

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

NICOLE ANGELIQUE IORG,
Plaintiff,
v.
USA,
Defendant.

No. 2:19-cv-01346 JAM AC (PS)
ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is proceeding in this matter pro se, and pre-trial proceedings are accordingly referred to the undersigned pursuant to Local Rule 302(c)(21). Plaintiff has paid the filing fee in this case and an initial scheduling conference has been set for February 5, 2020. ECF No. 3. Before the court is a motion to dismiss by defendant United States of America. ECF No. 5. Because there is no subject matter jurisdiction and plaintiff cannot state a claim, it is recommended that the motion to dismiss be GRANTED without leave to amend, and that this case be dismissed with prejudice. In light of this recommendation, the initial scheduling conference is VACATED.

I. BACKGROUND

A. Allegations of the Complaint

Nicole Angelique Iorg filed her complaint on July 18, 2019. ECF No. 1. Plaintiff alleges that she has fraudulent court documents that were typed up by a United States federal employee, Irene Williams District Attorney, stating that she was present in court on October 3, 2017 for case

1 number 17EO14391 and 17MI009682 with her appointed public defender Teresa Huang. Id. at 3-
2 4. Plaintiff alleges that this is false and that she was in court on August 14, 2017 but was
3 “kick[ed] out” of the courtroom for asking the Honorable Judge Michael Sweet to sign her
4 grievances because the correctional officers refused to sign them. Id. at 4. She alleges she was
5 never appointed a public defender and never saw or met Teresa Huang. Id.

6 Plaintiff alleges that on October 3, 2017 she received her one and only medical evaluation
7 from Dr. Janice Nakagawa which contains fraudulent forgery documents reflecting a mental
8 health evaluation conducted September 22, 2017. Id. Plaintiff has a print-out of all of her court
9 dates, and she only had four where she was called out of her cell from August 3, 2017 to May 10,
10 2019, and she had an illegal involuntary commitment to Napa State Hospital. Id. at 5.

11 Since plaintiff has been out of jail as of May 10, 2018, Judge Michael Sweet retired and
12 District Attorney Irene Williams has moved to Santa Clara County, and Judge Winn is no longer
13 in Department 4 of the Superior Courthouse as of November 9, 2018. Id. at 7. Plaintiff alleges
14 she was forced to take antipsychotic medications at Napa State Hospital. Id. at 9. Plaintiff
15 further alleges she was sexually harassed and assaulted by being strip searched. Id. at 10.

16 The court notes that on November 9, 2018, plaintiff filed a complaint in a separate case
17 bringing allegations nearly identical to those presented here. Iorg v. United States of America,
18 2:18-cv-02953 MCE CKD (“Iorg I”).¹ The facts asserted in the Iorg I complaint and the
19 complaint at issue in this case are the same. Iorg I was dismissed for lack of subject matter
20 jurisdiction on January 18, 2019. Iorg I, ECF Nos. 8 and 9. Ms. Iorg filed this case exactly 6
21 months later. ECF No. 1.

22 B. The Claims

23 The complaint is captioned as a Complaint for “Fraudulent court documents & fraud on
24 the court, forgery, counterfeiting, check offenses, sexual harassment and assault & battery.” ECF
25 No. 1 at 1. The body of the document lists plaintiff’s causes of action as “Forced Antipsychotic
26 Medication” and “Sexually Assaulted.” ECF No. 1 at 9-10.

27 ¹ The court may take judicial notice of its own records. United States v. Howard, 381 F.3d 873,
28 876 n.1 (9th Cir. 2004).

1 **II. MOTION TO DISMISS**

2 Defendant seeks to dismiss plaintiff’s case for lack of subject matter jurisdiction pursuant
3 to Fed. R. Civ. P. 12(b)(1) and for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6).
4 ECF No. 5-1.

