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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

GENEVA LEMA,

Plaintiff,

v.

COMFORT INN, MERCED, et al.,

Defendants.

CASE NO. 1:10-cv-00362-SMS

ORDER DISMISSING COMPLAINT  
WITH LEAVE TO AMEND

(Doc. 43)

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Defendants move for dismissal pursuant to F.R.Civ.P. 12(b)(1) and (6), arguing that the complaint is barred by the statute of limitations and that the Court lacks jurisdiction because of Plaintiff's lack of standing. This court reviewed the papers and determined that this matter was suitable for decision without oral argument pursuant to Local Rule 78-230(h). Having considered all written materials submitted, the Court is required to dismiss the complaint as a result of Plaintiff's failure to allege facts establishing subject matter jurisdiction.

**I. Procedural History**

On February 27, 2010, Plaintiff filed a complaint against Defendants seeking injunctive relief and damages for violations of the Americans With Disabilities Act of 1990 (42 U.S.C. § 12101 *et seq.*); California state disabilities rights laws (California Civil Code §§ 54, 54.1, and 55); and the Unruh Civil Rights Act. Plaintiff sought injunctive and declaratory relief, and treble damages. Defendants answered on April 8, 2010.

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1 Following multiple substitutions of counsel in the spring and summer of 2011,  
2 Defendants failed to provide timely expert discovery, resulting in the Court's striking  
3 Defendants' designation of its expert witness on January 19, 2012. On February 2, 2012,  
4 Defendants moved to dismiss the complain for lack of jurisdiction.

5 **II. Factual Allegations**

6 Plaintiff alleged that she is a person with physical disabilities who uses a wheelchair, but  
7 has "short term semi-ambulatory abilities with the use of hand crutches." Plaintiff alleged that,  
8 in the two years before she filed her complaint, she was unable to patronize Defendants' hotel  
9 due to a laundry list of deficiencies:

- 10 1. Insufficient disabled accessible guestrooms spread across the range of  
11 accommodations, including suited, and double bedrooms;
- 12 2. Absence of guestrooms with roll-in showers;
- 13 3. Insufficient numbers of disabled parking facilities in the hotel's different lots  
14 accessing entrances on separate sides of the building;
- 15 4. Substantially inaccessible disabled parking facilities, which are improperly sized,  
16 configured, sloped, and signed, and in many cases, hazardous to disabled use;
- 17 5. The absence of an accessible path of travel from the adjoining public sidewalk and  
18 paths of travel to the public transportation stops;
- 19 6. Absence of a path of travel between the main entrance and the porte-cochere;
- 20 7. Absence of a path of travel between the main entrance and the north parking lot;
- 21 8. Inaccessible path of travel between main entrance and the north parking lot  
22 requiring traversing steps and a cobblestone path; Inaccessible path of travel  
23 between the main entrance and the outdoor patio;
- 24 9. A raised registration counter, which provides only a roll-out shelf, but provides  
25 printed material, fruit, and other items, on the upper counter, violates Title 24;
- 26 10. Inaccessible lobby facilities, including circulation paths of travel, internet terminal  
27 and house telephone;

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- 1 11. Inaccessible designated accessible guestrooms, which violate code requirements  
2 in almost every respect, including but not limited to the failure to provide a  
3 compliant interior door landing (i.e., the existing strike-edge clearance is  
4 obstructed by the closet); a lack of turning radius in bathroom; and the necessary  
5 side and front transfer space for using the water closet and tub; the sign on the  
6 back of the door for the Emergency Escape Plan is mounted at about 56 inches  
7 and in a non-complaint font (about 8 or 9 pts); the absence of a 36 inch path of  
8 travel throughout the room; the absence of access to the HVAC controls, which  
9 are obstructed by furniture; and the inaccessible knee clearance at the desk/table;  
10 and the absence of knee space for the lavatory;
- 11 12. The designated disabled accessible restroom located on the first floor corridor just  
12 outside Room 101 is inaccessible because, inter alia, it fails to provide an  
13 accessible exterior door landing; the path of travel is obstructed by a 1 inch  
14 beveled sudden change in rise that obstructs the transition from the corridor to the  
15 pad; a vending machine also obstructs the inward swinging door by approximately  
16 1 inch; the hot water feed is not wrapped; the interior lacks a compliant turning  
17 circle and space beside and in front of the toilet; and all amenities are mounted at  
18 non-compliant heights and/or next to inaccessible floor spaces, including the  
19 sanitary seat cover dispenser behind the toilet, the mirror, the towel/trash  
20 receptacle, the sanitary napkin/tampon vending machine, and the sanitary disposal  
21 box;
- 22 13. Inaccessible vending and ice machines on the first floor which is obstructed by the  
23 aforementioned sudden change in rise;
- 24 14. Stair cases which lack compliant contrasting striping and handrails;
- 25 15. Inaccessible swimming pool; facilities, including, but not limited to, gates that  
26 lack kickplates; pull type latches that are out of reach; pool coping that is sloped  
27 backward at a slope far exceeding 2% to facilitate drainage to a drain-strip located

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1 about 3 feet from the edge; absence of in-ground sleeve for servicing a pool lift  
2 anywhere near the pool or Jacuzzi spa; placement of the pool furniture,  
3 particularly near the Jacuzzi, that fails to maintain an accessible path of travel; and  
4 spa controls, emergency shut off; and pool rescue equipment that are placed out of  
5 reach;

- 6 16. Inaccessible dry sauna facilities that are obstructed by a raised, non-compliant  
7 threshold and the absence of a turning radius and clear floor space.

8 Doc. 2 at 7-9.

9 Plaintiff also alleged that, on information and belief, “defendants have failed to provide  
10 access to multiple other facilities on site, including an adequate number of disabled parking  
11 facilities and guestroom upgrades and amenities, inaccessible guest laundry facilities, and  
12 inaccessible breakfast bar facilities that require reaches over an obstruction and/or food,  
13 condiments, plastic-ware, etc., that have been placed at inaccessible heights.” Doc. 2 at 9-10.

14 **III. Pleading Standards**

15 Federal Rule of Civil Procedure 8(a) provides:

16 A pleading that states a claim for relief must contain:

- 17 (1) a short and plain statement of the grounds for the court’s jurisdiction,  
18 unless the court already has jurisdiction and the claim needs no new  
19 jurisdictional support;  
20 (2) a short and plain statement of the claim showing the pleader is entitled to  
21 relief; and  
22 (3) a demand for the relief sought, which may include relief in the alternative  
23 or different types of relief.

24 “Each allegation must be simple, concise, and direct.” F.R.Civ.P. 8(d).

25 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited  
26 exceptions.” *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 512 (2002). Pursuant to Rule 8(a), a  
27 complaint must contain “a short and plain statement of the claim showing that the pleader is  
28 entitled to relief . . . .” Fed. R. Civ. P. 8(a). “Such a statement must simply give the defendant  
fair notice of what the plaintiff’s claim is and the grounds upon which it rests.” *Swierkiewicz*,  
534 U.S. at 512. Detailed factual allegations are not required, but “[t]hreadbare recitals of the

1 elements of the cause of action, supported by mere conclusory statements, do not suffice.”  
2 *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949 (2009), *citing Bell Atlantic Corp. v.*  
3 *Twombly*, 550 U.S. 544, 555 (2007). “Plaintiff must set forth sufficient factual matter accepted  
4 as true, to ‘state a claim that is plausible on its face.’” *Iqbal*, 129 S.Ct. at 1949, *quoting Twombly*,  
5 550 U.S. at 555. While factual allegations are accepted as true, legal conclusions are not. *Iqbal*,  
6 129 S.Ct. at 1949.

7 Although accepted as true, “[f]actual allegations must be [sufficient] to raise a right to  
8 relief above the speculative level.” *Twombly*, 550 U.S. at 555 (*citations omitted*). A plaintiff  
9 must set forth “the grounds of his entitlement to relief,” which “requires more than labels and  
10 conclusions, and a formulaic recitation of the elements of a cause of action.” *Id.* at 555-56  
11 (*internal quotation marks and citations omitted*). To adequately state a claim against a defendant,  
12 a plaintiff must set forth the legal and factual basis for his or her claim.

