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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ARMANDO C. RAMOS,
Plaintiff,
v.
VICTORIA J. HICKS and ALIREZA NIA,
Defendants.

No. 2:18-cv-00930 TLN AC (PS)

ORDER

Plaintiff is proceeding in this action pro se. This matter was accordingly referred to the undersigned by E.D. Cal. 302(c)(21). Plaintiff has filed a request for leave to proceed in forma pauperis (“IFP”), and has submitted the affidavit required by that statute. See 28 U.S.C. § 1915(a)(1). The motion to proceed IFP will therefore be granted.

I. SCREENING

The federal IFP statute requires federal courts to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). Plaintiff must assist the court in determining whether or not the complaint is frivolous, by drafting the complaint so that it complies with the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”). The Federal Rules of Civil Procedure are available online at www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-civil-procedure.

1 Under the Federal Rules of Civil Procedure, the complaint must contain (1) a “short and
2 plain statement” of the basis for federal jurisdiction (that is, the reason the case is filed in this
3 court, rather than in a state court), (2) a short and plain statement showing that plaintiff is entitled
4 to relief (that is, who harmed the plaintiff, and in what way), and (3) a demand for the relief
5 sought. Fed. R. Civ. P. 8(a). Plaintiff’s claims must be set forth simply, concisely and directly.
6 Fed. R. Civ. P. 8(d)(1). Forms are available to help pro se plaintiffs organize their complaint in
7 the proper way. They are available at the Clerk’s Office, 501 I Street, 4th Floor (Rm. 4-200),
8 Sacramento, CA 95814, or online at www.uscourts.gov/forms/pro-se-forms.

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

16 The court applies the same rules of construction in determining whether the complaint
17 states a claim on which relief can be granted. Erickson v. Pardus, 551 U.S. 89, 94 (2007) (court
18 must accept the allegations as true); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974) (court must
19 construe the complaint in the light most favorable to the plaintiff). Pro se pleadings are held to a
20 less stringent standard than those drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520
21 (1972). However, the court need not accept as true conclusory allegations, unreasonable
22 inferences, or unwarranted deductions of fact. Western Mining Council v. Watt, 643 F.2d 618,
23 624 (9th Cir. 1981). A formulaic recitation of the elements of a cause of action does not suffice
24 to state a claim. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57 (2007); Ashcroft v. Iqbal,
25 556 U.S. 662, 678 (2009).

26 To state a claim on which relief may be granted, the plaintiff must allege enough facts “to
27 state a claim to relief that is plausible on its face.” Twombly, 550 U.S. at 570. “A claim has
28 facial plausibility when the plaintiff pleads factual content that allows the court to draw the

1 reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S. at
2 678. A pro se litigant is entitled to notice of the deficiencies in the complaint and an opportunity
3 to amend, unless the complaint’s deficiencies could not be cured by amendment. See Noll v.
4 Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987), superseded on other grounds by statute as stated in
5 Lopez v. Smith, 203 F.3d 1122 (9th Cir.2000)) (en banc).

6 A. The Complaint

7 Plaintiff brings suit against two employees of the United States Patent and Trademark
8 Office (“USPTO”). ECF No. 1 at 2. Plaintiff asserts that the defendants “ignored the stipulation
9 in plaintiff’s granted Petition To Make Special for advancement of examination of the latter’s
10 patent application thereby unnecessarily delayed the processing of said application causing him
11 much concern and emotional distress.” Id. at 3. Plaintiff alleges that after two and a half years of
12 efforts to correct the allegedly non-compliant amendments of plaintiff’s patent application, an
13 “Office Action” was issued on May 23, 2016 that “totally disregarded, nullified, superseded, and
14 ‘trashed out all the amendments” that plaintiff worked on. Plaintiff claims the USPTO rejected
15 his “Claims 1-8, and objected to claims 9-17 of plaintiff’s patent application dragging him back to
16 square one.” Id. Plaintiff asserts this aggravated his hypertension and atrial fibrillation, and it
17 made him too sick to respond to the Office Action in the allowed time. Id.

18 B. Analysis

19 Although the complaint’s statement of the claim is short, it does not plainly set forth the
20 basis for plaintiff’s entitlement to legal relief as required by Fed. R. Civ. P. 8(a)(2)-(3). Although
21 plaintiff appears to challenge the denial of a patent application, he identifies no cause of action.
22 The complaint does not specify the roles of the named defendants in the patent denial, or identify
23 any acts of either defendant which suggest an identifiable theory of civil liability. In sum, the
24 court cannot tell from examining the complaint what legal wrong was done to plaintiff, by whom
25 and when.

