



1 court will (1) accept as true all of the factual allegations contained in the complaint, unless they  
2 are clearly baseless or fanciful, (2) construe those allegations in the light most favorable to the  
3 plaintiff, and (3) resolve all doubts in the plaintiff’s favor. See Neitzke, 490 U.S. at 327; Von  
4 Saher v. Norton Simon Museum of Art at Pasadena, 592 F.3d 954, 960 (9th Cir. 2010), cert.  
5 denied, 564 U.S. 1037 (2011).

6 The court applies the same rules of construction in determining whether the complaint  
7 states a claim on which relief can be granted. Erickson v. Pardus, 551 U.S. 89, 94 (2007) (court  
8 must accept the allegations as true); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974) (court must  
9 construe the complaint in the light most favorable to the plaintiff). Pro se pleadings are held to a  
10 less stringent standard than those drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520  
11 (1972). However, the court need not accept as true conclusory allegations, unreasonable  
12 inferences, or unwarranted deductions of fact. Western Mining Council v. Watt, 643 F.2d 618,  
13 624 (9th Cir. 1981). A formulaic recitation of the elements of a cause of action does not suffice  
14 to state a claim. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57 (2007); Ashcroft v. Iqbal,  
15 556 U.S. 662, 678 (2009).

16 To state a claim on which relief may be granted, the plaintiff must allege enough facts “to  
17 state a claim to relief that is plausible on its face.” Twombly, 550 U.S. at 570. “A claim has  
18 facial plausibility when the plaintiff pleads factual content that allows the court to draw the  
19 reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S. at  
20 678. A pro se litigant is entitled to notice of the deficiencies in the complaint and an opportunity  
21 to amend, unless the complaint’s deficiencies could not be cured by amendment. See Noll v.  
22 Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987), superseded on other grounds by statute as stated in  
23 Lopez v. Smith, 203 F.3d 1122 (9th Cir.2000)) (en banc).

## 24 II. THE COMPLAINT

25 Plaintiff initially brought a putative class action for violations of the Electronic Funds  
26 Transfer Act (15 U.S.C. § 1693) (“EFTA”), and many state law claims. ECF No. 1 at 1-2.  
27 Plaintiff alleges that there is a fraudulent scam being run out of state penitentiaries in which more  
28 than 35,000 inmates were issued payments by defendant California Employment Development

1 Department (“EDD”). Id. at 3. Plaintiff asserted that “[a]side from those facts, several million  
2 other Californians have been cheated out of EDD Benefits by an elusive & Corrosive State Govt.”  
3 Id. Plaintiff stated that he and members of the putative class were “harmed by the same unlawful,  
4 deceptive, unfair, systemic, and pervasive pattern of misconduct engaged in by Defendant.” ECF  
5 No. 1 at 9.

6 The court rejected plaintiff’s complaint, explaining that it did not contain facts supporting  
7 any cognizable legal claim against any defendant. ECF No. 3 at 3. The court explained that a pro  
8 se plaintiff cannot act as an attorney for others and cannot bring a class action. Id.; see C.E. Pope  
9 Equity Trust v. United States, 818 F.2d 696, 697 (9th Cir. 1987). The court further explained that  
10 it was not clear that plaintiff has standing to bring this case, because he did not allege that he  
11 suffered any actual harm. Id. at 4. The court also noted that plaintiff appeared to have named the  
12 incorrect defendants. Id. Plaintiff was given leave to file an amended complaint. Id. at 5.

13 Plaintiff’s First Amended Complaint (“FAC”) was filed on April 5, 2021. ECF No. 5. It  
14 is no longer titled a class action, though it is styled as one, regularly referring to “the mass” and  
15 “millions of Californians” who have suffered. See id. at 1, 4. Plaintiff identifies himself alone as  
16 the plaintiff, but states that he “suffered the same INJURY as 30 million other Californians.” Id.  
17 at 3. The FAC continues to address elements of a class action, such as numerosity, commonality,  
18 and typicality. Id. at 4. Plaintiff does not identify any specific harm to himself. Plaintiff  
19 maintained his state claims but removed his claim under the Electronic Funds Transfer Act (15  
20 U.S.C. § 1693) (“EFTA”). Id. at 1.

### 21 III. ANALYSIS

22 Plaintiff’s FAC is not meaningfully different from his original complaint except that he  
23 has removed the only federal cause of action, thereby defeating jurisdiction under 28 U.S.C. §  
24 1331. Because there is no diversity of citizenship in this case, without any federal causes of  
25 action this court lacks jurisdiction and this case must be dismissed. Further, the complaint does  
26 not contain facts supporting any cognizable legal claim against any defendant. As previously  
27 explained, a pro se plaintiff cannot act as an attorney for others and cannot bring a class action.  
28 C.E. Pope Equity Trust, 818 F.2d at 697. The complaint, though no longer labeled a class action,

1 is styled as a class action and all the allegations involve injuries to a purported class. See ECF  
2 No. 5 at 4.

3         Additionally, it is now apparent that plaintiff does not have standing to bring this case.  
4 “[F]ederal courts are required sua sponte to examine jurisdictional issues such as standing [and  
5 ripeness].” B.C. v. Plumas Unified Sch. Dist., 192 F.3d 1260, 1264 (9th Cir. 1999). The Article  
6 III case or controversy requirement limits federal courts’ subject matter jurisdiction by requiring  
7 that plaintiffs have standing. Valley Forge Christian Coll. v. Ams. United for Separation of  
8 Church and State, Inc., 454 U.S. 464, 471 (1982). To have Article III standing, a plaintiff must  
9 plead and prove that he has suffered sufficient injury to satisfy the “case or controversy”  
10 requirement of Article III of the United States Constitution. Clapper v. Amnesty Int’l USA, 568  
11 U.S. 398, 408 (2013) (“One element of the case-or-controversy requirement’ is that plaintiffs  
12 ‘must establish that they have standing to sue.’” (quoting Raines v. Byrd, 521 U.S. 811, 818  
13 (1997))).

14         To satisfy Article III standing, a plaintiff must allege: (1) injury-in-fact that is concrete  
15 and particularized, as well as actual or imminent; (2) that the injury is fairly traceable to the  
16 challenged action of the defendant; and (3) that the injury is redressable by a favorable ruling.  
17 Monsanto Co. v. Geertson Seed Farms, 561 U.S. 139, 149 (2010); Lujan v. Defenders of Wildlife,  
18 504 U.S. 555, 560-61 (1992). “The party invoking federal jurisdiction bears the burden of  
19 establishing these elements . . . with the manner and degree of evidence required at the successive  
20 stages of the litigation.” Lujan, 504 U.S. at 561 (citations omitted). Plaintiff’s FAC does not  
21 specify any injury that he personally suffered with respect to the allegations in the complaint, and  
22 therefore he has not properly alleged standing. Having already explained to plaintiff the  
23 requirements of Article III standing and given him an opportunity to cure the defect, the  
24 undersigned is now confident that this defect cannot be cured.

25         It is clear at this juncture that this court lacks jurisdiction and that plaintiff does not have  
26 standing to bring this case. This case must be dismissed without further leave to amend as further  
27 amendment would be futile.

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1 IV. CONCLUSION

2 For the reasons explained above, the undersigned recommends that the First Amended  
3 Complaint (ECF No. 5) be DISMISSED with prejudice.

4 These findings and recommendations are submitted to the United States District Judge  
5 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days  
6 after being served with these findings and recommendations, plaintiff may file written objections  
7 with the court and serve a copy on all parties. Id.; see also Local Rule 304(b). Such a document  
8 should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Failure  
9 to file objections within the specified time may waive the right to appeal the District Court’s  
10 order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153,  
11 1156-57 (9th Cir. 1991).

12 DATED: April 6, 2021

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14 ALLISON CLAIRE  
15 UNITED STATES MAGISTRATE JUDGE  
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