13 “A short and plain statement of the claim showing that the pleader is entitled to relief”  
14 contemplates a simple and straightforward, but complete, account of the relevant occurrences,  
15 actors, and resulting damages. Should Plaintiff elect to amend her complaint, as this order  
16 permits her to do, the Court will apply these standards to her amended complaint in the course of  
17 determining whether it has subject matter jurisdiction.

#### 18 **IV. Standing**

19 “In essence the question of standing is whether the litigant is entitled to have the court  
20 decide the merits of the dispute or of particular issues.” *Warth v. Seldin*, 422 U.S. 490, 498  
21 (1975). From a constitutional standpoint, standing addresses the question of whether the plaintiff  
22 has made out a case or controversy between himself and the defendant. *Id.* A federal court has  
23 jurisdiction only when the plaintiff himself has experienced a threatened or actual injury from the  
24 defendant’s alleged illegal action. *Id.* at 499.

25 “An ADA plaintiff suffers a legally cognizable injury under the ADA if he is  
26 ‘discriminated against on the basis of disability in the full and equal enjoyment of the goods,  
27 services, [or] facilities of any place of public accommodation.’” *Chapman v. Pier 1 Imports*  
28 (*U.S.*) *Inc.*, 631 F.3d 939, 944, 952 (9<sup>th</sup> Cir. 2011), *quoting* 42 U.S.C. § 12182(a). The ADA

1 proscribes not only obviously exclusionary conduct, such as a sign stating that disabled patrons  
2 are unwelcome, but also the “more subtle forms of discrimination—such as difficult-to-navigate  
3 restrooms and hard-to-open doors—that interfere with disabled individuals’ full and equal  
4 enjoyment of places of public accommodation.” *Chapman*, 631 F.3d at 945 (*internal quotations*  
5 *omitted*). When a disabled individual encounters or becomes aware of alleged ADA violations  
6 that deter her patronage of or otherwise interfere with her access to a place of public  
7 accommodation, she has suffered an injury in fact traceable to the defendant’s conduct and  
8 capable of Court redress, granting her Article III standing. *Doran v. 7-Eleven, Inc.*, 524 F.3d  
9 1034, 1042 n. 5 (9<sup>th</sup> Cir. 2008). *See also Chapman*, 631 F.3d at 946. Courts must take a “broad  
10 view” of constitutional standing in ADA cases since private enforcement suits are the primary  
11 method of enforcing compliance. *Doran*, 524 F.3d at 1039.

12 “[S]tanding is an essential and unchanging part of the case-or-controversy requirement of  
13 Article III.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). “[A]n ADA plaintiff can  
14 establish standing to sue for injunctive relief either by demonstrating deterrence, or by  
15 demonstrating injury-in-fact coupled with an intent to return to a noncompliant facility.”  
16 *Chapman*, 631 F.3d at 944. When an ADA plaintiff has suffered an injury-in-fact by  
17 encountering a barrier that deprives him of full and equal enjoyment of the facility due to his  
18 particular disability, he has standing to sue for injunctive relief as to that barrier and all other  
19 barriers relating to his disability even if he not personally encountered every such barrier. *Id.*  
20 That the disabled person is not deterred from returning to the public accommodation at issue is  
21 immaterial. *Id.* The statutory focus is the disabled person’s right to “full and equal enjoyment of  
22 the goods, services, [or] facilities.” *See* 42 U.S.C. § 12182(a).

