockwood, 846 F.2d 1202, 1203-04 (9th Cir.
22 1988)).

23 Here, given the vague and conclusory nature of the complaint’s allegations, the
24 undersigned cannot yet say that granting leave to amend would be futile. Plaintiff’s complaint
25 will therefore be dismissed, and plaintiff will be granted leave to file an amended complaint.
26 Plaintiff is cautioned, however, that if plaintiff elects to file an amended complaint “the tenet that
27 a court must accept as true all of the allegations contained in a complaint is inapplicable to legal
28 conclusions. Threadbare recitals of the elements of a cause of action, supported by mere

1 conclusory statements, do not suffice.” Ashcroft, 556 U.S. at 678. “While legal conclusions can
2 provide the complaint’s framework, they must be supported by factual allegations.” Id. at 679.
3 Those facts must be sufficient to push the claims “across the line from conceivable to
4 plausible[.]” Id. at 680 (quoting Twombly, 550 U.S. at 557).

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

14 CONCLUSION

15 Accordingly, IT IS HEREBY ORDERED that:

16 1. The complaint filed March 9, 2018 (ECF No. 1) is dismissed with leave to
17 amend.¹

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

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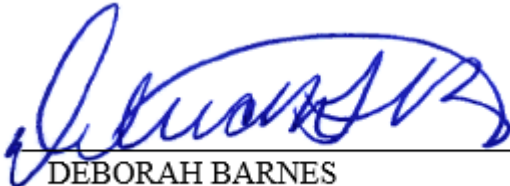
25 _____
26 ¹ Plaintiff need not file another application to proceed in forma pauperis at this time unless
27 plaintiff’s financial condition has improved since the last such application was submitted.

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.

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

Dated: May 31, 2018



DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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