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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANNE SABETTA, et al.

Plaintiffs,

No. 2:08-cv-2181 JAM KJN PS

v.

THE NATIONAL RAILROAD
PASSENGER CORP., dba AMTRAK,
et al.,

ORDER AND
FINDINGS AND RECOMMENDATIONS

Defendants.

_____/

Plaintiffs, who are proceeding without counsel, filed their complaint on September 16, 2008.¹ (Dkt. No. 1.) Following the plaintiffs submission of the appropriate in forma pauperis applications, on May 26, 2009, this court granted the plaintiffs' request to proceed in forma pauperis. (Dkt. No. 9.). In that same order, the court reviewed the in forma pauperis pro se complaint pursuant to 28 U.S.C. § 1915(e)(2), and dismissed plaintiffs' complaint with leave to file an amended complaint. On September 3, 2009, plaintiffs filed an

¹ This case was referred to the undersigned pursuant to Eastern District of California Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1), and was reassigned by an order entered February 9, 2010 (Dkt. No. 13).

1 amended complaint. The court now reviews the amended complaint pursuant to 28 U.S.C. §
2 1915(e)(2).

3 The court is permitted to screen complaints brought by parties proceeding in
4 forma pauperis. See 28 U.S.C. § 1915(e)(2); see also Lopez v. Smith, 203 F.3d 1122, 1129 (9th
5 Cir. 2000). Pursuant to 28 U.S.C. § 1915(e)(2), the court is directed to dismiss a case filed
6 pursuant to the in forma pauperis statute if, at any time, it determines that the allegation of
7 poverty is untrue, or if the action is frivolous or malicious, fails to state a claim on which relief
8 may be granted, or seeks monetary relief against an immune defendant.

9 Plaintiffs' amended complaint² arises from attempted travel on an AMTRAK
10 passenger bus from Sacramento, California to Chico, California.³ This complaint⁴ alleges that on
11 September 16, 2006, plaintiff Sabetta purchased an AMTRAK ticket for travel by train from San
12 Jose to Sacramento, and then continuing by bus from Sacramento to Chico. Plaintiff Sabetta was
13 attempting to visit her daughter in Chico.

14 Plaintiff Sabetta states that she is an alcoholic, that she purchased a half-bottle of
15 wine on the train portion of her trip, but that she was not intoxicated. Plaintiff Sabetta alleges
16 that after she commenced the bus portion of her AMTRAK trip to Marysville that she "noticed
17 the bus driver smoking what looks like a cigarette butt - he takes to [sic] puffs and puts it out."
18 Plaintiff Sabetta alleges that she questioned the bus driver about the smoking policy on the bus
19 and that he responded in an angry tone. She claims the bus driver belittled and ridiculed her, and
20 that she said in response "Why are you so mad? I don't care if you smoke, What were you

21 ² The facts as recited herein are gathered from the operative pleading, the plaintiffs' first
22 amended complaint.

23 ³ All cities referenced herein are located in California unless otherwise stated.

24 ⁴ As plaintiffs were specifically cautioned in this court's May 26, 2009 order, "the court
25 cannot refer to prior pleadings in order to make an amended complaint complete. Local Rule 15-
26 220 requires that an amended complaint be complete in itself. . . . Therefore a plaintiff waives all
causes of action alleged in the original complaint which are not alleged in the amended
complaint." (Dkt. No. 9 at 8.)

1 smoking a Joint (Marihuana Cigarette)?” Plaintiff Sabetta states that a woman from the back of
2 the bus walked up and suggested that she leave the bus driver alone, and that Sabetta then moved
3 five rows back and fell asleep. Plaintiff Sabetta contends that when the bus arrived at
4 Marysville, she was sleeping, during which time defendant Squire, the AMTRAK bus driver,
5 called the Marysville police department to complain that he had an unruly passenger on his bus,
6 plaintiff Sabetta.

7 Two officers from the Marysville Police Department arrived at the scene, and
8 after speaking with Sabetta, arrested her for public intoxication pursuant to California Penal
9 Code section 647(f). As stated in the police report attached to plaintiffs’ complaint, defendant
10 Conde, a Marysville police officer, stated that plaintiff was “angry and uncooperative,” “smelled
11 strongly of alcoholic beverages,” “slurred her words,” and “would not answer questions and
12 repeated [sic] yelled that she just wanted to go to Chico.” Defendant Conde stated in his police
13 report that defendant Squire was unwilling to let plaintiff Sabetta continue on the bus, and that
14 when Sabetta exited the bus, she could barely stand, that she staggered, became angry and
15 required restraint by several deputies during intake at the jail.

16 Plaintiff Sabetta alleges that she was not allowed to call her daughter, plaintiff
17 Walker, right away, to let her know that she would not be arriving via AMTRAK as scheduled.
18 It was eventually decided that plaintiff Walker would pick up plaintiff Sabetta from the Yuba
19 County jail the next morning, but Walker was unable to do so because of a family emergency.

20 Plaintiff Sabetta alleges that, upon her release, the Yuba County corrections
21 officers did not help her look up the Greyhound bus schedule (presumably to Chico) and did not
22 “care that \$15.00 maximum cash the County Jail release inmates with, will not punches [sic] a
23 Greyhound Bus ticket to Chico.” Plaintiff Wichelman contends that the Yuba County Sheriff’s
24 department acted with “deliberate indifference to Sabetta’s Health and Safety when released.”

25 Plaintiff Sabetta contends that she was released from custody the next morning,
26 began walking around, purchased a beer, started looking for a phone and became lost. Plaintiff

1 Sabetta then alleges that she was kidnaped by a man, not named as a defendant in this action, at a
2 makeshift campground, and that this man punched and beat her numerous times and kept her
3 against her will for a week.

4 Plaintiff Sabetta then asserts that the Marysville Police Department mishandled
5 her kidnaping investigation and failed to consider the appropriate suspects. Plaintiffs allege that
6 the San Jose Police Department, who is not named as a defendant in this action, searched
7 plaintiff Wichelman's home and car for retaliatory and intimidation purposes. Plaintiffs allege
8 that Sabetta was eventually located by a private investigator hired by plaintiff Wichelman, and
9 that Sabetta was taken to a Marysville hospital.⁵

10 Plaintiffs allege the following "causes of action," which the court characterizes as
11 follows solely for the purpose of screening the complaint: (1) violation of civil rights pursuant to
12 42 U.S.C. § 1983; (2) violation of civil rights pursuant to 18 U.S.C. § 245; (3) false arrest;
13 (4) false imprisonment; (5) deliberate indifference to the health and safety of a person in custody;
14 (6) intentional infliction of emotional distress; and (7) negligent infliction of emotional distress.
15 Plaintiffs also contend that AMTRAK's "Official Stated Policy" regarding its terms of
16 transportation are "too broad, discriminatory and poorly defined and without remedies to protect
17 the passengers." Specifically, plaintiffs argue that AMTRAK's policy fails to treat all passengers
18 equally because "[m]any passengers do become intoxicated while onboard Amtrak Train - the
19 consumption of alcohol is encouraged by Defendant AMTRAK [and] does not erode/diminish a
20 persons [sic] of Constitutional Rights." Plaintiffs also contend that passengers should receive
21 due process before "any alighting is inflicted upon said passengers." Citing California state law,
22 plaintiffs also allege that common carriers have a duty to protect paying passengers from harm
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24 ⁵ Plaintiffs also allege that nine months later plaintiff Sabetta took another AMTRAK
25 train and bus from San Jose to Marysville to meet with "Theresa" from the "Victim Witness
26 Program." Sabetta states that she was placed under house arrest at the Red Court Inn in
Marysville by the Marysville Police Department and that the Marysville Police Department was
uncooperative in helping solve her kidnaping case.

1 and to ensure that they are conveyed to their destinations in a proper manner.

2 Plaintiffs' Claim Under 18 U.S.C. § 245

3 Plaintiffs allege a claim for relief pursuant to 18 U.S.C. § 245(b) and (e). Yet it is
4 well established that this federal criminal statute which permits federal prosecutions for
5 interference with federally protected rights does not confer a private right of action for damages.
6 See Cooley v. Keisling, 45 F. Supp. 2d 818 (D. Or. 1999); John's Insulation, Inc. v. Sisak Constr.
7 Co., 774 F. Supp. 156, 163 (S.D.N.Y. 1991). Section 245 expressly reserves the right of
8 prosecution to government officials. 18 U.S.C. § 245(a)(1). Because plaintiff cannot amend the
9 complaint to assert a valid claim for relief under this section, it is recommended that such claim
10 be dismissed with prejudice.

