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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CASSANDRA B. CHARLES,  
Plaintiff,  
v.  
U.S. OFFICE OF PERSONNEL  
MANAGEMENT, et. al.,  
Defendants.

No. 2:23-cv-02200 DAD AC PS

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 filed a request for leave to proceed in forma pauperis (“IFP”) pursuant to 28 U.S.C. § 1915, and that motion was previously granted. See 28 U.S.C. § 1915(a)(1), ECF No. 3. The court rejected plaintiff’s original complaint pursuant to the screening process associated with IFP status, but granted leave to amend. ECF No. 3. Plaintiff has now filed her first amended complaint, which she titled “Short and Plain Statement.” ECF No. 4.

I. SCREENING STANDARDS

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).

1 Plaintiff must assist the court in determining whether or not the complaint is frivolous, by drafting  
2 the complaint so that it complies with the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”).  
3 Under the Federal Rules of Civil Procedure, the complaint must contain (1) a “short and plain  
4 statement” of the basis for federal jurisdiction (that is, the reason the case is filed in this court,  
5 rather than in a state court), (2) a short and plain statement showing that plaintiff is entitled to  
6 relief (that is, who harmed the plaintiff, and in what way), and (3) a demand for the relief sought.  
7 Fed. R. Civ. P. 8(a). Plaintiff’s claims must be set forth simply, concisely and directly. Fed. R.  
8 Civ. P. 8(d)(1).

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). To state a claim on which relief may be granted, the plaintiff must  
26 allege enough facts “to state a claim to relief that is plausible on its face.” Twombly, 550 U.S. at  
27 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the

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1 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”  
2 Iqbal, 556 U.S. at 678.

3 A pro se litigant is entitled to notice of the deficiencies in the complaint and an  
4 opportunity to amend unless the complaint’s deficiencies could not be cured by amendment. See  
5 Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987).

## 6 II. SCREENING THE AMENDED COMPLAINT

7 Plaintiff asserts that federal jurisdiction exists because the parties are part of the Federal  
8 Government, though plaintiff does not expressly identify the parties. ECF No. 4 at 1. Plaintiff  
9 alleges she is entitled to relief because the U.S. Office of Personnel Management and its  
10 employees are responsible for “providing vested annuities retirement payment per contract.” Id.  
11 Plaintiff states that the new online portal for account holders has caused a range of problems and  
12 complaints that include access and payment issues, including retirement fund transfers not being  
13 sent to individual banking accounts. Id. Plaintiff alleges she has been unable to access her  
14 account funds, has experienced long wait times when trying to contact the office, and still has not  
15 received her account information, annuity payments, or her 1099 R statements. Id. at 1-2.  
16 Plaintiff seeks a lump sum annuity retirement payout, a future payout, and access to her annuity  
17 retirement account. Id. at 2. Plaintiff does not identify any specific legal cause of action.

18 Plaintiff’s First Amended Complaint cannot be served because it does not state any legal  
19 cause of action upon which relief can be granted. “Failure to state a claim under § 1915A  
20 incorporates the familiar standard applied in the context of failure to state a claim under Federal  
21 Rule of Civil Procedure 12(b)(6).” Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th Cir. 2012)  
22 (citations omitted). To survive dismissal for failure to state a claim, a complaint must contain  
23 more than “a formulaic recitation of the elements of a cause of action;” it must contain factual  
24 allegations sufficient “to raise a right to relief above the speculative level.” Twombly, 550 U.S.  
25 at 555 (citations omitted). “[T]he pleading must contain something more ... than ... a statement of  
26 facts that merely creates a suspicion [of] a legally cognizable right of action.” Id. (alteration in  
27 original) (quoting 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure §  
28 1216 (3d ed. 2004)).



1 n.4 (2009) (“[n]ormally, an amended complaint supersedes the original complaint”) (citing 6 C.  
2 Wright & A. Miller, Federal Practice & Procedure § 1476, pp. 556-57 (2d ed. 1990)). Therefore,  
3 an amended complaint, as in an original complaint, each claim and the involvement of each  
4 defendant must be sufficiently alleged.

#### 5 IV. PLAIN LANGUAGE SUMMARY FOR PRO SE PLAINTIFF

6 Your amended complaint cannot be served because it is incomplete and because it does  
7 not identify any legal causes of action. You are being given a final opportunity to submit an  
8 amended complaint that this court can serve. You must file this second amended complaint  
9 within 30 days. The second amended complaint should be simple, concise, and direct. You  
10 should provide information that clearly states (1) the basis for federal jurisdiction, (2) the alleged  
11 harm you suffered and how each defendant harmed you, and (3) the laws that you believe were  
12 violated, and (4) the relief you are seeking. The amended complaint should briefly provide the  
13 necessary information, following the directions above.

#### 14 V. CONCLUSION

15 Accordingly, IT IS HEREBY ORDERED that:

16 1. The first amended complaint (ECF No. 4) fails to state a claim upon which relief can be  
17 granted and will not be served;

18 2. Plaintiff must file a second amended complaint within 30 days from the date of this order.

19 If plaintiff fails to timely comply with this order, the undersigned may recommend that this action  
20 be dismissed for failure to prosecute.

21 IT IS SO ORDERED.

22 DATED: November 14, 2023

23   
24 ALLISON CLAIRE  
25 UNITED STATES MAGISTRATE JUDGE  
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