

1 **I. Legal Standards**

2 Pro se pleadings are to be liberally construed. Hebbe v. Pliker, 627 F.3d 338, 342 & n.7
3 (9th Cir. 2010) (liberal construction appropriate even post-Iqbal). Prior to dismissal, the court is
4 to tell the plaintiff of deficiencies in the complaint and provide an opportunity to cure—if it
5 appears at all possible the defects can be corrected. See Lopez v. Smith, 203 F.3d 1122, 1130-31
6 (9th Cir. 2000) (en banc). However, if amendment would be futile, no leave to amend need be
7 given. Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 339 (9th Cir. 1996).

8 **A. Subject Matter Jurisdiction and Legal Frivolity**

9 The court must dismiss a case if, at any time, it determines that it lacks subject matter
10 jurisdiction. Rule 12(h)(3).² A federal district court generally has original jurisdiction over a
11 civil action when: (1) a federal question is presented in an action “arising under the Constitution,
12 laws, or treaties of the United States” or (2) there is complete diversity of citizenship and the
13 amount in controversy exceeds \$75,000. See 28 U.S.C. §§ 1331, 1332(a). Further, a plaintiff
14 must have standing to assert a claim, which requires an injury in fact caused by defendant(s) that
15 may be redressed in court. Harrison v. Kernan, 971 F.3d 1069, 1073 (9th Cir. 2020). Under the
16 well-pleaded complaint rule, “federal jurisdiction exists only when a federal question is presented
17 on the face of the plaintiff’s properly pleaded complaint.” Caterpillar Inc. v. Williams, 482 U.S.
18 386, 392 (1987).

19 Federal courts lack subject matter jurisdiction to consider claims that are “so insubstantial,
20 implausible, foreclosed by prior decisions of this court, or otherwise completely devoid of merit
21 as not to involve a federal controversy.” Steel Co. v. Citizens for a Better Environment, 523 U.S.
22 83, 89 (1998); Hagans v. Lavine, 415 U.S. 528, 537 (1974) (court lacks subject matter jurisdiction
23 over claims that are “essentially fictitious,” “obviously frivolous” or “obviously without merit”);
24 see also Grancare, LLC v. Thrower by & through Mills, 889 F.3d 543, 549-50 (9th Cir. 2018)
25 (noting that the “wholly insubstantial and frivolous” standard for dismissing claims operates
26 under Rule 12(b)(1) for lack of federal question jurisdiction). A claim is legally frivolous when it

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28 ² Citation to the “Rule(s)” are to the Federal Rules of Civil Procedure, unless otherwise noted.

1 lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989). A
2 court may dismiss a claim as frivolous where it is based on an indisputably meritless legal theory
3 or where the factual contentions are clearly baseless. Id. at 327; Rule 12(h)(3).

4 Although leave to amend is generally to be granted with liberality, “[v]alid reasons for
5 denying leave to amend include undue delay, bad faith, prejudice, and futility.” California
6 Architectural Bldg. Prod. v. Franciscan Ceramics, 818 F.2d 1466, 1472 (9th Cir. 1988); see also
7 Klamath-Lake Pharm. Ass'n v. Klamath Med. Serv. Bureau, 701 F.2d 1276, 1293 (9th Cir. 1983)
8 (holding that while leave to amend shall be freely given, the court does not have to allow futile
9 amendments).

10 **B. Federal Notice Pleading and a Complaint’s Failure to State a Claim**

11 Rule 8(a) requires that a pleading be “(1) a short and plain statement of the grounds for the
12 court’s jurisdiction . . . ; (2) a short and plain statement of the claim showing that the pleader is
13 entitled to relief; and (3) a demand for the relief sought, which may include relief in the
14 alternative or different types of relief.” Each allegation must be simple, concise, and direct. Rule
15 8(d)(1); see Swierkiewicz v. Sorema N.A., 534 U.S. 506, 514 (2002) (overruled on other grounds)
16 (“Rule 8(a) is the starting point of a simplified pleading system, which was adopted to focus
17 litigation on the merits of a claim.”).

18 A claim may be dismissed because of the plaintiff’s “failure to state a claim upon which
19 relief can be granted.” Rule 12(b)(6). A complaint fails to state a claim if it either lacks a
20 cognizable legal theory or sufficient facts to allege a cognizable legal theory. Mollett v. Netflix,
21 Inc., 795 F.3d 1062, 1065 (9th Cir. 2015). To avoid dismissal for failure to state a claim, a
22 complaint must contain more than “naked assertions,” “labels and conclusions,” or “a formulaic
23 recitation of the elements of a cause of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544,
24 555-57 (2007). In other words, “[t]hreadbare recitals of the elements of a cause of action,
25 supported by mere conclusory statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678
26 (2009). Thus, a complaint “must contain sufficient factual matter, accepted as true, to state a
27 claim to relief that is plausible on its face.” Id. “A claim has facial plausibility when the plaintiff
28 pleads factual content that allows the court to draw the reasonable inference that the defendant is

1 liable for the misconduct alleged.” Id.

2 When considering whether a complaint states a claim upon which relief can be granted,
3 the court must accept the well-pleaded factual allegations as true, Erickson v. Pardus, 551 U.S.
4 89, 94 (2007), and construe the complaint in the light most favorable to the plaintiff, see Papasan
5 v. Allain, 478 U.S. 265, 283 (1986). The court is not, however, required to accept as true
6 “conclusory [factual] allegations that are contradicted by documents referred to in the complaint,”
7 or “legal conclusions merely because they are cast in the form of factual allegations.” Paulsen v.
8 CNF Inc., 559 F.3d 1061, 1071 (9th Cir. 2009).

9 A complaint must not contain lengthy introductions, argument, speeches, explanations,
10 stories, griping, evidence, summaries, charts, notes, e-mails, and the like. See McHenry v.
11 Renne, 84 F.3d 1172, 1176-78 (9th Cir. 1996). This is because a complaint documentary
12 evidence may be presented at a later point in the case. See Id. Further, the practice of
13 “incorporat[ing] each preceding paragraph, regardless of relevancy [has] been harshly criticized
14 as a form of ‘shotgun pleading’ that violates Rule 8's requirement of a ‘short and plain statement’
15 and interferes with the court's ability to administer justice.” Destfino v. Kennedy, 2008 WL
16 4810770, at *3 (E.D. Cal. Nov. 3, 2008).

17 **II. Analysis**

18 Plaintiff’s complaint consists of roughly three pages of incoherent text. It begins, “beyond
19 and infinite bond of white diamond blue nite [sic] ct [sic]”. (ECF No. 1 at 1.) On the second and
20 third pages, plaintiff writes, “achievement vs. no achievement,” and makes reference to various
21 diamonds, a purple heart award, medal of honor, and “Gimizdo Number.” (Id. at 2-3.) The
22 fourth page states “I win all US government free money and free benefits such as Medical,
23 Medicare, and etc and profit.” (Id. at 4.) The court cannot discern any plausible facts that support
24 a basis for relief under any legal theory. Accordingly, the undersigned finds the complaint is
25 frivolous and therefore recommends dismissal. Rule 12(h)(3).

26 Based on the contents of the complaint, it is clear that further amendment would be
27 futile. Therefore, the undersigned recommends that this action be dismissed without leave to
28 amend. California Architectural Bldg. Prod., 818 F.2d at 1472 (stating futility of amendment is a

1 valid reason to deny leave to amend).

2 **ORDER AND RECOMMENDATIONS**

3 Accordingly, IT IS HEREBY ORDERED that:

- 4 1. Plaintiff's IFP application is GRANTED; and
- 5 2. In light of the above, all pleading, discovery, and motion practice in this action are
- 6 STAYED pending resolution of these findings and recommendations. Other than
- 7 objections to the findings and recommendations or non-frivolous motions for
- 8 emergency relief, the court will not entertain or respond to any pleadings or motions
- 9 until the findings and recommendations are resolved

10 Further, it is RECOMMENDED that:

- 11 1. The action be DISMISSED WITH PREJUDICE;
- 12 2. The Clerk of Court be directed to CLOSE this case.

13 These findings and recommendations are submitted to the United States District Judge assigned to

14 the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14) days after

15 being served with these findings and recommendations, plaintiff may file written objections with


16 the court. Such a document should be captioned "Objections to Magistrate Judge's Findings and

17 Recommendations." Plaintiff is advised that failure to file objections within the specified time

18 may waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455

19 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

20 Dated: May 16, 2023

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23 KENDALL J. NEWMAN
24 UNITED STATES MAGISTRATE JUDGE

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