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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SHANNON O. MURPHY, Sr.,
Plaintiff,
v.
STACY WITBECK,
Defendant.

No. 2:25-cv-00506-DAD-SCR

ORDER

Plaintiff is proceeding pro se in this action, which was accordingly referred to the undersigned pursuant to Local Rule 302(c)(21). Plaintiff has filed a request for leave to proceed in forma pauperis (“IFP”) and 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. However, for the reasons provided below, the Court finds Plaintiff’s complaint is legally deficient and will grant Plaintiff leave to file an amended complaint.

I. SCREENING

A. Legal Standard

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). In reviewing the complaint, the Court is guided by the requirements of the Federal Rules of Civil

1 Procedure. The Federal Rules of Civil Procedure are available online at [www.uscourts.gov/rules-](http://www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-civil-procedure)
2 [policies/current-rules-practice-procedure/federal-rules-civil-procedure](http://www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-civil-procedure).

3 Under the Federal Rules of Civil Procedure, the complaint must contain (1) a “short and
4 plain statement” of the basis for federal jurisdiction (that is, the reason the case is filed in this
5 court, rather than in a state court), (2) a short and plain statement showing that plaintiff is entitled
6 to relief (that is, who harmed the plaintiff, and in what way), and (3) a demand for the relief
7 sought. Fed. R. Civ. P. 8(a). Plaintiff’s claims must be set forth simply, concisely and directly.
8 Fed. R. Civ. P. 8(d)(1). Forms are available to help pro se plaintiffs organize their complaint in
9 the proper way. They are available at the Clerk’s Office, 501 I Street, 4th Floor (Rm. 4-200),
10 Sacramento, CA 95814, or online at www.uscourts.gov/forms/pro-se-forms.

11 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
12 *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). In reviewing a complaint under this standard, the
13 court will (1) accept as true all of the factual allegations contained in the complaint, unless they
14 are clearly baseless or fanciful, (2) construe those allegations in the light most favorable to the
15 plaintiff, and (3) resolve all doubts in the plaintiff’s favor. *See Neitzke*, 490 U.S. at 327; *Von*
16 *Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960 (9th Cir. 2010), *cert.*
17 *denied*, 564 U.S. 1037 (2011).

18 The court applies the same rules of construction in determining whether the complaint
19 states a claim on which relief can be granted. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (court
20 must accept the allegations as true); *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974) (court must
21 construe the complaint in the light most favorable to the plaintiff). Pro se pleadings are held to a
22 less stringent standard than those drafted by lawyers. *Erickson*, 551 U.S. at 94. However, the
23 court need not accept as true legal conclusions, even if cast as factual allegations. *See Moss v.*
24 *U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009). A formulaic recitation of the elements of
25 a cause of action does not suffice to state a claim. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544,
26 555-57 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

27 To state a claim on which relief may be granted, the plaintiff must allege enough facts “to
28 state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. “A claim has

1 facial plausibility when the plaintiff pleads factual content that allows the court to draw the
2 reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at
3 678. A pro se litigant is entitled to notice of the deficiencies in the complaint and an opportunity
4 to amend, unless the complaint’s deficiencies could not be cured by amendment. *See Akhtar v.*
5 *Mesa*, 698 F.3d 1202, 1213 (9th Cir. 2012).

6 B. The Complaint

7 Plaintiff’s complaint names one defendant, Stacy Witbeck. Plaintiff’s jurisdictional
8 statement states: “Defendant(s), perform business attends this court responsible.” ECF No. 1 at 1.
9 Plaintiff states venue is appropriate because he seeks a “grand award” that exceeds \$79,000.¹ *Id.*
10 Plaintiff states his causes of action are: 1) injury; 2) breach of contract; 3) negligence; 4)
11 discrimination; and 5) assault. *Id.* at 2. Plaintiff appears to allege he was caused some
12 undescribed injury that has lasted 8 years. *Id.* His breach of contract claim concerns an
13 allegation of events in 2016 and 2017. *Id.* The allegations are unclear, but it may be that
14 Defendant is an employee of AIG Insurance. Plaintiff’s entire allegation of discrimination is:
15 “Defendants did discriminate fair provisions should be apply available plaintiff while he was
16 attends injury claim court.” *Id.* Plaintiff’s assault claim states Defendant “did commit acts to
17 assault” and mentions the sending of a rude email. *Id.*

18 C. Analysis

19 The complaint does not sufficiently plead a basis for federal jurisdiction. Plaintiff does
20 not plead a federal statute upon which his claim is based. As Plaintiff mentions the amount
21 exceeding \$79,000, he may be attempting to base jurisdiction on diversity of citizenship, but
22 Plaintiff does not allege his citizenship or that of Defendant.² Plaintiff and Defendant must be
23 citizens of different states for diversity jurisdiction. *See Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68
24 (1996) (diversity jurisdiction requires “complete diversity of citizenship” where “the citizenship
25 of each plaintiff is diverse from the citizenship of each defendant.”).

26 _____
27 ¹ The amount in controversy is not relevant to the venue determination. *See* 28 U.S.C. § 1391.

28 ² The Civil Cover Sheet submitted by Plaintiff states that there is federal question jurisdiction, and the boxes are checked indicating both Plaintiff and Defendant are citizens of California. ECF No. 1-1.

1 paragraph having its own number, and no paragraph number being repeated anywhere in the
2 complaint. Each paragraph should be limited “to a single set of circumstances” where
3 possible. Rule 10(b). As noted above, forms are available to help plaintiffs organize their
4 complaint in the proper way. They are available at the Clerk’s Office, 501 I Street, 4th Floor
5 (Rm. 4-200), Sacramento, CA 95814, or online at www.uscourts.gov/forms/pro-se-forms.

6 The amended complaint must not force the Court or the Defendant to guess at what is
7 being alleged against whom. *See McHenry v. Renne*, 84 F.3d 1172, 1177-80 (9th Cir. 1996)
8 (affirming dismissal of a complaint where the district court was “literally guessing as to what
9 facts support the legal claims being asserted against certain defendants”). The amended
10 complaint should contain specific allegations as to the actions of each named defendant.

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

20 Plaintiff’s amended complaint must also clarify whether the intended plaintiff is Shannon
21 O. Murphy as an individual, or the plaintiff is Sheetmetal & Associates. The complaint’s caption
22 lists Mr. Murphy dba Sheetmetal & Associates. An individual may appear pro se, but a
23 corporation must appear through counsel. *See CLD Const. Inc. v. City of San Ramon*, 120
24 Cal.App.4th 1141, 1145 (Cal. Ct. App. 2004) (“However, under a long-standing common law rule
25 of procedure, a corporation, unlike a natural person, cannot represent itself before courts of record
26 in propria persona, nor can it represent itself through a corporate officer, director or other
27 employee who is not an attorney. It must be represented by licensed counsel in proceedings
28 before courts of record.”). !

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III. 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 addresses the defects set forth above. The amended complaint must include a sufficient jurisdictional statement and comply with Rule 8. If Plaintiff fails to timely comply with this order, the undersigned may recommend that this action be dismissed.
3. Alternatively, if Plaintiff no longer wishes to pursue this action, Plaintiff may file a notice of voluntary dismissal of this action pursuant to Rule 41 of the Federal Rules of Civil Procedure.

SO ORDERED.

DATED: March 6, 2025



SEAN C. RIORDAN
UNITED STATES MAGISTRATE JUDGE