

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

EMPRESS ALEXANDRIYAH
APHRODITE aka DANTE SEARS
et al.,

ALLISON REGO et al.,

Plaintiffs,

Defendants.

Case No.: 22-CV-1597 JLS (DEB)

**ORDER (1) DENYING PLAINTIFF'S
APPLICATION TO PROCEED IN
DISTRICT COURT WITHOUT
PREPAYING FEES OR COSTS AND
(2) DISMISSING WITHOUT
PREJUDICE COMPLAINT**

(ECF Nos. 1 & 2)

Presently before the Court are Plaintiffs Empress Alexandriyah Aphrodite aka Dante Sears (“Aphrodite”); Rancho Del Sol Estates LP (“RDSELP”); and Sovereign Nation of CXQTA Autochthons’s (the “Tribe”) (collectively, “Plaintiffs”)¹ Complaint and Request for Injunction (“Compl.,” ECF No. 1) and Aphrodite’s Application to Proceed in District Court Without Prepaying Fees or Costs (“IFP Appl.,” ECF No. 2). Having carefully

¹ The Court notes that, under this District's Civil Local Rules, “[o]nly natural persons representing their individual interests in propria persona may appear in court without representation by an attorney,” and “[a]ll other parties, including corporations, partnerships and other legal entities, may appear in court only through an attorney.” S.D. Cal. CivLR 83.3(j). Plaintiffs’ Civil Cover Sheet indicates “N/A,” “Pro Solido,” “in divina” in the space provided to identify Plaintiffs’ attorneys. *See* ECF No. 1-1. While Aphrodite may represent herself, both RDSELP and the Tribe may not. Plaintiffs are advised that, should they seek to continue this action, RDSELP and the Tribe must obtain counsel to represent them.

1 considered Plaintiffs' Complaint, Aphrodite's IFP Application, and the applicable law, the
 2 Court **DENIES** Aphrodite's IFP Application and **DISMISSES WITHOUT PREJUDICE**
 3 Plaintiffs' Complaint for the reasons that follow.

4 ***IN FORMA PAUPERIS APPLICATION***

5 All parties instituting any civil action, suit, or proceeding in a district court of the
 6 United States, except an application for writ of habeas corpus, must pay a filing fee of
 7 \$402.² *See* 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff's failure to
 8 prepay the entire fee only if she is granted leave to proceed *in forma pauperis* ("IFP")
 9 pursuant to 28 U.S.C. § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir.
 10 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). Although the statute does
 11 not specify the qualifications for proceeding IFP, the plaintiff's affidavit must allege
 12 poverty with some particularity. *Escobeda v. Applebees*, 787 F.3d 1226, 1234 (2015).
 13 Granting a plaintiff leave to proceed IFP may be proper, for example, when the affidavit
 14 demonstrates that paying court costs will result in a plaintiff's inability to afford the
 15 "necessities of life." *Id.* The affidavit, however, need not demonstrate that the plaintiff is
 16 destitute. *Id.*

17 Here, Aphrodite notes that she is "the Leader of a Foreign Tribal Government," and
 18 that "Money, as defined by Constitution for the United States, et al.; is silver and gold, of
 19 which I have none." IFP Appl. at 5. Aphrodite simply writes "N/A" in nearly all the spaces
 20 provided on the form, including for income, employer, assets, and expenses. *See generally*
 21 *id.* Accordingly, the Court is unable, based on the information (or lack thereof) provided,
 22 to determine whether Aphrodite would be unable to afford the necessities of life should she
 23 be required to pay the requisite filing fee. The Court finds it incredible that Aphrodite has
 24 no assets, income, expenses, or debts whatsoever, whether in gold and/or silver or U.S.

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 27 ² In addition to the \$350 statutory fee, civil litigants must pay an additional administrative fee of \$52.
 28 *See* 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule, § 14
 (eff. Dec. 1, 2020)). The additional \$52 administrative fee does not apply to persons granted leave to
 proceed *in forma pauperis*. *Id.*

1 dollars. *Corbin-Bey v. All Parties in Evidence & Principles of Subsidiaries*, No. CV 17-
 2 5400, 2017 WL 11541165, at *1 (E.D. Pa. Dec. 6, 2017) (“Quite simply, nothing in [the
 3 plaintiff]’s financial affidavit reflects that [s]he is eligible for *in forma pauperis* status,
 4 including h[er] allegation that [s]he does not possess any gold or silver coins.”) (citation
 5 omitted). Accordingly, given its deficiency, the Court **DENIES WITHOUT**
 6 **PREJUDICE** Aphrodite’s IFP Application.³

7 **SCREENING PURSUANT TO 28 U.S.C. § 1915(e)(2)**

8 **I. Standard of Review**

9 Because Aphrodite seeks to proceed IFP, her Complaint requires a pre-answer
 10 screening pursuant to 28 U.S.C. § 1915(e)(2). *See, e.g., Calhoun v. Stahl*, 254 F.3d 845,
 11 845 (9th Cir. 2002) (per curiam) (holding 28 U.S.C. § 1915(e)(2) screening applies to non-
 12 prisoners proceeding IFP); *see also Lopez v. Smith*, 203 F.3d 1122, 1126–27 (9th Cir. 2000)
 13 (en banc) (discussing 28 U.S.C. § 1915(e)(2)). Under this statute, the Court *sua sponte*
 14 must dismiss a complaint, or any portion of it, that is frivolous, malicious, fails to state a
 15 claim, or seeks damages from immune defendants. *See Lopez*, 203 F.3d at 1126–27. “The
 16 purpose of [screening] is ‘to ensure that the targets of frivolous or malicious suits need not
 17 bear the expense of responding.’” *Nordstrom v. Ryan*, 762 F.3d 903, 920 n.1 (9th Cir.
 18 2014) (citations omitted).

19 “The standard for determining whether a plaintiff has failed to state a claim upon
 20 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of
 21 Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*, 668 F.3d
 22 1108, 1112 (9th Cir. 2012). Rule 12(b)(6) requires a complaint “contain sufficient factual
 23 matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v.*
 24 *Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted); *Wilhelm*, 680 F.3d at

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 26 ³ The Court further notes that the IFP Application appears to have been submitted only by and on behalf
 27 of Aphrodite, *see generally* IFP Appl., and “that IFP status is only available to natural persons and not to
 28 ‘artificial entities’ such as corporations,” *Climate Change Truth Inc. v. Abbott*, No. 3:22-CV-00739-HZ,
 2022 WL 2117685, at *1 (D. Or. June 9, 2022) (citing *Rowland v. Cal. Men’s Colony*, 506 U.S. 194, 211–
 12 (1993)).

1 1121. Detailed factual allegations are not required, but “[t]hreadbare recitals of the
 2 elements of a cause of action, supported by mere conclusory statements, do not suffice.”
 3 *Iqbal*, 556 U.S. at 678. “Determining whether a complaint states a plausible claim for relief
 4 [is] . . . a context-specific task that requires the reviewing court to draw on its judicial
 5 experience and common sense.” *Id.* The “mere possibility of misconduct” or “unadorned,
 6 the defendant-unlawfully-harmed me accusation[s]” fall short of meeting this plausibility
 7 standard. *Id.*; *see also Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009).

8 “When a court does not have jurisdiction to hear an action, the claim is considered
 9 frivolous.” *Johnson v. E. Band Cherokee Nation*, 718 F. Supp. 6, 6 (N.D.N.Y. 1989).
 10 Moreover, “[t]he Court has an independent obligation to determine whether it has subject-
 11 matter jurisdiction.” *Cox v. Lee*, No. CV-20-0275-PHX-DMF, 2020 WL 1904625, at *2
 12 (D. Ariz. Apr. 17, 2020) (citing *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583
 13 (1999)); *see also Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 434 (2011)
 14 (“[F]ederal courts have an independent obligation to ensure that they do not exceed the
 15 scope of their jurisdiction, and therefore they must raise and decide jurisdictional questions
 16 that the parties either overlook or elect not to press.”) (citation omitted). Pursuant to
 17 Federal Rule of Civil Procedure 12(h)(3), “[i]f the court determines at any time that it lacks
 18 subject-matter jurisdiction, the court **must** dismiss the action” (emphasis added). As the
 19 plain language of Rule 12(h)(3) suggests, this requirement is mandatory. *See Arbaugh v.*
 20 *Y&H Corp.*, 546 U.S. 500, 514 (2006) (noting that “subject-matter jurisdiction, because it
 21 involves a court’s power to hear a case, can never be forfeited or waived; therefore, “when
 22 a federal court concludes that it lacks subject-matter jurisdiction, the court must dismiss
 23 the complaint in its entirety”) (internal quotations and citation omitted).

24 Courts have a duty to construe a *pro se* litigant’s pleadings liberally. *See Karim-*
 25 *Panahi v. L.A. Police Dep’t*, 839 F.2d 621, 623 (9th Cir. 1988). The district court should
 26 grant leave to amend if it appears “at all possible that the plaintiff can correct the defect,”
 27 unless the court determines that “the pleading could not possibly be cured by the allegation

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1 of other facts.” *Lopez*, 203 F.3d at 1130–31 (citing *Doe v. United States*, 58 F.3d 494, 497
 2 (9th Cir. 1995); *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 701 (9th Cir. 1990)).

3 **II. Plaintiffs’ Allegations**

4 Plaintiffs’ Complaint is not a model of clarity; however, it seemingly alleges that
 5 Plaintiffs possess a grant deed to certain property that constitutes the Tribe’s reclaimed
 6 sovereign territory that was “stolen” by the United States government in 1939. Compl. at
 7 5.⁴ Plaintiffs claim that “Defendants are attempting to Seize the Territory in a court action
 8 against a TENANT who formerly owned the property.” *Id.* Plaintiffs claim that
 9 “Defendants continue to stalk, harass, intimidate, and collude to commit FRAUD, breaking
 10 laws they are subject to.” *Id.* Plaintiffs seek injunctive relief, a default judgment in the
 11 amount of \$2,183,555,548.00 for trespass, and “Stand Down Orders to North County, Vista
 12 Sheriff(s) for all matters regarding the Territory.” *Id.*

13 Plaintiffs indicate that the bases for this Court’s jurisdiction are federal questions
 14 premised on the Supremacy and Contract Clauses of the U.S. Constitution and diversity of
 15 citizenship. *Id.* at 3. In the Civil Cover Sheet, Plaintiffs also assert a cause of action based
 16 on 18 U.S.C. § 242 (“Deprivation of Rights Under Color of Law (Against a Foreign
 17 State)”). ECF No. 1-1. Plaintiffs indicate that the Tribe is a sovereign nation and/or foreign
 18 state; Aphrodite, who has a California mailing address, is the Tribe’s “Chieftess”; and
 19 RDSELP “is incorporated under the laws of the State of UTAH and has its principal place
 20 of business in the State of UTAH.” Compl. at 1, 3.

21 **III. Analysis**

22 The Court finds that Plaintiffs’ Complaint must be dismissed because it does not
 23 appear that the Court has jurisdiction over Plaintiffs’ claims. First, diversity jurisdiction
 24 requires “that the parties be in complete diversity,” *Matheson v. Progressive Specialty Ins.*
 25 *Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003), meaning “all plaintiffs must have citizenship

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 28 ⁴ In citing to the Complaint, the Court references the blue numbers stamped in the upper righthand corner
 by CM/ECF.

1 different than all defendants,” *Mireles v. Wells Fargo Bank, N.A.*, 845 F. Supp. 2d 1034,
 2 1057 (C.D. Cal. 2012). Plaintiffs, however, fail to allege adequately complete diversity
 3 among the Parties. Ninth Circuit law is clear “that an unincorporated Indian tribe is not a
 4 citizen of any state” and is therefore not subject to diversity jurisdiction. *See Am. Vantage*
 5 *Companies, Inc. v. Table Mtn. Rancheria*, 292 F.3d 1091, 1098 (9th Cir.), *as amended on*
 6 *denial of reh’g* (July 29, 2002). “[N]otwithstanding the joinder of other diverse parties,
 7 the presence of an Indian tribe destroys complete diversity.” *Grand Canyon Skywalk Dev.,*
 8 *LLC v. Hualapai Indian Tribe of Ariz.*, 966 F. Supp. 2d 876, 881 (D. Ariz. 2013) (citations
 9 omitted). Because Plaintiffs do not allege that the Tribe is incorporated, the Court
 10 concludes on the face of the Complaint that the Tribe is a stateless party that destroys
 11 diversity.

12 Second, it does not appear that the Complaint raises any federal questions. Despite
 13 Plaintiffs’ invocation of various provisions of the Constitution, the claims appear to be
 14 state-law causes of action for, among other things, fraud and trespass. And, while Plaintiffs
 15 profess to bring a claim under 18 U.S.C. § 242, “Plaintiff[s] cannot bring criminal charges
 16 against defendants through a private lawsuit, and these sections do not give rise to a civil
 17 cause of action.” *Shahin v. Darling*, 606 F. Supp. 2d 525, 538 (D. Del.) (citing *U.S. ex rel.*
 18 *Savage v. Arnold*, 403 F. Supp. 172 (E.D. Pa. 1975)), *aff’d*, 350 F. App’x 605 (3d Cir.
 19 2009).

20 Third, while Plaintiffs do not assert the presence of a United States government
 21 defendant as a basis for this Court’s jurisdiction, *see generally* Compl.; ECF No. 1-1, the
 22 Court notes that Merrick Garland is among the many Defendants named in this action. *See*
 23 Compl. at 11. However, Plaintiffs do not specify whether Merrick Garland is sued in his
 24 personal or professional capacity or the basis of their claims against him. *See generally*
 25 Compl. Accordingly, the Court finds that the Complaint also fails to adequately allege
 26 jurisdiction premised on the presence of the United States as a party.

27 Fourth, it would seem Plaintiffs’ claims potentially are barred by the *Rooker-*
 28 *Feldman* doctrine. “Under *Rooker–Feldman*, a federal district court does not have subject

1 matter jurisdiction to hear a direct appeal from the final judgement of a state court.” *Noel*
 2 *v. Hall*, 341 F.3d 1148, 1154 (9th Cir. 2003); *see also Rooker v. Fidelity Tr. Co.*, 263 U.S.
 3 413 (1923); *Dist. of Columbia Ct. of Appeals v. Feldman*, 460 U.S. 462 (1983). *Rooker-*
 4 *Feldman* precludes jurisdiction when federal court proceedings arise out of a final state
 5 court determination that is “judicial in nature” and the issues raised are “inextricably
 6 intertwined” with the state court proceedings, making the federal case a *de facto* appeal of
 7 a state court decision. *See Feldman*, 460 U.S. at 476, 486; *see also Pennzoil Co. v. Texaco*,
 8 Inc., 481 U.S. 1, 25 (1987) (Marshall, J., concurring) (noting that a claim is inextricably
 9 intertwined “if the federal claim succeeds only to the extent that the state court wrongly
 10 decided the issues before it”). The *Rooker-Feldman* jurisdictional bar applies even if the
 11 complaint raises federal constitutional issues. *Feldman*, 460 U.S. at 483 n.16, 486;
 12 *Henrichs v. Valley View Dev.*, 474 F.3d 609, 613 (9th Cir. 2007). The district court lacks
 13 subject matter jurisdiction if the relief requested requires “‘a mere revision of the errors
 14 and irregularities, or of the legality and correctness’ of the state court judgment, not the
 15 ‘investigation of a new case arising upon new facts.’” *MacKay v. Pfeil*, 827 F.2d 540, 545
 16 (9th Cir. 1987) (quoting *Barrow v. Hunton*, 99 U.S. (9 Otto) 80, 82–83 (1878)). Again, the
 17 allegations of the Complaint are far from clear; however, Plaintiffs appear to be contesting
 18 the validity of actions taken by Defendants pursuant to a case pending in the California
 19 Superior Court. *See* Compl. at 3; ECF No. 1-1 (providing 37-2015-0043052-CU-PO-CTL
 20 as a related case). Given that Plaintiffs argue that Defendants are wrongfully attempting
 21 to seize the alleged Tribal territory, it would appear that Plaintiffs’ claims may contest the
 22 propriety of a state-court decision concerning Plaintiffs’ property rights and therefore may
 23 be barred by *Rooker-Feldman*.