26 Plaintiff is informed that judicial review of the denial of a patent application is limited to
27 the Court of Appeals for the Federal Circuit, pursuant to 35 U.S.C. § 141, following appeal to the
28 Patent Trial and Appeal Board under § 134(a). In the alternative, a civil action to obtain a patent

1 may be filed in the U.S. District Court for the Eastern District of Virginia, following
2 administrative appeal, pursuant to § 145. To the extent that plaintiff believes the actions of
3 defendants Hicks and Nia caused him to miss deadlines related to the administrative appeal
4 process, such allegations fail to state a claim on which relief could be granted. In other words,
5 even if the defendants mishandled plaintiff's patent application, the court cannot discern any legal
6 basis for a damages lawsuit against them.

7 For these reasons the complaint must be dismissed, but plaintiff will be provided an
8 opportunity to submit an amended complaint that sets forth a basis for relief.

9 II. AMENDING THE COMPLAINT

10 If plaintiff chooses to amend the complaint, the amended complaint must contain a short
11 and plain statement of plaintiff's claims. The allegations of the complaint must be set forth in
12 sequentially numbered paragraphs, with each paragraph number being one greater than the one
13 before, each paragraph having its own number, and no paragraph number being repeated
14 anywhere in the complaint. Each paragraph should be limited "to a single set of circumstances"
15 where possible. Rule 10(b). As noted above, forms are available to help plaintiffs organize their
16 complaint in the proper way. They are available at the Clerk's Office, 501 I Street, 4th Floor
17 (Rm. 4-200), Sacramento, CA 95814, or online at www.uscourts.gov/forms/pro-se-forms.

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

23 The amended complaint must not force the court and the defendants to guess at what is
24 being alleged against whom. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996)
25 (affirming dismissal of a complaint where the district court was "literally guessing as to what
26 facts support the legal claims being asserted against certain defendants"). The amended
27 complaint must not require the court to spend its time "preparing the 'short and plain statement'
28 which Rule 8 obligated plaintiffs to submit." Id. at 1180. The amended complaint must not

1 require the court and defendants to prepare lengthy outlines “to determine who is being sued for
2 what.” Id. at 1179.

3 Also, the amended complaint must not refer to a prior pleading in order to make plaintiff’s
4 amended complaint complete. An amended complaint must be complete in itself without
5 reference to any prior pleading. Local Rule 220. This is because, as a general rule, an amended
6 complaint supersedes the original complaint. See Pacific Bell Tel. Co. v. Linkline
7 Communications, Inc., 555 U.S. 438, 456 n.4 (2009) (“[n]ormally, an amended complaint
8 supersedes the original complaint”) (citing 6 C. Wright & A. Miller, Federal Practice &
9 Procedure § 1476, pp. 556-57 (2d ed. 1990)). Therefore, in an amended complaint, as in an
10 original complaint, each claim and the involvement of each defendant must be sufficiently
11 alleged.

12 III. PRO SE PLAINTIFF’S SUMMARY

13 The court cannot tell from your complaint what legal harm was done to you. The court is
14 dismissing the complaint, but allowing you to submit an amended complaint within 30 days of
15 this order. If you choose to submit an amended complaint, it must clearly state who did what to
16 you, and why you believe you should be able to get legal relief. You needs to tell the court, in
17 simple terms, what laws you believe were violated, who violated them, and how the violations
18 impacted you. Without this information, the court cannot tell what legal claims you are trying to
19 bring against the defendant. If you do not submit an amended complaint by the deadline, the
20 undersigned will recommend that the case be dismissed.

21 IV. CONCLUSION

22 Accordingly, IT IS HEREBY ORDERED that:


- 23 1. Plaintiff’s request to proceed in forma pauperis (ECF No. 2) is GRANTED;
- 24 2. The complaint (ECF No. 1), is DISMISSED because it does not contain the short and
25 plain statement of the claim required by Rule 8(a); and
- 26 3. Plaintiff shall have 30 days from the date of this order to file an amended complaint that
27 names defendants who are amenable to suit, and which complies with the instructions

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given above. If plaintiff fails to timely comply with this order, the undersigned may recommend that this action be dismissed.

DATED: April 26, 2018



ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE