



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](http://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 Siemens Mobility and Superior Group under Title VII of the  
8 Civil Rights Act of 1964 and the Age Discrimination in Employment Act (“ADEA”). ECF No. 1  
9 at 2-4. Plaintiff’s complaint appears to be premised on a denial of employment due to a past  
10 criminal conviction. Specifically, plaintiff alleges that defendant Superior Group did an  
11 employment screening for Siemens, and that “Siemens administration facially-neutral policy or  
12 procedures specifically, criminal procedures, policies that disproportionately affects [sic.] plaintiff  
13 who is African American policy is job related for position in question and consistent with  
14 business necessity.” ECF No. 1 at 5. Plaintiff further alleges that “criminal conviction is not job  
15 related” and that “alternative employment practice that serves the employee legitimate goal  
16 effected as the challenge practice.” Id. Plaintiff seeks earning of potential wages and punitive  
17 damages for “failure to hire with criminal conviction.”

18 B. Analysis

19 The complaint does not contain facts supporting any cognizable legal claim against any  
20 defendant. Plaintiff, who has previously brought a similar action in this district, has been  
21 cautioned that in general “employers are free to refuse to hire applicants with any criminal record  
22 without violating Title VII or the ADEA, even if plaintiff personally disagrees with the relevance  
23 of such a requirement for the position he seeks.” Stevens v. IMKO Workforce Sols., No. 217-cv-  
24 1026-MCE-KJN-PS, 2017 WL 4284639, at \*2 (E.D. Cal. Sept. 27, 2017). Additionally, plaintiff  
25 has previously been warned that the conclusory allegation that his rejection on the basis of  
26 criminal history was pretext for racial discrimination, unsupported by specific factual allegations  
27 demonstrating pretext, is not sufficient to state a claim. Id.

28 The complaint now before the court does not clearly state allegations that support any

1 legal claim. In this case, plaintiff fails to assert facts to support his belief that his failure to be  
2 hired was due to his criminal conviction. Even if he had alleged such facts, they would fail to  
3 state a claim for relief under any employment discrimination statute. Moreover, plaintiff does not  
4 allege facts demonstrating a basis for his belief that rejection on the basis of his criminal  
5 conviction was a pretext for unlawful discrimination. Plaintiff's complaint makes only the  
6 conclusory assertion that his criminal conviction was not work related, but he does not assert any  
7 facts related to how he was otherwise qualified for the position(s) at issue. Plaintiff alleges no  
8 facts whatsoever to support his ADEA claim. Plaintiff's amended complaint must provide a clear  
9 recitation of the facts supporting his claims, including what legal harm he alleges was done and  
10 by whom, as well as allegations of facts supporting his claims of discrimination.

## 11 II. AMENDING THE COMPLAINT

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

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

26 The amended complaint must not force the court and the defendants to guess at what is  
27 being alleged against whom. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996)  
28 (affirming dismissal of a complaint where the district court was "literally guessing as to what

1 facts support the legal claims being asserted against certain defendants”). The amended  
2 complaint must not require the court to spend its time “preparing the ‘short and plain statement’  
3 which Rule 8 obligated plaintiffs to submit.” Id. at 1180. The amended complaint must not  
4 require the court and defendants to prepare lengthy outlines “to determine who is being sued for  
5 what.” Id. at 1179.

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

### 15 III. PRO SE PLAINTIFF’S SUMMARY

16 The court cannot tell from plaintiff’s complaint what legal harm was done to him, and  
17 what the facts are to support his claims of discrimination. The court is dismissing plaintiff’s  
18 complaint, but allowing him to submit an amended complaint within 30 days of this order. If  
19 plaintiff chooses to submit an amended complaint, it must clearly state who did what to him, and  
20 why he believes he should be able to get legal relief. Plaintiff needs to tell the court, in simple  
21 terms, what laws he believes were violated, who he believes violated them, why he believes they  
22 were violated, and how the violations impacted him. Without this information, the court cannot  
23 tell whether plaintiff has a cognizable claim sufficient to pass screening. If plaintiff does not  
24 submit an amended complaint by the deadline, the undersigned will recommend that the case be  
25 dismissed.

### 26 IV. CONCLUSION


27 Accordingly, IT IS HEREBY ORDERED that:

- 28 1. Plaintiff’s request to proceed in forma pauperis (ECF No. 2) is GRANTED;

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2. The complaint (ECF No. 1), is DISMISSED because it does not sufficiently state a cognizable claim; and
3. Plaintiff shall have 30 days from the date of this order to file an amended complaint that names defendants who are amenable to suit, and which complies with the instructions given above. If plaintiff fails to timely comply with this order, the undersigned may recommend that this action be dismissed.

DATED: May 2, 2018

  
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ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE