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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL A. BRUZZONE,
Plaintiff,
v.
INTEL CORPORATION,
Defendant.

No. 2:18-cv-0865 KJM DB PS

ORDER

Plaintiff, Michael Bruzzone, 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). 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 that defendant Intel Corporation “falsely portray to harm Bruzzone immensely in order to negate, cover up and bury Bruzzone actual witness to various forms of RICO affecting the United States[.]” (Compl. (ECF No. 1) at 2.)

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

Pursuant to federal statute, a filing fee of \$350.00 is required to commence a civil action

1 in federal district court. 28 U.S.C. § 1914(a). In addition, a \$50.00 general administrative fee for
2 civil cases must be paid. 28 U.S.C. § 1914(b). The court may authorize the commencement of an
3 action “without prepayment of fees . . . by a person who submits an affidavit” showing that he is
4 unable to pay such fees. 28 U.S.C. § 1915(a).

5 Here, plaintiff’s in forma pauperis application reflects that plaintiff has a net monthly
6 income of \$1,322 and \$650 in a bank account. (ECF No. 2 at 1, 3.) Moreover, plaintiff’s
7 monthly expenses are only \$1,050—of which \$250 consists of “case support postage and
8 printing” costs. (*Id.* at 3.) In this regard, it is unclear if plaintiff has made an adequate showing
9 of indigency. *See Olivares v. Marshall*, 59 F.3d 109, 111 (9th Cir. 1995) (“Requiring the
10 payment of fees according to a plaintiff’s ability to pay serves the dual aims of defraying some of
11 the judicial costs of litigation and screening out frivolous claims.”).

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

24 The court must dismiss an in forma pauperis case at any time if the allegation of poverty is
25 found to be untrue or if it is determined that the action is frivolous or malicious, fails to state a
26 claim on which relief may be granted, or seeks monetary relief against an immune defendant. *See*
27 28 U.S.C. § 1915(e)(2). A complaint is legally frivolous when it lacks an arguable basis in law or
28 in fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Franklin v. Murphy*, 745 F.2d 1221,

1 1227-28 (9th Cir. 1984). Under this standard, a court must dismiss a complaint as frivolous
2 where it is based on an indisputably meritless legal theory or where the factual contentions are
3 clearly baseless. Neitzke, 490 U.S. at 327; 28 U.S.C. § 1915(e).

4 To state a claim on which relief may be granted, the plaintiff must allege “enough facts to
5 state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544,
6 570 (2007). In considering whether a complaint states a cognizable claim, the court accepts as
7 true the material allegations in the complaint and construes the allegations in the light most
8 favorable to the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Hosp. Bldg. Co. v.
9 Trustees of Rex Hosp., 425 U.S. 738, 740 (1976); Love v. United States, 915 F.2d 1242, 1245
10 (9th Cir. 1989). Pro se pleadings are held to a less stringent standard than those drafted by
11 lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). However, the court need not accept as true
12 conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. Western
13 Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

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

15 A pleading which sets forth a claim for relief . . . shall contain (1) a
16 short and plain statement of the grounds upon which the court’s
17 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.

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

19 **II. Plaintiff’s Complaint**

20 **A. Short and Plain Statement**

21 Here, the complaint fails to contain a short and plain statement of a claim showing that
22 plaintiff is entitled to relief. In this regard, the complaint is entirely devoid of factual allegations.
23 Instead, the complaint consists of vague and conclusory allegations.

24 For example, the complaint alleges that the defendant “present false claims in sworn
25 declarations manufacturing evidence to portray Bruzzone ‘work risk, delusional, dangerous,
26 harassing, vexatious litigation of frivolous claims,’ unbelievable cognizable civil and federal
27 discovery claims.” (Compl. (ECF No. 1) at 4.) Also, defendant “know[s] by slandering
28 Bruzzone in court record will libel Bruzzone in industry, public forum and news record[.]” (Id.)

1 The allegations, however, do not identify persons, places, actions, or claims that plaintiff is
2 asserting.

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

12 **B. Venue**

13 Pursuant to 28 U.S.C. § 1391(b)

14 A civil action may be brought in--

15 (1) a judicial district in which any defendant resides, if all defendants
16 are residents of the State in which the district is located;

17 (2) a judicial district in which a substantial part of the events or
18 omissions giving rise to the claim occurred, or a substantial part of
property that is the subject of the action is situated; or

19 (3) if there is no district in which an action may otherwise be brought
20 as provided in this section, any judicial district in which any
defendant is subject to the court's personal jurisdiction with respect
to such action.

