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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DONALD AUTEN,  
Plaintiff,  
v.  
COUNTY OF CALAVERAS,  
Defendant.

No. 2:19-cv-01679-JAM-AC

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 requested leave to proceed in forma pauperis (“IFP”) pursuant to 28 U.S.C. § 1915. ECF No. 2. Plaintiff 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](http://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](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 the County of Calaveras. ECF No. 1 at 2. As the basis for  
8 jurisdiction, plaintiff invokes the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12112-  
9 12117 by checking a box on the form complaint. Id. at 3. Plaintiff checked boxes indicating that  
10 the discriminatory conduct of which he complains includes termination of employment, failure to  
11 accommodate his disability, and retaliation. Id. at 4. He checked a box indicating the  
12 discrimination is ongoing, but when asked to provide dates of incidences, he indicated only  
13 several dates in 2016. Id. The entire description of facts provided by plaintiff is as follows:

14 Suffered industrial head/brain injury which caused additional  
15 cognitive/psychological disabilities. Wrongful termination based on  
16 lack of accommodations [sic] and interactive process with requests for  
17 proper medical treatment recommendations. Placed on workers  
18 compensation with medical leave per three independent California  
19 Qualified Medical Examinors [sic] evaluations, discovery, and  
20 recommendations with treatment plan prior to re-evaluations never  
21 received. Discrimination based on respondent and their  
representation failed to honor said treatment to engage in a proper  
interactive process. Retaliation based on being terminated while on  
leave from medical doctor. Discrimination, retaliation and  
harrasment [sic] based on cognitive/psychological inabilities while  
being denied treatment for the chance to receive reasonable  
accommodations [sic].

22 Id. at 5. Plaintiff was issued a Right to Sue letter from the Equal Opportunity Commission on  
23 June 13, 2019. Id. at 5, 7. As damages, plaintiff seeks payment of his base salary from June 16,  
24 2015 to the present, comp time, vacation, and sick leave accrued prior to June 8, 2014, Early  
25 Industrial CALPERS retirement granted to be calculated to full retirement age of 65, and punitive  
26 damages. Id. at 6.

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

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

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

17 It is not clear that this case can proceed in federal court. The court cannot tell from your  
18 complaint what legal harm was done to you. In order to go forward, you need to explain who  
19 discriminated against you, how they discriminated against you, when each discriminatory act  
20 happened, and exactly how the discrimination harmed you. Because the complaint as written  
21 does not state enough facts to present a legal claim, it will not be served on defendant. Your  
22 lawsuit cannot proceed unless you fix the problems with your complaint.

23 You are being given 30 days to submit an amended complaint that provides a proper basis  
24 for federal jurisdiction. If you submit an amended complaint, it needs to explain in simple terms  
25 what laws or legal rights of yours were violated, by whom and how, and how those violations  
26 impacted you. If you do not submit an amended complaint by the deadline, the undersigned will  
27 recommend that the case be dismissed.

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IV. CONCLUSION

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's request to proceed in forma pauperis (ECF No. 2) is GRANTED;
2. 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: October 9, 2019

  
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ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE