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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SWARAN KAUR and BALBIR SINGH,  
Plaintiffs,  
v.  
COMPTROLLER OF THE CURRENCY,  
et al.,  
Defendants.

No. 2:14-cv-0875 KJM DAD PS

ORDER

Plaintiffs Swaran Kaur and Balbir Singh are each proceeding in this action pro se. This matter was, therefore, referred to the undersigned in accordance with Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1).

On April 8, 2014, plaintiffs filed a complaint, (Dkt. No. 1), and a motion to proceed in forma pauperis only as to plaintiff Balbir Singh. (Dkt. No. 2.) On July 24, 2014, the undersigned issued an order dismissing the complaint with leave to amend and ordering plaintiff Swaran Kaur to either also file a motion to proceed in forma pauperis or to pay the required filing fee. On August 19, 2014, plaintiffs filed an amended complaint and a motion to proceed in forma pauperis on behalf of plaintiff Swaran Kaur. (Dkt. Nos. 4 & 5.)

However, instead of waiting for the court to review the amended complaint pursuant to 28 U.S.C. § 1915 and issue a summons, plaintiffs attempted to serve the amended complaint on the

1 named defendants. On September 8, 2014, defendants Audra Hutton and Wells Fargo Bank,  
2 N.A., filed a motion to dismiss and on October 24, 2014, this matter came before the undersigned  
3 for hearing of defendants' motion to dismiss. (Dkt. No. 6.) Attorney Gurinder Grewal appeared  
4 telephonically on behalf of defendants Wells Fargo Bank, N.A. and Audra Hutton. Plaintiffs  
5 Swaran Kaur and Balbir Singh appeared in person on their own behalf and requested further leave  
6 to amend.

7 The undersigned has reviewed the in forma pauperis applications submitted by the  
8 plaintiffs and finds that they make the showing required by the statute. Accordingly, plaintiffs'  
9 request to proceed in forma pauperis will be granted.

10 However, the determination that a plaintiff may proceed in forma pauperis does not  
11 complete the inquiry required by the statutes. The court must dismiss an in forma pauperis case  
12 at any time if the allegation of poverty is found to be untrue or if it is determined that the action is  
13 frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary  
14 relief against an immune defendant. See 28 U.S.C. § 1915(e)(2). A complaint is legally frivolous  
15 when it lacks an arguable basis in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989);  
16 Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). Under this standard, a court must  
17 dismiss a complaint as frivolous where it is based on an indisputably meritless legal theory or  
18 where the factual contentions are clearly baseless. Neitzke, 490 U.S. at 327; 28 U.S.C. § 1915(e).

19 To state a claim on which relief may be granted, the plaintiff must allege "enough facts to  
20 state a claim to relief that is plausible on its face." Bell Atlantic Corp. v. Twombly, 550 U.S. 544,  
21 570 (2007). In considering whether a complaint states a cognizable claim, the court accepts as  
22 true the material allegations in the complaint and construes the allegations in the light most  
23 favorable to the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Hosp. Bldg. Co. v.  
24 Trustees of Rex Hosp., 425 U.S. 738, 740 (1976); Love v. United States, 915 F.2d 1242, 1245  
25 (9th Cir. 1989). Pro se pleadings are held to a less stringent standard than those drafted by  
26 lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). However, the court need not accept as true  
27 conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. Western  
28 Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

1 The minimum requirements for a civil complaint in federal court are as follows:

2 A pleading which sets forth a claim for relief . . . shall contain (1) a  
3 short and plain statement of the grounds upon which the court's  
4 jurisdiction depends . . . , (2) a short and plain statement of the  
claim showing that the pleader is entitled to relief, and (3) a demand  
for judgment for the relief the pleader seeks. FED. R. CIV. P. 8(a).

5 Here, plaintiffs' amended complaint is deficient in several respects. First, it does not  
6 appear from the amended complaint that this court has subject matter jurisdiction over this action.  
7 Jurisdiction is a threshold inquiry that must precede the adjudication of any case before the  
8 district court. Morongo Band of Mission Indians v. Cal. State Bd. of Equalization, 858 F.2d  
9 1376, 1380 (9th Cir. 1988). Federal courts are courts of limited jurisdiction and may adjudicate  
10 only those cases authorized by federal law. Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375,  
11 377 (1994); Willy v. Coastal Corp., 503 U.S. 131, 136-37 (1992). "Federal courts are presumed  
12 to lack jurisdiction, 'unless the contrary appears affirmatively from the record.'" Casey v. Lewis,  
13 4 F.3d 1516, 1519 (9th Cir. 1993) (quoting Bender v. Williamsport Area Sch. Dist., 475 U.S. 534,  
14 546 (1986)).

