

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

VICTORIA REYES;
JOSE REYES, JR.,

Plaintiffs,

No. 2:09-cv-03114 GEB KJN PS

V.

JOSEPH MODESTO; DAVID JAKABOSKY; MICHELLE DAVIS-TATE; RICHARD WINTERS; and NANCY MEUER

ORDER

Defendants.

Plaintiffs, who are proceeding without counsel, filed their complaint on November 9, 2009.¹ (Dkt. No. 1.) Presently before the court is plaintiffs' third application to proceed without prepayment of fees, or in forma pauperis. (Dkt. No. 7.) For the reasons stated below, the undersigned will grant the application to proceed in forma pauperis, but will dismiss the complaint without prejudice. Plaintiffs will be granted leave to file an amended complaint.

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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. 3).

1 I. Application to Proceed In Forma Pauperis

2 Plaintiff Victoria Reyes has requested leave to proceed in forma pauperis pursuant
3 to 28 U.S.C. § 1915. (Dkt. No. 7.) On two previous occasions, she filed incomplete applications
4 to proceed in forma pauperis, and the court ordered her to submit a third application. Although
5 her third application remains unclear in certain respects, the undersigned is able to conclude that
6 her application and declaration make the showing required by 28 U.S.C. § 1915(a)(1).

7 Accordingly, the undersigned will grant plaintiffs' request to proceed in forma pauperis.

8 II. Screening of the Complaint

9 The determination that a plaintiff may proceed in forma pauperis does not
10 complete the required inquiry. The court is also required to screen complaints brought by parties
11 proceeding in forma pauperis. See 28 U.S.C. § 1915(e)(2); see also Calhoun v. Stahl, 254 F.3d
12 845, 845 (9th Cir. 2001) (per curiam) ("[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not
13 limited to prisoners."); accord Lopez v. Smith, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc).
14 Pursuant to 28 U.S.C. § 1915(e)(2), the court is directed to dismiss a case filed pursuant to the in
15 forma pauperis statute if, at any time, it determines that the allegation of poverty is untrue, or if
16 the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks
17 monetary relief against an immune defendant. See also Lopez, 203 F.3d at 1126-27 ("It is also
18 clear that section 1915(e) not only permits but requires a district court to dismiss an in forma
19 pauperis complaint that fails to state a claim.").

20 Under the "notice pleading" standard of the Federal Rules of Civil Procedure, a
21 plaintiff's complaint must provide, in part, a "short and plain statement" of plaintiff's claims
22 showing entitlement to relief. Fed. R. Civ. P. 8(a)(2); see also Paulsen v. CNF, Inc., 559 F.3d
23 1061, 1071 (9th Cir. 2009). A complaint should be dismissed for failure to state a claim if,
24 taking all well-pleaded factual allegations as true, it does not contain "enough facts to state a
25 claim to relief that is plausible on its face." See Coto Settlement v. Eisenberg, 593 F.3d 1031,
26 1034 (9th Cir. 2010) (quoting Ashcroft v. Iqbal, ____ U.S. ___, 129 S. Ct. 1937, 1949 (2009)).

1 “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to
2 draw the reasonable inference that the defendant is liable for the misconduct alleged.”” Caviness
3 v. Horizon Cmty. Learning Ctr., Inc., 590 F.3d 806, 812 (9th Cir. 2010) (quoting Iqbal, 129 S.
4 Ct. at 1949). The court accepts “all facts alleged as true and construes them in the light most
5 favorable to the plaintiff.” County of Santa Clara v. Astra USA, Inc., 588 F.3d 1237, 1241 n.1
6 (9th Cir. 2009). The court is “not, however, required to accept as true conclusory allegations that
7 are contradicted by documents referred to in the complaint, and [the court does] not necessarily
8 assume the truth of legal conclusions merely because they are cast in the form of factual
9 allegations.” Paulsen, 559 F.3d at 1071 (citations and quotation marks omitted). The court must
10 construe a pro se pleading liberally to determine if it states a claim and, prior to dismissal, tell a
11 plaintiff of deficiencies in the complaint and give the plaintiff an opportunity to cure them if it
12 appears at all possible that the plaintiff can correct the defect. See Lopez, 203 F.3d at 1130-31.

13 Upon review of the complaint, the undersigned will dismiss the complaint for
14 failure to comply with the pleading standards described above. However, plaintiffs will be
15 granted leave to file an amended complaint.

16 The federal civil cover sheet² filed by plaintiffs indicates that they are suing
17 defendants for a violation of their civil rights based on wrongful death. (Dkt. No. 1, Document
18 No. 1-2.) Plaintiffs’ complaint is difficult to understand because it is hand-written and also
19 causes confusion because of a lack of punctuation; however, it appears to allege the following
20 facts: Plaintiff Reyes alleges that on May 30, 2007, she was at her mother’s home in West
21 Sacramento, California. (Pl.’s Compl. at 2.) She alleges that she was on parole in Sacramento

23 ² Attached to plaintiffs’ complaint is civil cover sheet from the Yolo County Superior
24 Court, file stamped August 28, 2009, in case number P009-2286. (Dkt. No. 1 at 4.) The cover
25 sheet indicates that plaintiffs were at some point represented by counsel, Cyrus Zal, and filed a
26 wrongful death complaint against the same named defendants in state court. (Id.) The record
 before the undersigned does not elucidate the status of that litigation, but the presence of a
 pending lawsuit in state court may present questions regarding whether this court has
 jurisdiction, or should exercise jurisdiction, over the federal case.

1 County and that her parole officer was Jerry Brown, who is not named as a defendant. (Id.) She
2 further alleges that:

3 On May 30, 2009, along with others claimant believes that the officers
4 [illegible]^[3] were responsible for causing my unborn daughter Makayla
5 Monigue Reyes to be still born on August 28, 2007 claimant also suffered
6 offied physical injuries when she was violently thrown too ground. Bye
7 officers of West Sacramento . on May 30, 2007 including the loss of one
8 of her front tooth.

9 (Id.) Several aspects of these allegations are unclear such that the complaint does not provide
10 sufficient notice of the conduct that forms the basis of plaintiffs' claims for relief. First, it is
11 unclear whether plaintiffs are alleging that the events leading to plaintiff Reyes's unborn
12 daughter's still-birth took place on May 30, 2007 or May 30, 2009. Furthermore, due to the lack
13 of punctuation it is unclear whether August 28, 2007 was the date of the still-birth or whether
14 August 28, 2007 was the date that plaintiff Reyes was allegedly thrown to the ground and
15 suffered injuries to her tooth. Moreover, it is unclear whether the events that caused the still-
16 birth of plaintiff Reyes's unborn daughter were the same events that led to plaintiff Reyes's other
17 physical injuries.

18 Most importantly, however, is the fact that plaintiffs have completely failed to
19 allege how any of the named defendants—defendants Modesto, Jakabosky, Davis-Tate, Winters,
20 and Meuer—were personally involved in violating their rights. Plaintiffs have the responsibility
21 to allege facts to state a plausible claim for relief. Iqbal, 129 S. Ct. at 1949; Moss v. U.S. Secret
22 Serv., 572 F.3d 962, 969 (9th Cir. 2009). Because plaintiffs do not make any factual allegations
23 as to these defendants, they cannot proceed against these defendants unless they cure these
24 deficiencies in an amended complaint.

25 In the remainder of the one-page complaint, plaintiffs allege the following:
26

27 My daughter died and He said He would help me he oley help . Giving me
28 \$350.00/ as Loan, and my Daughter and son EliJAH Reyes Jada Reyes are

29 ³ The word that the undersigned has characterized as illegible reads: "CmaHaffey." (Pl.'s
30 Compl. at 2.)

still custody at This time NO visits and I work for IHSS 2 Jobs at this Time I've been doing the Best I can and go to School, Wyotech, W Sac 916 533-2147 Please help are family [remainder cut off].

(Id.) Other than the allegation that the daughter died, it is unclear how any of these allegations support or relate to any of plaintiffs' claims against defendants. Moreover, it is entirely unclear who "He" is and what relevance "He" has to this lawsuit.

Based on the foregoing, the undersigned will dismiss plaintiffs' complaint.

However, plaintiffs will be granted leave to file an amended complaint that complies with Rule 8 and corrects the deficiencies addressed herein. Lopez, 203 F.3d at 1126-27 (district courts must afford pro se litigants an opportunity to amend to correct any deficiency in their complaints). Should plaintiffs choose to file an amended complaint, they shall identify each defendant in both the caption and the body of the amended complaint, and clearly set forth the allegations against each such defendant.

Plaintiffs shall also specify a basis for this court's subject matter jurisdiction.

Generally, original federal subject matter jurisdiction may be premised on two bases: (1) federal question jurisdiction, or (2) diversity jurisdiction. District courts have federal question jurisdiction over “all civil actions that arise under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. “A case ‘arises under’ federal law either where federal law creates the cause of action or ‘where the vindication of a right under state law necessarily turn[s] on some construction of federal law.’” Republican Party of Guam v. Gutierrez, 277 F.3d 1086, 1088-89 (9th Cir. 2002) (modification in original) (citing Franchise Tax Bd. v. Constr. Laborers Vacation Trust, 463 U.S. 1, 8-9 (1983)). “[T]he presence or absence of federal-question jurisdiction is governed by the ‘well-pleaded complaint rule,’ which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint.” Provincial Gov’t of Marinduque v. Placer Dome, Inc., 582 F.3d 1083, 1091 (9th Cir. 2009). District courts have diversity jurisdiction over “all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs,” and the

1 action is between: “(1) citizens of different States; (2) citizens of a State and citizens or subjects
2 of a foreign state; (3) citizens of different States and in which citizens or subjects of a foreign
3 state are additional parties; and (4) a foreign state . . . as plaintiff and citizens of a State or of
4 different States.” 28 U.S.C. § 1332.

5 Additionally, plaintiffs are informed that the court cannot refer to prior pleadings
6 in order to make an amended complaint complete. Local Rule 220 requires that an amended
7 complaint be complete in itself. This is because, as a general rule, an amended complaint
8 supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967) (“The
9 amended complaint supersedes the original, the latter being treated thereafter as non-existent.”).
10 Accordingly, once plaintiff files an amended complaint, the original no longer serves any
11 function in the case. Therefore, “a plaintiff waives all causes of action alleged in the original
12 complaint which are not alleged in the amended complaint,” London v. Coopers & Lybrand, 644
13 F.2d 811, 814 (9th Cir. 1981), and defendants not named in an amended complaint are no longer
14 defendants. Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992).

15 Finally, the undersigned cautions plaintiffs that failure to comply with the Federal
16 Rules of Civil Procedure, this court’s Local Rules, or any court order may result in a
17 recommendation that this action be dismissed. See Fed. R. Civ. P. 41(b); Local Rules 110,
18 183(a); see Hells Canyon Preservation Council v. U.S. Forest Serv., 403 F.3d 683, 689 (9th Cir.
19 2005) (recognizing that courts may dismiss an action pursuant to Federal Rule of Civil Procedure
20 41(b) *sua sponte* for a plaintiff’s failure to prosecute or comply with the rules of civil procedure
21 or the court’s orders); Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995) (per curiam) (“Failure to
22 follow a district court’s local rules is a proper ground for dismissal.”); King v. Atiyeh, 814 F.2d
23 565, 567 (9th Cir. 1987) (“Pro se litigants must follow the same rules of procedure that govern
24 other litigants.”).

25 For the reasons stated above, IT IS HEREBY ORDERED that:

26 1. Plaintiffs’ application for leave to proceed in forma pauperis (Dkt. No. 7)

1 is granted;

2 2. Plaintiffs' complaint is dismissed with leave to amend; and

3 3. Plaintiff is granted thirty (30) days from the date of service of this order to
4 file an amended complaint that is complete in itself. The amended complaint must bear the
5 docket number assigned to this case and must be labeled "Amended Complaint." Plaintiff must
6 file an original and two copies of the amended complaint. Failure to timely file an amended
7 complaint in accordance with this order will result in a recommendation that this action be
8 dismissed.

9 DATED: April 22, 2010

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13 KENDALL J. NEWMAN
14 UNITED STATES MAGISTRATE JUDGE
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