21 Here, it appears from the court's research that defendant Intel resides in Santa Clara
22 County, which is in the United States District Court for the Northern District of California.¹

23 Plaintiff's in forma pauperis application alleges that this action is "related" to an action filed in
24 the Northern District against "Intel Corporation's associate (outside) counsel[.]" (ECF No. 2 at
25 4.) And the complaint fails to allege where a substantial part of the events at issue occurred. In
26

27 ¹ It also appears that plaintiff has been declared a vexatious litigant in the Northern District and is
28 subject to a pre-filing order. See Bruzzone v. Intel Corporation, et al., No. C 14-1279 WHA
(N.D. Cal. Aug. 19, 2014).

1 this regard, it is unclear from plaintiff's complaint if this is the appropriate venue for this action.

2 **III. Leave to Amend**

3 For the reasons stated above, plaintiff's complaint must be dismissed. The undersigned
4 has carefully considered whether plaintiff may amend the complaint to state a claim upon which
5 relief can be granted. "Valid reasons for denying leave to amend include undue delay, bad faith,
6 prejudice, and futility." California Architectural Bldg. Prod. v. Franciscan Ceramics, 818 F.2d
7 1466, 1472 (9th Cir. 1988); see also Klamath-Lake Pharm. Ass'n v. Klamath Med. Serv. Bureau,
8 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that while leave to amend shall be freely given, the
9 court does not have to allow futile amendments).

10 However, when evaluating the failure to state a claim, the complaint of a pro se plaintiff
11 may be dismissed "only where 'it appears beyond doubt that the plaintiff can prove no set of facts
12 in support of his claim which would entitle him to relief.'" Franklin v. Murphy, 745 F.2d 1221,
13 1228 (9th Cir. 1984) (quoting Haines v. Kerner, 404 U.S. 519, 521 (1972); see also Weilburg v.
14 Shapiro, 488 F.3d 1202, 1205 (9th Cir. 2007) ("Dismissal of a pro se complaint without leave to
15 amend is proper only if it is absolutely clear that the deficiencies of the complaint could not be
16 cured by amendment.") (quoting Schucker v. Rockwood, 846 F.2d 1202, 1203-04 (9th Cir.
17 1988)).

18 Here, given the vague and conclusory nature of the complaint's allegations, the
19 undersigned cannot yet say that granting leave to amend would be futile. Plaintiff's complaint
20 will therefore be dismissed, and plaintiff will be granted leave to file an amended complaint.
21 Plaintiff is cautioned, however, that if plaintiff elects to file an amended complaint "the tenet that
22 a court must accept as true all of the allegations contained in a complaint is inapplicable to legal
23 conclusions. Threadbare recitals of the elements of a cause of action, supported by mere
24 conclusory statements, do not suffice." Ashcroft, 556 U.S. at 678. "While legal conclusions can
25 provide the complaint's framework, they must be supported by factual allegations." Id. at 679.
26 Those facts must be sufficient to push the claims "across the line from conceivable to
27 plausible[.]" Id. at 680 (quoting Twombly, 550 U.S. at 557).

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


10 CONCLUSION

11 Accordingly, IT IS HEREBY ORDERED that:

- 12 1. The complaint filed April 10, 2018 (ECF No. 1) is dismissed with leave to
13 amend³;
- 14 2. Within twenty-eight days from the date of this order, an amended complaint shall be
15 filed that cures the defects noted in this order and complies with the Federal Rules of Civil
16 Procedure and the Local Rules of Practice.⁴ The amended complaint must bear the case number
17 assigned to this action and must be titled "Amended Complaint"; and
- 18 3. Failure to comply with this order in a timely manner may result in a recommendation
19 that this action be dismissed.

20 Dated: September 27, 2018

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24 _____
25 DEBORAH BARNES
26 UNITED STATES MAGISTRATE JUDGE

27 ² Any amended complaint filed by plaintiff shall also address the issue of venue.

28 ³ Plaintiff need not file another application to proceed in forma pauperis at this time unless plaintiff's financial condition has improved since the last such application was submitted.

⁴ 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.