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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SARAH BABCOCK & CLIFFTON
SOUZA,

Plaintiffs,

v.

YUBA COUNTY CHILD PROTECTIVE
SERVICES, et al.,

Defendants.

No. 2:16-cv-750-JAM-KJN PS

ORDER AND
FINDINGS AND RECOMMENDATIONS

Plaintiffs Sarah Babcock and Clifton Souza, who proceed in this action without counsel, requested leave to proceed *in forma pauperis* under 28 U.S.C. § 1915. (ECF No. 2.)¹ Pursuant to 28 U.S.C. § 1915, the court is directed to dismiss the case at any time if it determines that the allegation of poverty is untrue, or if the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against an immune defendant.

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

¹ This case proceeds before the undersigned pursuant to E.D. Cal. L.R. 302(c)(21).

1 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
2 490 U.S. at 327.

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

15 Pro se pleadings are liberally construed. See Haines v. Kerner, 404 U.S. 519, 520-21
16 (1972); Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1988). Unless it is clear
17 that no amendment can cure the defects of a complaint, a pro se plaintiff proceeding *in forma*
18 *pauperis* is ordinarily entitled to notice and an opportunity to amend before dismissal. See Noll
19 v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987); Franklin v. Murphy, 745 F.2d 1221, 1230 (9th
20 Cir. 1984). Nevertheless, leave to amend need not be granted when further amendment would be
21 futile. See Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 339 (9th Cir. 1996).

22 Here, plaintiffs allege that defendants Erin English and Thomas English, private citizens,
23 took pictures of plaintiffs’ 2-year-old son “naked in his privacy fenced back yard” and turned the
24 pictures over to defendant Yuba County Child Protective Services, which thereafter, with the
25 assistance of defendant Yuba County Sheriff’s Department, removed plaintiffs’ children on
26 March 19, 2015, purportedly due to the photos and allegedly false accusations. At a subsequent
27 juvenile court hearing, defendant Judge Debra Givens allegedly found plaintiffs’ mental
28 disabilities to be a reason to refuse reunification services with the children. According to

1 plaintiffs, Judge Givens further stated that plaintiffs do not deserve their children and that drug
2 addicts would be better parents. Plaintiffs' complaint asserts claims for violation of their civil
3 rights pursuant to 42 U.S.C. § 1983, disability discrimination, and various other claims based on
4 criminal law. Plaintiffs seek the following relief: (1) immediate return of plaintiffs' children; (2)
5 the prosecution of child endangerment and child pornography charges; and (3) a restraining order
6 against all parties, presumably to prevent further interference with the parent-child relationship.
7 (See ECF Nos. 1, 1-1.)

8 As an initial matter, the court notes that plaintiffs, as private citizens, do not have standing
9 to prosecute any criminal claims, or to compel the prosecution of criminal charges by virtue of a
10 civil action. Criminal charges may only be brought by an appropriate prosecutorial authority,
11 such as a district attorney's office, in its discretion.

12 Furthermore, with respect to plaintiffs' requests for injunctive relief (return of plaintiffs'
13 children and a restraining order), the court finds that it would be inappropriate for a federal court
14 to interfere in this family law matter. See Coats v. Woods, 819 F.2d 236, 237 (9th Cir. 1987) (no
15 abuse of discretion in district court's abstention from hearing § 1983 claims arising from a child
16 custody dispute). As the Ninth Circuit Court of Appeals noted in Coats:

17 This case, while raising constitutional issues, is at its core a child
18 custody dispute. The state courts have already considered the
19 merits of Coats' claims and have held that her former husband is
20 entitled to custody. The district court was aptly reluctant to put
21 itself in the position of having to review the state courts' custody
22 decision. If the constitutional claims in the case have independent
23 merit, the state courts are competent to hear them. Given the state
24 courts' strong interest in domestic relations, we do not consider that
25 the district court abused its discretion when it invoked the doctrine
26 of abstention.

23 Coats, 819 F.2d at 237. For those same reasons, abstention is appropriate in this case.

24 Although the court is not unsympathetic to plaintiffs' obvious concerns about the removal
25 of their children, plaintiffs' proper recourse is to appeal or seek relief from the custody
26 orders/decisions in the state appellate courts, and to pursue any related constitutional claims in the
27 state courts. Importantly, in finding that this federal case should be dismissed, the court expresses
28 no opinion regarding the merits of plaintiffs' claims concerning the custody of their children.

1 Ordinarily, the court liberally grants a pro se plaintiff leave to amend. However, because
2 the record shows that plaintiffs would be unable to cure the above-mentioned deficiencies through
3 further amendment of the complaint, the court concludes that granting leave to amend in this case
4 would be futile.

5 Accordingly, IT IS HEREBY RECOMMENDED that:


- 6 1. The action be dismissed without leave to amend.
- 7 2. Plaintiffs' motion to proceed *in forma pauperis* in this court (ECF No. 2) be denied as
8 moot.
- 9 3. The Clerk of Court be directed to close this case.

10 In light of these recommendations, IT IS ALSO HEREBY ORDERED that all pleading,
11 discovery, and motion practice in this action are stayed pending resolution of these findings and
12 recommendations. Other than objections to the findings and recommendations or non-frivolous
13 motions for emergency relief, the court will not entertain or respond to any pleadings or motions
14 until the findings and recommendations are resolved.

15 These findings and recommendations are submitted to the United States District Judge
16 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
17 days after being served with these findings and recommendations, any party may file written
18 objections with the court and serve a copy on all parties. Such a document should be captioned
19 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
20 shall be served on all parties and filed with the court within fourteen (14) days after service of the
21 objections. The parties are advised that failure to file objections within the specified time may
22 waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th
23 Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

24 IT IS SO ORDERED AND RECOMMENDED.

25 Dated: May 26, 2016

26 
27 _____
28 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE