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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DARLICE CARTER,

 Plaintiff,

 v.

JAHMAN YATES,

 Defendant.

No. 2:15-cv-2679-JAM-KJN PS

ORDER

Plaintiff, who is proceeding without counsel, filed the original complaint and an application to proceed *in forma pauperis* on December 28, 2015.¹ (ECF Nos. 2.) On January 4, 2016, the court granted the motion to proceed *in forma pauperis* and dismissed the complaint with leave to amend within 28 days. (ECF No. 3.) When plaintiff failed to timely file an amended complaint, the court issued an Order to Show Cause ordering plaintiff to file an amended complaint on or before April 7, 2016. (ECF No. 4.) On March 10, 2016 plaintiff filed a First Amended Complaint (“FAC”).² (ECF No. 5.)

¹ This case proceeds before the undersigned pursuant to Eastern District of California Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1).

² Because plaintiff timely filed her FAC prior to the extended deadline set by the court’s OSC, the OSC is discharged.

1 As discussed in the court’s previous order in this matter (ECF No. 3), the determination
2 that a plaintiff may proceed in forma pauperis does not complete the required inquiry. The court
3 is also required to screen complaints brought by parties proceeding *in forma pauperis*. See 28
4 U.S.C. § 1915(e)(2); Lopez v. Smith, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc). Pursuant to
5 28 U.S.C. § 1915(e)(2), the court is directed to dismiss a case filed pursuant to the *in forma*
6 *pauperis* statute if, at any time, it determines that the allegation of poverty is untrue, the action is
7 frivolous or malicious, the complaint fails to state a claim on which relief may be granted, or the
8 action seeks monetary relief against an immune defendant.

9 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
10 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
11 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
12 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
13 490 U.S. at 327.

14 To avoid dismissal for failure to state a claim, a complaint must contain more than “naked
15 assertions,” “labels and conclusions,” or “a formulaic recitation of the elements of a cause of
16 action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57 (2007). In other words,
17 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
18 statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim
19 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A
20 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
21 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S.
22 at 678. When considering whether a complaint states a claim upon which relief can be granted,
23 the court must accept the factual allegations as true, Erickson v. Pardus, 551 U.S. 89, 94 (2007),
24 and construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416
25 U.S. 232, 236 (1974).

26 Pro se pleadings are liberally construed. See Haines v. Kerner, 404 U.S. 519, 520-21
27 (1972); Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1988). Unless it is clear
28 that no amendment can cure the defects of a complaint, a pro se plaintiff proceeding *in forma*

1 *pauperis* is ordinarily entitled to notice and an opportunity to amend before dismissal. See Noll
2 v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987); Franklin v. Murphy, 745 F.2d 1221, 1230 (9th
3 Cir. 1984).

4 While the FAC does provide greater detail on who are the defendants, specifically the
5 Social Security Administration and three of its agents, two of whom are identified by name, it
6 actually contains fewer factual allegations than the initial complaint.³ (ECF No. 5 at 2-3.) In
7 short, plaintiff alleges that defendants “have a COO going on,”⁴ and reiterates her allegations
8 from the original complaint that defendants have put her family in some unidentified danger and
9 in some way prevented her from getting help. (Id.) Plaintiff also alleges that she has “names[,]
10 dates[, and] time of people [she has] called and [is] pressing over.” (Id.)

11 Based on these allegations, plaintiff alleges claims based on the Fourth and Fifth
12 Amendments to the United States Constitution, as well as claims for “harassment, slander,
13 prejudice, turture [*sic*],” humiliation, and abuse. (Id. at 4, 6.) This somewhat addresses the
14 court’s previous concerns regarding plaintiff’s claims in that it clarifies the sources on which
15 plaintiff bases her constitutional claims and provides some indication as to the sort of alleged
16 behavior on which she bases her apparent claims of assault and defamation. However, plaintiff
17 still fails to indicate in her allegations which aspects of her Fourth and Fifth Amendment rights
18 were violated by defendants. In addition, while plaintiff alleged claims for assault and
19 defamation in her original complaint, she fails to expressly make such claims in the FAC despite
20 providing some vague additional allegations apparently in regard to such claims. Moreover,
21 plaintiff yet again fails to specify whether she requests monetary damages, or some form of
22 cognizable non-monetary relief such as declaratory or injunctive relief. (Id. at 6.) Indeed, the
23 FAC is completely devoid of any cognizable request for relief.

24
25 ³ Plaintiff also writes the name of the undersigned, alongside or close to the names of the
26 defendants on several occasions in the FAC. (ECF No. 5 at 1, 2, 5.) Given the imprecision of the
27 pleading it is difficult to tell if plaintiff is addressing the undersigned or attempting to add the
28 undersigned as a defendant to this action.

⁴ It is unclear from plaintiff’s allegations what she means when she uses the term “COO” in the
FAC.

1 While plaintiff has addressed some of the problems found in the previous complaint, the
2 FAC still falls badly short of the factual detail necessary to allow the court to find that plaintiff's
3 pleading states a cognizable claim for relief. Again, plaintiff fails to even remotely allege
4 sufficient facts from which the court can draw a reasonable inference that the officials named as
5 defendants engaged in the sort of conduct that could support claims under the Fourth and Fifth
6 Amendments to the United States Constitution, or for assault or defamation under California State
7 law. See Iqbal, 556 U.S. at 678 ("A claim has facial plausibility when the plaintiff pleads factual
8 content that allows the court to draw the reasonable inference that the defendant is liable for the
9 misconduct alleged."). Plaintiff cannot simply allege that she has "names[,] dates [and] time[s]"
10 of alleged misconduct, she must actually provide those facts in sufficient detail to meet the
11 required pleading standards. Furthermore, plaintiff fails to specify what, if any, remedy will
12 satisfy her claims.

13 Given these deficiencies, the court must dismiss plaintiff's FAC. Nevertheless, in light of
14 plaintiff's pro se status, and in light of plaintiff's allegations that she possesses greater factual
15 detail than she has provided in the FAC, it is at least conceivable that plaintiff could cure these
16 deficiencies. Accordingly, the court dismisses the FAC with leave to amend to give plaintiff
17 another opportunity to address the pleading defects discussed above.

18 If plaintiff elects to file an amended complaint, it shall be captioned "Second Amended
19 Complaint"; shall clearly identify the named defendant(s); shall clearly identify under what
20 constitutional provision(s) plaintiff's Fourth and Fifth Amendment claims are brought; shall
21 outline the specific factual allegations in support of each of plaintiff's claims; shall specify the
22 relief sought; and shall be typed or written in legible handwriting.

23 Plaintiff is informed that the court cannot refer to a prior complaint or other filing in order
24 to make plaintiff's second amended complaint complete. Local Rule 220 requires that an
25 amended complaint be complete in itself without reference to any prior pleading. As a general
26 rule, an amended complaint supersedes the original complaint and any previous amended
27 complaint, and once the second amended complaint is filed, the original and first amended
28 complaints no longer serve any function in this case.

