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

ANNE SABETTA, et al.,

Plaintiffs,

No. CIV S-11-0554 JAM CKD PS

vs.

NATIONAL RAILROAD PASSENGER
CORPORATION, et al.,

Defendants.

ORDER

_____/

Plaintiffs are proceeding in this action pro se. Plaintiffs have filed an amended complaint.

The federal in forma pauperis statute authorizes federal courts to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,

1 490 U.S. at 327.

2 In order to avoid dismissal for failure to state a claim a complaint must contain
3 more than “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements
4 of a cause of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other
5 words, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
6 statements do not suffice.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). Furthermore, a
7 claim upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570.
8 “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to
9 draw the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 129
10 S. Ct. at 1949. When considering whether a complaint states a claim upon which relief can be
11 granted, the court must accept the allegations as true, Erickson v. Pardus, 127 S. Ct. 2197, 2200
12 (2007), and construe the complaint in the light most favorable to the plaintiff, see Scheuer v.
13 Rhodes, 416 U.S. 232, 236 (1974).

14 The court finds the allegations in plaintiff’s complaint so vague and conclusory
15 that it is unable to determine whether the current action is frivolous or fails to state a claim for
16 relief. The court has determined that the complaint does not contain a short and plain statement
17 as required by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a flexible pleading
18 policy, a complaint must give fair notice and state the elements of the claim plainly and
19 succinctly. Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff
20 must allege with at least some degree of particularity overt acts which defendants engaged in that
21 support plaintiff’s claim. Id. Because plaintiffs have failed to comply with the requirements of
22 Fed. R. Civ. P. 8(a)(2), the complaint must be dismissed. The court will, however, grant leave to
23 file a second amended complaint.

24 If plaintiffs choose to amend the complaint, plaintiffs must set forth the
25 jurisdictional grounds upon which the court’s jurisdiction depends. Federal Rule of Civil
26 Procedure 8(a). Further, plaintiffs must demonstrate how the conduct complained of has resulted

1 in a deprivation of plaintiffs' federal rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980).

2 In this action, plaintiffs contend their civil rights were violated in connection with
3 an incident which occurred on an Amtrak train on September 16, 2006. Plaintiffs were
4 previously advised of the standards for stating a claim under 42 U.S.C. § 1983. The amended
5 complaint does not cure the pleading deficiencies evident in the original complaint. Plaintiffs
6 fail to demonstrate how the conduct of each defendant resulted in a deprivation of plaintiffs'
7 federal rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). In addition, plaintiffs name as
8 defendants various public entities but fail to allege a custom or policy sufficient to give rise to
9 municipal liability. See Monell v. Department of Social Servs., 436 U.S. 658 (1978) (liability of
10 municipality under section 1983 must rest on official policy giving rise to the alleged
11 constitutional deprivation).

12 Moreover, plaintiffs were previously advised that it appeared plaintiffs' claims
13 were barred by the statute of limitations. The statute of limitations of the state in which the claim
14 arises governs civil rights actions under 42 U.S. C. § 1983. See Donoghue v. County of Orange,
15 848 F.2d 926, 929 (9th Cir. 1987). Section 1983 actions are characterized as personal injury
16 actions for purposes of identifying the applicable statute of limitations. See Wilson v. Garcia.
17 471 U.S. 261, 268-71, 276 (1985); Bianchi v. Bellingham Police Dep't, 909 F.2d 1316, 1317 (9th
18 Cir. 1990). In California, the applicable statute of limitations is two years. Cal. Code Civ. Proc.
19 Code § 335.1; see Maldonado v. Harris, 370 F.3d 945, 954 (9th Cir. 2004).

20 In the amended complaint, plaintiffs allege they previously filed an action alleging
21 the same allegations as pled here. The previous action, Sabetta, et al. v. National Railroad
22 Passenger Corp., CIV S-08-2181 JAM KJN PS was filed September 16, 2008 and dismissed by
23 order of the court with judgment entered on January 28, 2011. The pending action was not filed
24 until February 28, 2011.

25 As a model for drafting a second amended complaint, plaintiffs are directed to
26 McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996). There, the Ninth Circuit Court of

1 Appeal upheld the dismissal of a complaint it found to be “argumentative, prolix, replete with
2 redundancy, and largely irrelevant. It consists largely of immaterial background information.” It
3 observed that the Federal Rules require that a complaint consist of “simple, concise, and direct”
4 averments. Id. As a model of concise pleading, the court quoted the standard form negligence
5 complaint from the Appendix to the Federal Rules of Civil Procedure:

6 1. Allegation of jurisdiction.

7 2. On June 1, 1936, in a public highway, called Boylston Street, in
8 Boston Massachusetts, defendant negligently drove a motor vehicle against
9 plaintiff, who was then crossing said highway.

10 3. As a result plaintiff was thrown down and had his leg broken,
11 and was otherwise injured, was prevented from transacting his business, suffered
12 great pain of body and mind, and incurred expenses for medical attention and
13 hospitalization in the sum of one thousand dollars.

14 Wherefore plaintiff demands judgment against defendant in the
15 sum of one thousand dollars.

16 Id.

17 Phrased another way, “Vigorous writing is concise.” William Strunk, Jr. & E.B.
18 White, *The Elements of Style*, § III, ¶ 13. Accordingly, any amended complaint should **not**
19 **exceed twenty pages.**

20 In addition, plaintiffs are informed that the court cannot refer to a prior pleading in
21 order to make plaintiff’s amended complaint complete. Local Rule 15-220 requires that an
22 amended complaint be complete in itself without reference to any prior pleading. This is
23 because, as a general rule, an amended complaint supersedes the original complaint. See Loux v.
24 Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original
25 pleading no longer serves any function in the case. Therefore, in an amended complaint, as in an
26 original complaint, each claim and the involvement of each defendant must be sufficiently

1 alleged.

2 In accordance with the above, IT IS HEREBY ORDERED that:

3 1. Plaintiffs' amended complaint is dismissed; and

4 2. Plaintiffs are granted thirty days from the date of service of this order to file a
5 second amended complaint that complies with the requirements of the Federal Rules of Civil
6 Procedure, and the Local Rules of Practice; the second amended complaint must bear the docket
7 number assigned this case and must be labeled "Second Amended Complaint"; plaintiffs must
8 file an original and two copies of the second amended complaint; failure to file a second
9 amended complaint in accordance with this order will result in a recommendation that this action
10 be dismissed.

11 Dated: November 17, 2011

12 
13 _____
14 CAROLYN K. DELANEY
15 UNITED STATES MAGISTRATE JUDGE

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