15 Lack of subject matter jurisdiction may be raised by the court at any time during the  
16 proceedings. Attorneys Trust v. Videotape Computer Prods., Inc., 93 F.3d 593, 594-95 (9th Cir.  
17 1996). A federal court "ha[s] an independent obligation to address sua sponte whether [it] has  
18 subject-matter jurisdiction." Dittman v. California, 191 F.3d 1020, 1025 (9th Cir. 1999). It is the  
19 obligation of the district court "to be alert to jurisdictional requirements." Grupo Dataflux v.  
20 Atlas Global Group, L.P., 541 U.S. 567, 593 (2004). Without jurisdiction, the district court  
21 cannot decide the merits of a case or order any relief. See Morongo, 858 F.2d at 1380.

22 The burden of establishing jurisdiction rests upon plaintiff as the party asserting  
23 jurisdiction. Kokkonen, 511 U.S. at 377; see also Hagans v. Lavine, 415 U.S. 528, 543 (1974)  
24 (acknowledging that a claim may be dismissed for lack of jurisdiction if it is "so insubstantial,  
25 implausible, . . . or otherwise completely devoid of merit as not to involve a federal controversy  
26 within the jurisdiction of the District Court"); Bell v. Hood, 327 U.S. 678, 682-83 (1946)  
27 (recognizing that a claim is subject to dismissal for want of jurisdiction where it is "wholly  
28 insubstantial and frivolous" and so patently without merit as to justify dismissal for lack of

1 jurisdiction ); Franklin v. Murphy, 745 F.2d 1221, 1227 n.6 (9th Cir. 1984) (holding that even  
2 “[a] paid complaint that is ‘obviously frivolous’ does not confer federal subject matter jurisdiction  
3 . . . and may be dismissed sua sponte before service of process.”).

4 Here, plaintiffs’ amended complaint asserts that this court has subject matter jurisdiction  
5 over this action pursuant to 28 U.S.C. §§ 1331 and 1346(a)(1). Title 28 U.S.C. § 1331 provides  
6 that this court shall have original jurisdiction over all civil actions arising under the Constitution,  
7 laws, or treaties of the United States. However, the only clearly asserted causes of action in the  
8 amended complaint are six state law causes of action. Although there are multiple vague and  
9 conclusory references to the Constitution and laws of the United States throughout plaintiffs’  
10 amended complaint there are no clearly identifiable claims alleged pursuant to either the  
11 Constitution or the laws of the United States to be found therein.

12 With respect to 28 U.S.C. § 1346(a)(1), that statute provides that this court shall have  
13 original jurisdiction in “[a]ny civil action against the United States for the recovery of any  
14 internal-revenue tax alleged to have been erroneously or illegally assessed . . . .” It does not  
15 appear, however, that there are any allegations in the plaintiffs’ amended complaint implicating  
16 the recovery of an internal-revenue tax.

17 To the extent plaintiffs are attempting to bring a claim against the Office of Comptroller  
18 of the Currency, it appears that such a claim stems from plaintiffs’ belief that they received an  
19 insufficient payment under the terms of consent orders entered into between, among others,  
20 defendant Wells Fargo and banking regulators, to resolve inquiries into deficient practices in  
21 mortgage loan servicing and foreclosure processing. In this regard, the amended complaint  
22 alleges as follows:

23 This case against said defendants is for the recovery of damages  
24 caused by the alleged defendants’ unlawful and unfair conduct in  
25 the IFR scheme involving distribution of settlement funds under  
26 QSF to eligible borrower whose mortgages were serviced by Wells  
27 Fargo, Plaintiff is one of them . . . . The defendants’ practice of  
steering minority borrowers as to (sic) Plaintiff into lower payout  
category under IFR is illegal.

27 (Am. Compl. (Dkt. No. 4) at 7.)

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1           However, the consent orders placed at issue by plaintiffs’ allegations do not provide them  
2 with a private right of action to enforce the terms and conditions of those consent orders. See  
3 Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 750 (1975) (“a well-settled line of  
4 authority from this Court establishes that a consent decree is not enforceable directly or in  
5 collateral proceedings by those who are not parties to it even though they were intended to be  
6 benefited by it”); Green v. Bank of America Corp., 530 Fed. Appx. 426, 430 (6th Cir. 2013)  
7 (plaintiff “has no right to enforce the terms and conditions of the OCC Consent Orders”);  
8 Housdan v. JPMorgan Chase Bank, N.A., No. 3:13-CV-543-CWR-FKB, 2014 WL 4814760, at  
9 \*5 (S.D. Miss. Sept. 24, 2014) (“The OCC consent orders do not provide the Plaintiff with a  
10 private cause of action.”); Conant v. Wells Fargo Bank, N.A., --- F. Supp.2d ---, 2014 WL  
11 3696444, at \*12 (D. D.C. July 25, 2014) (“Reviewing this language and identical language in  
12 other OCC consent orders, other courts have concluded that homeowners lack the ability to sue  
13 for enforcement of such consent orders.”); Onyszcak v. Wells Fargo Bank, N.A., No. 13-12166,  
14 2013 WL 6038863, at \*5 (E.D. Mich. Nov. 14, 2013) (“The Court finds that this language clearly  
15 establishes Plaintiffs have no right to enforce the Consent Order against Defendant.”).<sup>1</sup>

16           Second, even if it appeared from the amended complaint that the court had subject matter  
17 jurisdiction over this action, the amended complaint fails to contain a short and plain statement of  
18 a claim showing that plaintiffs are entitled to relief. Plaintiffs’ amended complaint is an  
19 exceedingly lengthy 99 pages of vague and conclusory allegations that fail to allege facts stating  
20 the elements of a claim plainly and succinctly against any defendant.

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22 <sup>1</sup> When this issue was raised at the October 24, 2014 hearing, plaintiffs directed the court to  
23 review the decision in In re JPMorgan Chase Mortg. Modification Litigation, 880 F. Supp.2d 220  
24 (D. Mass 2012). That decision, however, concerned whether the consent orders at issue in that  
25 action precluded the court’s subject matter jurisdiction over the plaintiff’s various claims because  
26 12 U.S.C. § 1818(i)(1) “prohibits any action that ‘could effect’ the enforcement of an OCC  
27 consent order.” (Id. at 231.) The district court in that case concluded that “where plaintiffs allege  
28 that Chase breached the TPP agreements, § 1818 does not preclude the court from acting to  
remedy the breach as the result would not be inconsistent with the Consent Order.” (Id. at 232.)  
Thus, In re JPMorgan addressed whether the plaintiff in that case could pursue a claim unrelated  
to the enforcement of the consent orders. Here, it appears plaintiffs are attempting to bring a  
cause of action founded squarely on the enforcement of the consent orders – specifically, how  
much plaintiffs were entitled to under the terms of the consent orders.

1           Although the Federal Rules of Civil Procedure adopt a flexible pleading policy, a  
2 complaint must give the defendant fair notice of the plaintiff's claims and must allege facts that  
3 state the elements of each claim plainly and succinctly. FED. R. CIV. P. 8(a)(2); Jones v.  
4 Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). "A pleading that offers 'labels  
5 and conclusions' or 'a formulaic recitation of the elements of cause of action will not do.' Nor  
6 does a complaint suffice if it tenders 'naked assertions' devoid of 'further factual  
7 enhancements.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at  
8 555, 557). A plaintiff must allege with at least some degree of particularity overt acts which the  
9 defendants engaged in that support the plaintiff's claims. Jones, 733 F.2d at 649.

10           Lastly, even if plaintiffs' amended complaint established that this court had subject matter  
11 jurisdiction and stated a cognizable claim for relief, this is not the first lawsuit plaintiffs have  
12 pursued against the defendants named in the amended complaint.<sup>2</sup> See Singh v. Wells Fargo  
13 Bank N.A., No. CIV 2:11-cv-0401 GEB JFM PS, 2011 WL 2118889 (E.D. Cal. 2011); Singh v.  
14 Wells Fargo Bank, N.A., Case No. CO70609, 2013 WL 6173099 (Cal. App. 3 Dist. Nov. 26,  
15 2013).

16           Plaintiffs are advised that claims brought in a prior lawsuit, and any claim that plaintiffs  
17 could have brought in a prior lawsuit but failed to, would be barred from being brought in this  
18 action by res judicata. Under the doctrine of res judicata, "a final judgment on the merits bars  
19 further claims by parties or their privies based on the same cause of action." Montana v. United  
20 States, 440 U.S. 147, 153 (1979). The doctrine also "bars all grounds for recovery which could  
21 have been asserted, whether they were or not, in a prior suit between the same parties . . . on the  
22 same cause of action." C.D. Anderson & Co. v. Lemos, 832 F.2d 1097, 1100 (9th Cir. 1987)  
23 (internal quotations omitted).