5 A. This Court Lacks Jurisdiction to Hear This Case

6 Federal courts are courts of limited jurisdiction. To invoke a federal court’s subject-
7 matter jurisdiction, a plaintiff needs to provide “a short and plain statement of the grounds for the
8 court’s jurisdiction.” Fed. R. Civ. P. 8(a)(1). Jurisdiction can either be based on diversity of
9 parties or the presence of a federal question. 28 U.S.C. § 1331, § 1332. The plaintiff must allege
10 facts, not mere legal conclusions, in compliance with the pleading standards established by Bell
11 Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), and Ashcroft v. Iqbal, 556 U.S. 662 (2009). See
12 Harris v. Rand, 682 F.3d 846, 850-51 (9th Cir. 2012). Assuming compliance with those
13 standards, the plaintiff’s factual allegations will ordinarily be accepted as true unless challenged
14 by the defendant. See 5C Charles Alan Wright & Arthur R. Miller, Federal Practice and
15 Procedure § 1363, at 107 (3d ed.2004).

16 Federal Rule of Civil Procedure 12(b)(1) allows a defendant to raise by motion the
17 defense that the court lacks jurisdiction over the subject matter of an entire action or of specific
18 claims alleged in the action. When a party brings a facial attack to subject matter jurisdiction,
19 that party contends that the allegations of jurisdiction contained in the complaint are insufficient
20 on their face to demonstrate the existence of jurisdiction. Safe Air for Everyone v. Meyer, 373
21 F.3d 1035, 1039 (9th Cir. 2004). The district court resolves a facial attack as it would a motion to
22 dismiss under Rule 12(b)(6): accepting the plaintiff’s allegations as true and drawing all
23 reasonable inferences in the plaintiff’s favor, the court determines whether the allegations are
24 sufficient as a legal matter to invoke the court’s jurisdiction. Pride v. Correa, 719 F.3d 1130,
25 1133 (9th Cir. 2013).

26 Here, defendant mounts a facial attack by arguing that plaintiff’s complaint does not
27 support either diversity or federal question jurisdiction. Because plaintiff’s complaint discusses
28 events during her involvement with the state court system and names the United States as the only

1 defendant² without stating any relevant facts that involve the United States, there is no apparent
2 basis for federal jurisdiction. See ECF No. 1. As was the case in Iorg I, “[t]hough plaintiff names
3 the United States of America as the defendant, her allegations are too vague and conclusory to
4 assert a federal claim and/or a basis for federal subject matter jurisdiction.” Iorg I at ECF No. 7 at
5 1-2; see also Fed. R. Civ. P 8(a)(2); Ashcroft v. Iqbal, 556 U.S. 662, 677 (2009). As with Iorg I,
6 there is no basis for subject matter jurisdiction apparent on the face of the complaint, and the
7 complaint therefore must be dismissed.

8 **B. Plaintiff Fails to State a Claim Upon Which Relief Can Be Granted**

9 The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the legal
10 sufficiency of the Complaint. N. Star Int’l v. Ariz. Corp. Comm’n, 720 F.2d 578, 581 (9th Cir.
11 1983). “Dismissal can be based on the lack of a cognizable legal theory or the absence of
12 sufficient facts alleged under a cognizable legal theory.” Balistreri v. Pacifica Police Dep’t., 901
13 F.2d 696, 699 (9th Cir. 1990).

14 In order to survive dismissal for failure to state a claim, a complaint must contain more
15 than a “formulaic recitation of the elements of a cause of action;” it must contain factual
16 allegations sufficient to “raise a right to relief above the speculative level.” Twombly, 550 U.S.
17 at 555. It is insufficient for the pleading to contain a statement of facts that “merely creates a
18 suspicion” that the pleader might have a legally cognizable right of action. Id. (quoting 5 C.
19 Wright & A. Miller, Federal Practice and Procedure § 1216, pp. 235-35 (3d ed. 2004)). Rather,
20 the complaint “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief
21 that is plausible on its face.’” Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 570). “A
22 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
23 the reasonable inference that the defendant is liable for the misconduct alleged.” Id.

24 In reviewing a complaint under this standard, the court “must accept as true all of the
25 factual allegations contained in the complaint,” construe those allegations in the light most

26 ² Plaintiff does allege facts that could, with great liberality, be construed as supporting
27 constitutional claims against state actors; such claims could in theory give rise to federal
28 jurisdiction under 42 U.S.C. § 1983. However, because plaintiff does not name any state actor
defendants in this case, there is no basis for § 1983 jurisdiction here.

1 favorable to the plaintiff, and resolve all doubts in the plaintiffs' favor. See Erickson v. Pardus,
2 551 U.S. 89, 94 (2007); Von Saher v. Norton Simon Museum of Art at Pasadena, 592 F.3d 954,
3 960 (9th Cir. 2010), cert. denied, 131 S. Ct. 3055 (2011); Hebbe v. Pliler, 627 F.3d 338, 340 (9th
4 Cir. 2010). However, the court need not accept as true, legal conclusions cast in the form of
5 factual allegations, or allegations that contradict matters properly subject to judicial notice. See
6 Western Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981); Sprewell v. Golden State
7 Warriors, 266 F.3d 979, 988 (9th Cir.), as amended, 275 F.3d 1187 (2001).

8 Pro se pleadings are held to a less stringent standard than those drafted by lawyers.
9 Haines v. Kerner, 404 U.S. 519, 520 (1972). Pro se complaints are construed liberally and may
10 only be dismissed if it appears beyond doubt that the plaintiff can prove no set of facts in support
11 of his claim which would entitle him to relief. Nordstrom v. Ryan, 762 F.3d 903, 908 (9th Cir.
12 2014). A pro se litigant is entitled to notice of the deficiencies in the complaint and an
13 opportunity to amend, unless the complaint's deficiencies could not be cured by amendment. See
14 Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987).

15 This complaint fails to state a claim because the only named defendant is the United States
16 of America, and the complaint does not contain a single relevant fact tied to the defendant.
17 Instead, the complaint focuses on alleged mistreatment that occurred during plaintiff's
18 interactions with the state court and state prison system. ECF No. 1. Where the facts alleged
19 cannot possibly create liability for the only defendant, the complaint does not state a plausible
20 claim and must be dismissed. See Iqbal, 556 U.S. at 678 (stating that "[a] claim has facial
21 plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable
22 inference that the defendant is liable for the misconduct alleged") (emphasis added).³ Because
23 the facts alleged make clear that the United States was not involved in the incidents that form the

24 ///

25 _____
26 ³ Plaintiff specifically alleges that false documents were created by a federal employee, who is
27 further identified as a District Attorney appearing in superior court. Because a prosecutor in the
28 state court system cannot be a federal employee, the court need not and does not accept the
allegation of federal employment status as true. None of plaintiff's allegations plausibly support
federal involvement in the matters of which she complains.

1 basis for plaintiff's complaint, amendment cannot cure the defect and leave to amend would be
2 futile.

3 Moreover, to the extent that plaintiff seeks to pursue claims for "forgery, counterfeiting,
4 check offenses... and assault and battery," these are criminal acts that may not be prosecuted by
5 private parties in civil lawsuits. See Clinton v. Jones, 520 U.S. 681, 718 (1997) ("Criminal
6 proceedings, unlike private civil proceedings, are public acts initiated and controlled by the
7 Executive Branch."); Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980) (criminal provisions
8 provide no basis for civil liability). This defect cannot be cured by amendment.

9 III. CONCLUSION

10 It is hereby ORDERED that the initial scheduling conference set in this case for February
11 5, 2020 is VACATED.

12 It is hereby RECOMMENDED that defendant's motion to dismiss this lawsuit be
13 GRANTED, and that this case be DISMISSED with prejudice.

14 These findings and recommendations are submitted to the United States District Judge
15 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty one days
16 after being served with these findings and recommendations, parties may file written objections
17 with the court and serve a copy on all parties. Id.; see also Local Rule 304(b). Such a document
18 should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Failure
19 to file objections within the specified time may waive the right to appeal the District Court's
20 order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153,
21 1156-57 (9th Cir. 1991).

22 DATED: September 18, 2019

23 
24 ALLISON CLAIRE
25 UNITED STATES MAGISTRATE JUDGE
26
27
28