24 Even overlooking these fundamental and significant jurisdictional flaws, the Court
 25 finds that the Complaint as presently pleaded is frivolous. Plaintiffs’ claims appear to rely
 26 on a variation of the “sovereign citizen” movement. *See generally* Compl. However,
 27 “[c]ourts across the country have uniformly rejected such ‘sovereign citizen’ theories as
 28 frivolous, irrational, or unintelligible.” *Bey v. Geiser*, No. EDCV19844JGBKKX, 2019

1 WL 12447340, at *1 (C.D. Cal. May 21, 2019) (collecting cases). Ultimately, Plaintiffs'
 2 factual allegations are implausible and fail to state any actionable claim; therefore, the
 3 Complaint is subject to dismissal.

4 **CONCLUSION**

5 In light of the foregoing, the Court **DENIES** Aphrodite's IFP Application and
 6 **DISMISSES WITHOUT PREJUDICE** Plaintiffs' Complaint pursuant to 28 U.S.C.
 7 § 1915(e)(2).

8 Plaintiffs may reopen this matter by both (1) paying the requisite filing fees and (2)
 9 filing an amended complaint curing the deficiencies noted above, on or before December
 10 1, 2022. Any amended complaint must be complete in itself, without reference to
 11 Plaintiffs' original Complaint. Any claim not realleged in Plaintiffs' amended complaint
 12 will be considered waived. *See* S.D. Cal. CivLR 15.1; *Hal Roach Studios, Inc. v. Richard*
 13 *Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) ("[A]n amended pleading
 14 supersedes the original."); *see also Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir.
 15 2012) (noting that claims dismissed with leave to amend which are not realleged in an
 16 amended pleading may be "considered waived").

17 ***Should Plaintiffs fail to pay the requisite filing fees and/or fail to file an amended
 18 complaint on or before December 1, 2022, the Court will enter a final Order dismissing
 19 this civil action without prejudice based on Plaintiffs' failure to pay the necessary civil
 20 filing fees, Plaintiffs' failure to state a claim upon which relief can be granted pursuant
 21 to 28 U.S.C. § 1915(e)(2), Plaintiffs' failure to prosecute in compliance with a court
 22 order requiring amendment, and this Court's lack of subject-matter jurisdiction. See
 23 Lira v. Herrera***, 427 F.3d 1164, 1169 (9th Cir. 2005) ("If a plaintiff does not take advantage

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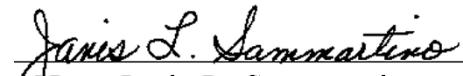
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1 of the opportunity to fix his complaint, a district court may convert the dismissal of the
2 complaint into dismissal of the entire action.”).

3 **IT IS SO ORDERED.**

4 Dated: November 21, 2022


5 Hon. Janis L. Sammartino
6 United States District Judge

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