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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

GINA DIANE CARMICHAEL,  
Plaintiff,  
v.  
AMY OWENS, et al.,  
Defendants.

No. 2:21-cv-740-JAM-KJN PS  
ORDER GRANTING IFP REQUEST AND  
FINDINGS AND RECOMMENDATIONS TO  
DISMISS  
(ECF No. 2.)

Plaintiff, who is proceeding without counsel in this action, requested leave to proceed in forma pauperis (“IFP”).<sup>1</sup> See 28 U.S.C. § 1915 (authorizing the commencement of an action “without prepayment of fees or security” by a person that is unable to pay such fees). Plaintiff’s affidavit makes the required showing, and so plaintiff’s request to proceed IFP is granted.

The determination a plaintiff may proceed in forma pauperis does not complete the required inquiry. Under Section 1915, the court must dismiss the case if it determines 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. Further, federal courts have an independent duty to assess federal subject matter jurisdiction exists. See United Investors Life Ins. Co. v. Waddell & Reed Inc., 360 F.3d 960, 967 (9th Cir. 2004).

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<sup>1</sup> Actions where a party proceeds without counsel are referred to a magistrate judge pursuant to E.D. Cal. L.R. 302(c)(21). See 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72.

1           **Legal Standards**

2           A claim may be dismissed because of the plaintiff’s “failure to state a claim upon which  
3 relief can be granted.” Rule 12(b)(6). A complaint fails to state a claim if it either lacks a  
4 cognizable legal theory or sufficient facts to allege a cognizable legal theory. Mollett v. Netflix,  
5 Inc., 795 F.3d 1062, 1065 (9th Cir. 2015). To avoid dismissal for failure to state a claim, a  
6 complaint must contain more than “naked assertions,” “labels and conclusions,” or “a formulaic  
7 recitation of the elements of a cause of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544,  
8 555-57 (2007). In other words, “[t]hreadbare recitals of the elements of a cause of action,  
9 supported by mere conclusory statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678  
10 (2009). Thus, a complaint “must contain sufficient factual matter, accepted as true, to state a  
11 claim to relief that is plausible on its face.” Id. “A claim has facial plausibility when the plaintiff  
12 pleads factual content that allows the court to draw the reasonable inference that the defendant is  
13 liable for the misconduct alleged.” Id.

14           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 Papasan v.  
17 Allain, 478 U.S. 265, 283 (1986). The court is not, however, required to accept as true  
18 “conclusory [factual] allegations that are contradicted by documents referred to in the complaint,”  
19 or “legal conclusions merely because they are cast in the form of factual allegations.” Paulsen v.  
20 CNF Inc., 559 F.3d 1061, 1071 (9th Cir. 2009).

21           Pro se pleadings are to be liberally construed. Hebbe v. Pliler, 627 F.3d 338, 342 & fn.7  
22 (9th Cir. 2010) (liberal construction appropriate even post-Iqbal). Prior to dismissal, the court is  
23 to tell the plaintiff of deficiencies in the complaint and provide an opportunity to cure—if it  
24 appears at all possible the defects can be corrected. See Lopez v. Smith, 203 F.3d 1122, 1130-31  
25 (9th Cir. 2000) (en banc). However, if amendment would be futile, no leave to amend need be  
26 given. Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 339 (9th Cir. 1996).

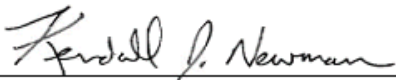
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1 These findings and recommendations are submitted to the United States District Judge assigned to  
2 the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14) days after  
3 being served with these findings and recommendations, plaintiff may file written objections with  
4 the court. Such a document should be captioned “Objections to Magistrate Judge’s Findings and  
5 Recommendations.” Plaintiff is advised that failure to file objections within the specified time  
6 may waive the right to appeal the District Court’s order. Turner v. Duncan, 158 F.3d 449, 455  
7 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

8 Dated: April 29, 2021

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10 KENDALL J. NEWMAN  
11 UNITED STATES MAGISTRATE JUDGE

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