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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SIDNEY THEODORE SCARLETT,
Plaintiff,
v.
THE COUNTY OF SANTA CLARA, et al.,
Defendants.

Case No. 16-CV-05418-LHK

**ORDER GRANTING LEAVE TO
AMEND COMPLAINT**

Re: Dkt. No. 9

On October 3, 2016, the Court denied Plaintiff’s motion for leave to proceed in forma pauperis on the ground that Plaintiff’s complaint was legally and factually frivolous. ECF No. 9. Under 28 U.S.C. § 1915(e), denial of leave to proceed in forma pauperis operated as a “dismissal of the complaint.” *Rodriguez v. Steck*, 795 F.3d 1187, 1188 (9th Cir. 2015). However, the Court’s October 3, 2016, order did not state whether the dismissal was with or without leave to amend.

The Court therefore grants Plaintiff leave to amend Plaintiff’s complaint. Although the complaint “has made no particular factual allegations against Defendants, and the legal arguments Plaintiff makes are entirely irrelevant,” ECF No. 9 at 2, it is not “absolutely clear that no amendment can cure the defect[s]” in the complaint. *Lucas v. Dep’t of Corr.*, 66 F.3d 245, 248 (9th Cir.1995) (per curiam). In these circumstances, Plaintiff is entitled to “an opportunity to amend

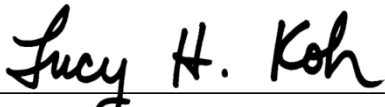
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prior to dismissal of the action” with prejudice. *Id.*

Therefore, the Court orders that Plaintiff shall file an amended complaint remedying the defects identified in the Court’s October 3, 2016 order within 21 days of this November 2, 2016 order or face dismissal of this action with prejudice.

IT IS SO ORDERED.

Dated: November 2, 2016



LUCY H. KOH
United States District Judge