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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALI ABED,

Plaintiff,

v.

KRISTEN HEATHER EMINO, et al.,

Defendants.

No. 2:18-cv-01789-TLN-CKD PS

ORDER

Plaintiff Ali Abed, who is proceeding without counsel in this action, has requested leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915.¹ (ECF No. 3.) Plaintiff’s application in support of his request to proceed *in forma pauperis* makes the showing required by 28 U.S.C. § 1915. Accordingly, the court grants plaintiff’s request to proceed *in forma pauperis*.

The determination that a plaintiff may proceed *in forma pauperis* does not complete the required inquiry. Pursuant to 28 U.S.C. § 1915, the court is directed to dismiss the case at any time if it determines that the allegation of poverty is untrue, or if the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against an immune defendant.

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¹ This action proceeds before the undersigned pursuant to Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1).

1 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
2 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
3 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
4 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
5 490 U.S. at 327.

6 To avoid dismissal for failure to state a claim, a complaint must contain more than “naked
7 assertions,” “labels and conclusions,” or “a formulaic recitation of the elements of a cause of
8 action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57 (2007). In other words,
9 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
10 statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim
11 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A
12 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
13 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S.
14 at 678. When considering whether a complaint states a claim upon which relief can be granted,
15 the court must accept the well-pled factual allegations as true, Erickson v. Pardus, 551 U.S. 89, 94
16 (2007), and construe the complaint in the light most favorable to the plaintiff, see Scheuer v.
17 Rhodes, 416 U.S. 232, 236 (1974).

18 Pro se pleadings are liberally construed. See Haines v. Kerner, 404 U.S. 519, 520-21
19 (1972); Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1988). Unless it is clear
20 that no amendment can cure the defects of a complaint, a pro se plaintiff proceeding *in forma*
21 *pauperis* is ordinarily entitled to notice and an opportunity to amend before dismissal. See Noll
22 v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987); Franklin v. Murphy, 745 F.2d 1221, 1230 (9th
23 Cir. 1984).

24 Here, plaintiff’s complaint alleges that his “personal property was taken from [him]
25 without serving [him] with any court order” and that as a result defendants have violated his
26 rights under the Fifth and Fourteenth Amendments to the United States Constitution. (ECF No. 1
27 at 5.) However, the complaint does not include any more factual details. These allegations are
28 nothing more than naked assertions without sufficient factual content to state a facially plausible

1 claim. Indeed, there are not enough factual allegations to put defendants on notice as to
2 plaintiff's claim. For these reasons, the complaint is subject to dismissal.

3 Nevertheless, in light of plaintiff's *pro se* status, and because it is at least conceivable that
4 plaintiff could allege additional facts to potentially state a claim, the court finds it appropriate to
5 grant plaintiff an opportunity to amend the complaint.

6 If plaintiff elects to file an amended complaint, it shall be captioned "First Amended
7 Complaint," shall be typed or written in legible handwriting, shall address the deficiencies
8 outlined in this order, and shall be filed within 28 days of this order.

9 Plaintiff is informed that the court cannot refer to a prior complaint or other filing in order
10 to make plaintiff's first amended complaint complete. Local Rule 220 requires that an amended
11 complaint be complete in itself without reference to any prior pleading. As a general rule, an
12 amended complaint supersedes the original complaint, and once the first amended complaint is
13 filed, the original complaint no longer serves any function in the case.

14 Finally, nothing in this order requires plaintiff to file a first amended complaint. If
15 plaintiff determines that he is unable to amend his complaint in compliance with the court's order
16 at this juncture, he may alternatively file a notice of voluntary dismissal of his claims without
17 prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) within 28 days of this order.

18 Accordingly, IT IS HEREBY ORDERED that:

- 19 1. Plaintiff's motion to proceed *in forma pauperis* (ECF No. 3) is granted.
- 20 2. Plaintiff's complaint is dismissed, but with leave to amend.
- 21 3. Within 28 days of this order, plaintiff shall file either (a) a first amended complaint in
22 accordance with this order, or (b) a notice of voluntary dismissal of the action without
23 prejudice.

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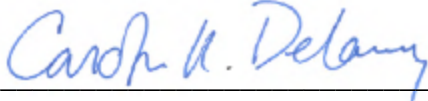
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4. Failure to file either a first amended complaint or a notice of voluntary dismissal by the required deadline may result in the imposition of sanctions, including potential dismissal of the action with prejudice pursuant to Federal Rule of Civil Procedure 41(b).

Dated: June 27, 2018



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

4/18-1789.abed v. emino. order granting IFP dismiss w/ta