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

KARL WICHELMAN, et al.,

Plaintiffs,

No. CIV S-10-2125 KJM DAD PS

v.

SANTA CLARA COUNTY
CALIFORNIA, et al.,

ORDER AND FINDINGS AND
RECOMMENDATIONS

Defendants.

Plaintiffs, Karl Wichelman and Anne Sabetta, proceeding in this action pro se, have requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. The case was referred to the undersigned in accordance with Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1).

Plaintiffs have each submitted an in forma pauperis application that makes the showing required by 28 U.S.C. § 1915(a)(1). Plaintiffs’ request for leave to proceed in forma pauperis will therefore be granted.

The determination that plaintiffs may proceed in forma pauperis does not complete the inquiry required by the statutes. Under 28 U.S.C. § 1915(e)(2), the court is required to dismiss an in forma pauperis case at any time if the plaintiff’s allegations of poverty is untrue or if the action is frivolous or malicious, fails to state a claim on which relief may be granted, or

1 seeks monetary relief against an immune defendant. To state a claim on which relief may be
2 granted, the plaintiff must allege “enough facts to state a claim to relief that is plausible on its
3 face.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). A claim is frivolous when it lacks
4 an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989);
5 Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1990).

6 In considering whether a complaint states a cognizable claim, the court accepts as
7 true the material allegations in the complaint and construes the allegations in the light most
8 favorable to the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Hosp. Bldg. Co.
9 v. Trustees of Rex Hosp., 425 U.S. 738, 740 (1976); Love v. United States, 915 F.2d 1242, 1245
10 (9th Cir. 1989). Pro se pleadings are held to a less stringent standard than those drafted by
11 lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). However, the court need not accept as
12 true conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. Western
13 Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

14 In their complaint plaintiffs assert that defendants Santa Clara County, Santa
15 Clara Valley Medical Center (“VMC”) and several named doctors “did with knowledge and
16 malice at the highest levels of County Government intend by actions and/or inaction by medical
17 staff at VMC to TERMINATE SABETTA’S LIFE WITH PREJUDICE.” (Compl. (Doc. No. 1)
18 at 4.) In this regard, plaintiffs allege as follows. On April 1, 2008, plaintiff Anne Sabetta was
19 transferred to VMC by the San Jose Police Department after being found asleep at a bus stop.
20 (Id. at 2-3.) Ms. Sabetta was admitted to VMC as a “perfectly healthy human being,” but soon
21 after was transferred to the critical care unit suffering from septicemia as a result of a hospital
22 acquired infection. (Id. at 3-4.) She remained hospitalized for several months. (Id.) On
23 September 21, 2008, Ms. Sabetta broke her leg while in Sacramento, California “because of” her
24 weakened condition as a result of her prolonged hospitalization at VMC. (Id. at 7.)

25 Because defendants have not appeared and therefore not waived a challenge to
26 venue, the court may raise the issue of proper venue sua sponte. Costlow v. Weeks, 790 F.2d

1 1486, 1487-88 (9th Cir. 1986). Title 28 U.S.C. § 1391(b) provides that where jurisdiction is not
2 founded solely on diversity, a civil action “may be brought only in the judicial district where all
3 defendants reside, or in which the claim arose” The factual allegations found in plaintiffs’
4 complaint occurred almost exclusively in Santa Clara County. In this regard plaintiffs’ claim
5 arose in Santa Clara County, which is within the boundaries of the Northern District of
6 California. Plaintiffs have not alleged that any of the named defendants reside within the Eastern
7 District of California and that would appear not to be the case. The Eastern District of California
8 is therefore not the proper venue for this case.

9 Title 28 U.S.C. § 1406(a) states that “[t]he district court of a district in which is
10 filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest
11 of justice, transfer such case to any district or division in which it could have been brought.” The
12 decision of whether to transfer or dismiss rests within the sound discretion of the district court.
13 See Cook v. Fox, 537 F.2d 370, 371 (9th Cir. 1976); see also Hapaniewski v. City of Chicago
14 Heights, 883 F.2d 576, 579-80 (7th Cir. 1989); Naartex Consulting Corp. v. Watt, 722 F.2d 779,
15 789 (D.C. Cir. 1983). Here the court finds that the interests of justice do not require a transfer.¹
16 Accordingly, the undersigned will recommend that plaintiffs’ complaint be dismissed. “A
17 determination of improper venue does not go to the merits of the case and therefore must be
18 without prejudice.” In re Hall, Bayoutree Assoc. Ltd., 939 F.2d 802, 804 (9th Cir. 1991).

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20 ¹ The court notes that Rule 8(a) of the Federal Rules of Civil Procedure requires that a
21 civil complaint contain “ a short and plain statement of the grounds upon which the court’s
22 jurisdiction depends” Here, plaintiffs’ complaint does not contain a statement of the
23 grounds upon which this court’s jurisdiction depends. The civil cover sheet submitted with the
24 complaint indicates that all parties are California residents, jurisdiction is based on the presence
25 of a federal question, the nature of plaintiffs’ suit is “civil rights” and plaintiffs’ cause of action is
26 “Title 42 U.S.C. sec 1983.” (Doc. No. 2.) However, plaintiffs have not alleged in their
complaint that they were deprived of any right, privilege, or immunity secured by the United
State Constitution, nor have they alleged how any named defendant acted under color of state
law. It is unclear from the complaint whether plaintiff Sabetta is alleging that she was in police
custody during her stay and treatment at VMC. If not, plaintiffs’ claim would appear to be a state
law claim of medical malpractice or negligence, over which the federal courts would clearly have
no jurisdiction. Plaintiffs should consider this in determining whether to file a complaint in the
San Jose Division of the U.S. District Court for the Northern District of California.

1 The undersigned will therefore recommend that plaintiffs' complaint be dismissed
2 without prejudice to the filing of an action in the appropriate venue.

3 Accordingly, IT IS HEREBY ORDERED that:

4 1. Plaintiff Karl Wichelman's August 9, 2010 application to proceed in forma
5 pauperis (Doc. No. 3) is granted; and

6 2. Plaintiff Anne Sabetta's August 12, 2010 application to proceed in forma
7 pauperis (Doc. No. 4) is granted.

8 IT IS RECOMMENDED that:

9 1. Plaintiffs' complaint (Doc. No. 1) be dismissed without prejudice to refileing
10 this action in the appropriate venue; and

11 2. This action be dismissed.

12 These findings and recommendations will be submitted to the United States
13 District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within
14 fourteen (14) days after being served with these findings and recommendations, plaintiff may file
15 written objections with the court. A document containing objections should be titled "Objections
16 to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
17 objections within the specified time may, under certain circumstances, waive the right to appeal
18 the District Court's order. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

19 DATED: May 9, 2011.

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23 DALE A. DROZD
24 UNITED STATES MAGISTRATE JUDGE

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