11 Plaintiffs Karl Wichelman and Bridgette Walker

12 Plaintiffs allege that plaintiff Wichelman is the common law husband of Sabetta
13 and that plaintiff Walker is the daughter of Sabetta. In the first amended complaint, plaintiffs
14 make scant reference to any claims that Wichelman or Walker might possess. This court
15 previously held that the legal basis for plaintiff Wichelman's claims was vague, and that plaintiff
16 Walker had alleged no claims at all. (Dkt. No. 9 at 6-7.) Nothing in plaintiffs' first amended
17 complaint cures these deficiencies. Plaintiff Walker has alleged no claims, and the gravamen of
18 plaintiff Wichelman's injury is still that Sabetta was treated unfairly. These plaintiffs have no
19 standing to raise the claims of co-plaintiff Sabetta. Nat'l Wildlife Fed'n v. Adams, 629 F.2d 587,
20 593 n.11 (9th Cir. 1980) ("[T]he standing question is whether the plaintiff has 'alleged such a
21 personal stake in the outcome of the controversy' as to warrant his invocation of federal-court
22 jurisdiction and to justify the exercise of the court's remedial power on his behalf."). Plaintiffs
23 already amended their complaint after the grant of a sixty day extension of time, and further

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1 amendment as to these two plaintiffs appears futile.⁶ (Dkt. No. 10.) See Conley v. Gibson, 355
2 U.S. 41, 47 (1957); Richmond v. Nationwide Cassel L.P., 52 F.3d 640, 645 (7th Cir. 1995)
3 (holding that an amended complaint with vague and scanty allegations fails to satisfy the notice
4 requirement of Rule 8). Hence, it is recommended that plaintiffs Wichelman and Walker be
5 dismissed from this action with prejudice.

6 Remainder of Amended Complaint

7 The court cannot conclusively determine on the present record that plaintiff
8 Sabetta fails to state a claim on which relief may be granted with respect to the remaining claims
9 alleged. As to the remaining six claims by plaintiff Sabetta, the court reserves decision on these
10 claims until the record is sufficiently developed.⁷ Accordingly, the court will order service of the
11 complaint on the defendants, but will do so by separate order after resolution by the United States
12 District Judge assigned to this case of the undersigned's recommendation below that plaintiffs'
13 section 245 claim be dismissed with prejudice and that plaintiffs Wichelman and Walker be
14 dismissed from this action.

15 Plaintiffs' Request for Counsel

16 Plaintiffs also state within their first amended complaint that they would like court
17 appointed counsel to represent them because "[t]his case involved multiple agency [and] is of a
18 complex nature beyond the abilities of plaintiffs." An expenditure of public funds on behalf of
19 an indigent litigant is proper only when authorized by Congress. Tedder v. Odel, 890 F.2d 210,
20 211-12 (9th Cir. 1989). According to the Ninth Circuit, Wilborn v. Excalderon, 789 F.2d 1328,
21 1331 (9th Cir. 1986), the court may appoint counsel only under exceptional circumstances, which

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23 ⁶ It is further noted that plaintiff Walker did not even sign the amended complaint.
24 Pursuant to Rule 11 of the Federal Rules of Civil Procedure, every pleading "must be signed by
at least one attorney . . . or by a party personally if the party is unrepresented."

25 ⁷ This court may later consider, among other things, whether venue is proper in this court
26 in light of the complaint's referenced District of Columbia forum selection clause, whether the
statute of limitations precludes certain claims and whether certain defendants are entitled to
immunity.

1 includes a finding that a petitioner is unable to articulate his or her claims without the benefit of
2 counsel in light of the complexity of the legal issues involved. The court finds that plaintiffs
3 have not met the showing of extraordinary circumstances required to support such relief.
4 Plaintiffs, despite their pro se status, have adequately articulated their positions with this court on
5 numerous occasions. Appointment of counsel is presently inappropriate based on the facts
6 presented to this court.

7 Plaintiffs' Request for "Forwarding" of the Complaint

8 Finally, plaintiffs request that "copies of this complaint be forwarded to a United
9 States District Attorney to investigate crimes committed against Anne Sabetta and Chairou
10 Garibay." (Dkt. No. 12 at 1.) The court's role is to decide cases before it, and it will not forward
11 copies of plaintiffs' complaint to the requested third parties. Plaintiffs, and not the court, must be
12 responsible for distributing their complaint, or not, as permitted by law. See U.S. v. Gonzales,
13 578 F.3d 1130, 1132 (9th Cir. 2009) (recognizing the court's role as an adjudicative body
14 charged with deciding cases).

15 CONCLUSION

16 For the foregoing reasons, IT IS HEREBY ORDERED that:

17 1. Service of the amended complaint will be ordered by separate order once
18 the United States District Judge assigned to this case has acted upon the recommendation stated
19 below; and

20 2. Plaintiffs request for counsel is DENIED; and

21 3. Plaintiffs' request that copies of the complaint be forwarded to a "United
22 States District Attorney" is DENIED.

23 It is FURTHER RECOMMENDED that:

24 1. Plaintiffs' claims for relief under 18 U.S.C. §§ 245(b) and 245(e) be
25 dismissed with prejudice; and

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