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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RHONDA IREDIA-ORTEGA,
Plaintiff,

v.

BAKER RESIDENTIAL ACADEMIC
PROGRAM UNIVERSITY OF CAL, et
al.,
Defendants.

No. 2:17-cv-0843 MCE CKD PS

ORDER

Plaintiff is proceeding in this action pro se and in forma pauperis. Plaintiff has 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, 490 U.S. at 327.

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

13 The court finds the allegations in plaintiff’s amended 79 page complaint so vague and
14 conclusory that it is unable to determine whether the current action is frivolous or fails to state a
15 claim for relief. The court has determined that the complaint does not contain a short and plain
16 statement as required by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a flexible
17 pleading policy, a complaint must give fair notice and state the elements of the claim plainly and
18 succinctly. Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff
19 must allege with at least some degree of particularity overt acts which defendants engaged in that
20 support plaintiff’s claim. Id. Because plaintiff has failed to comply with the requirements of Fed.
21 R. Civ. P. 8(a)(2), the complaint must be dismissed. The court will, however, grant leave to file
22 an amended complaint.

23 If plaintiff chooses to amend the complaint, plaintiff must set forth the jurisdictional
24 grounds upon which the court’s jurisdiction depends. Federal Rule of Civil Procedure 8(a).
25 Further, plaintiff must demonstrate how the conduct complained of has resulted in a deprivation
26 of plaintiff’s federal rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). As the pleadings
27 presently stand, the court cannot discern any proper basis for subject matter jurisdiction. Plaintiff
28 complains about identity theft and problems with her internet service. The connection between

1 plaintiff's complaints and the defendants is indecipherable. Further, plaintiff's complaint is
2 disjointed, failing to set forth subject matter jurisdiction or understandable causes of action.

3 As a model for drafting a second amended complaint, plaintiff is directed to McHenry v.
4 Renne, 84 F.3d 1172, 1177 (9th Cir. 1996). There, the Ninth Circuit Court of Appeal upheld the
5 dismissal of a complaint it found to be "argumentative, prolix, replete with redundancy, and
6 largely irrelevant. It consists largely of immaterial background information." It observed that the
7 Federal Rules require that a complaint consist of "simple, concise, and direct" averments. Id. As
8 a model of concise pleading, the court quoted the standard form negligence complaint from the
9 Appendix to the Federal Rules of Civil Procedure:

10 1. Allegation of jurisdiction.

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

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

20 Wherefore plaintiff demands judgment against defendant in
21 the sum of one thousand dollars.

22 Id. Accordingly, any amended complaint should not exceed fifteen pages.

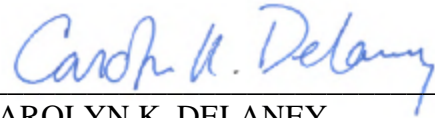
23 In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to
24 make plaintiff's amended complaint complete. Local Rule 15-220 requires that an amended
25 complaint be complete in itself without reference to any prior pleading. This is because, as a
26 general rule,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

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

1. Plaintiff's amended complaint is dismissed; and

1 2. Plaintiff is granted thirty days from the date of service of this order to file a second
2 amended complaint that complies with the requirements of the Federal Rules of Civil Procedure,
3 and the Local Rules of Practice; the second amended complaint must bear the docket number
4 assigned this case and must be labeled "Second Amended Complaint"; plaintiff must file an
5 original and two copies of the second amended complaint; the second amended complaint must
6 not exceed fifteen pages; and failure to file an amended complaint in accordance with this order
7 will result in a recommendation that this action be dismissed.

8 Dated: May 8, 2017



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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