24           Accordingly, for the reasons explained above, plaintiffs' amended complaint will be  
25 dismissed for lack of subject matter jurisdiction. The undersigned has carefully considered  
26 whether plaintiffs may further amend the complaint to state a claim that would provide this court

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27 <sup>2</sup> A court may take judicial notice of court records. See MGIC Indem. Co. v. Weisman, 803 F.2d  
28 500, 505 (9th Cir. 1986); United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980).

1 with subject matter jurisdiction. “Valid reasons for denying leave to amend include undue delay,  
2 bad faith, prejudice, and futility.” California Architectural Bldg. Prod. v. Franciscan Ceramics,  
3 818 F.2d 1466, 1472 (9th Cir. 1988). See also Klamath-Lake Pharm. Ass’n v. Klamath Med.  
4 Serv. Bureau, 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that while leave to amend shall be  
5 freely given, the court does not have to allow futile amendments). However, when evaluating the  
6 failure to state a claim, the complaint of a pro se plaintiff may be dismissed “only where ‘it  
7 appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which  
8 would entitle him to relief.’” Franklin v. Murphy, 745 F.2d 1221, 1228 (9th Cir. 1984) (quoting  
9 Haines v. Kerner, 404 U.S. 519, 521 (1972). See also Weilburg v. Shapiro, 488 F.3d 1202, 1205  
10 (9th Cir. 2007) (“Dismissal of a pro se complaint without leave to amend is proper only if it is  
11 absolutely clear that the deficiencies of the complaint could not be cured by amendment.”)  
12 (quoting Schucker v. Rockwood, 846 F.2d 1202, 1203-04 (9th Cir. 1988)).

13 Here, the court cannot yet say that granting further leave to amend would be futile.  
14 Plaintiffs’ amended complaint will therefore be dismissed, and they will be granted leave to file a  
15 second amended complaint. Plaintiffs are cautioned, however, that if they elect to file a second  
16 amended complaint “the tenet that a court must accept as true all of the allegations contained in a  
17 complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of  
18 action, supported by mere conclusory statements, do not suffice.” Ashcroft, 556 U.S. at 678.  
19 “While legal conclusions can provide the complaint’s framework, they must be supported by  
20 factual allegations.” Id. at 679. Those facts must be sufficient to push the claims “across the line  
21 from conceivable to plausible[.]” Id. at 680 (quoting Twombly, 550 U.S. at 557).

22 Plaintiffs are also reminded that the court cannot refer to a prior pleading in order to make  
23 an amended complaint complete. Local Rule 220 requires that any amended complaint be  
24 complete in itself without reference to prior pleadings. The second amended complaint will  
25 supersede amended complaint just as the amended complaint superseded the original complaint.  
26 See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Thus, in a second amended complaint, just as  
27 if it were the initial complaint filed in the case, each defendant must be listed in the caption and  
28 identified in the body of the complaint, and each claim and the involvement of each defendant

1 must be sufficiently alleged. Any second amended complaint which plaintiffs may elect to file  
2 must also include concise but complete factual allegations describing the conduct and events  
3 which underlie plaintiffs' claims.

4 CONCLUSION

5 Accordingly, IT IS HEREBY ORDERED that:

- 6 1. Plaintiffs' applications to proceed in forma pauperis (Dkt. Nos. 2 & 5) are  
7 granted.
- 8 2. The amended complaint filed September 8, 2014 (Dkt. No. 6) is dismissed with  
9 leave to amend.
- 10 3. Within twenty-eight days from the date of this order, plaintiffs may file a  
11 second amended complaint that cures the defects noted in this order and complies with the  
12 Federal Rules of Civil Procedure and the Local Rules of Practice. The second amended  
13 complaint must bear the case number assigned to this action and must be titled "Second Amended  
14 Complaint."  
15 4. Failure to file a second amended complaint within the time provided by this  
16 order will result in a recommendation that this action be dismissed.
- 17 5. **Plaintiffs shall not attempt to serve a second amended complaint on any**  
18 **defendant prior to receiving an order from this court directing such service and no**  
19 **defendant named in a second amended complaint shall file a response to a second amended**  
20 **complaint until this court has ordered such a response or issued a summons.**
- 21 6. The September 8, 2014 motion to dismiss filed by defendants Audra Hutton  
22 and Wells Fargo Bank, N.A. (Dkt. No. 6) is denied without prejudice as having been rendered  
23 moot by this screening order.

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7. Plaintiffs' October 20, 2014 motion for leave to file arguments in opposition  
(Dkt. No. 19) is granted.

Dated: October 27, 2014

  
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DALE A. DROZD  
UNITED STATES MAGISTRATE JUDGE

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