23 To establish standing, a plaintiff must first allege that she has suffered an actual injury  
24 attributable to Defendant’s actions. *Fortyune v. American Multi-Cinema, Inc.*, 364 F.3d 1075,  
25 1081 (9<sup>th</sup> Cir. 2004). Once a plaintiff has encountered a barrier violating the ADA, she has  
26 sufficient personal stake in the outcome of the controversy as long as her suit addresses only  
27 those barriers relating to her particular disability. *Chapman*, 631 F.3d at 944, 947. *See, e.g.*,  
28 *Doran*, 524 F.3d at 1044 n. 7 (holding that a wheelchair-bound plaintiff may challenge only those

1 barriers relating to mobility); *Steger v. Franco, Inc.*, 228 F.3d 889, 893 (8<sup>th</sup> Cir. 2000) (a plaintiff  
2 who is not blind lacks standing to sue for ADA violations that only affect the blind). Plaintiff's  
3 complaint does not allege that she has personally encountered a barrier violating the ADA, only  
4 that barriers exist and that those barriers have denied Plaintiff "the right and desire to [visit] the  
5 subject hotel." Plaintiff does not allege that any barriers that she did not personally encounter  
6 also relate to her disability, either.

7 To establish standing to pursue injunctive relief, the sole remedy available to a private  
8 plaintiff under the ADA, she must also allege a "real and immediate threat of repeated injury."  
9 *Fortyune*, 364 F.3d at 1081. A plaintiff may satisfy this prong of the standing requirements by  
10 demonstrating her intent to return to a noncompliant accommodation or by establishing that she  
11 would be like to return but could not do so as long as the barriers remain. *Chapman*, 631 F.3d at  
12 944, 950. Put another way, Plaintiff can demonstrate an ongoing actual injury either by  
13 demonstrating that the discriminatory barriers interfere with his continuing patronage of the  
14 facility or that the discriminatory barriers prevent his return or otherwise interfere with his access  
15 to the facility. *Id.* An ADA plaintiff "lacks standing if he is indifferent to returning to the store  
16 or if his alleged intent to return is not genuine, or if the barriers he seeks to enjoin do not pose a  
17 real and immediate threat to him due to his particular disability." *Id.*

18 "In determining whether the plaintiff's likelihood of return is sufficient to confer  
19 standing, courts have closely examined factors such as: (1) the proximity of defendant's business  
20 to plaintiff's residence, (2) the plaintiff's past patronage of defendant's business, (3) the  
21 definitiveness of plaintiff's plans to return, and (4) the plaintiff's frequency of travel near  
22 defendant." *D'Lil v. Stardust Vacation Club*, 2001 WL 1825832 at \*3 (E.D. Cal. December 21,  
23 2001) (No. CIV-S-00-1496-DFL-PAN). In *Stardust Vacation Club*, the court concluded that the  
24 plaintiff had standing based on her stated intent to return, her history of travel to Lake Tahoe, and  
25 her particular reasons for patronizing the defendant's time-share hotel. *See also Parr v. L & L*  
26 *Drive-Inn Restaurant*, 96 F.Supp.2d 1065, 1079 (D. Hi. 2000) (finding standing where the  
27 plaintiff had one previous visit to the restaurant, which was located far from plaintiff's home,  
28 where plaintiff had a history of patronizing the restaurant chain, and where the court found the

1 plaintiff's claimed intent to return to be sincere); *D'Lil v. El Torito Restaurants, Inc.*, 1997 WL  
2 714866 (N.D.Cal. June 24, 1997) (No. C 94-3900-CAL) (finding no standing where the plaintiff  
3 had only one visit to a restaurant located over one hundred miles from her home and did not  
4 allege any intent to return).

5 Here, Plaintiff neither alleged having visited the hotel nor having any desire or intent to  
6 return. Nor does the complaint plead supportive facts such as her occupation as a minister, the  
7 nature of her ministry, the frequency of her visits to the area near the hotel to address local  
8 congregations, the recurring nature of her visits for certain annual events (such as annual  
9 conferences and retreats), her definite intent to return to the area, or her desire to patronize a  
10 more affordable hotel. Although Plaintiff testified to these facts in the course of her deposition,  
11 her complaint focused on setting forth applicable law and asserting legal conclusions. Had her  
12 complaint been properly pleaded, it would have alleged facts to support the elements of  
13 Plaintiff's claims.

14 Relying on *Aetna Life Ins. Co. v. Alla Medical Services*, 855 F.2d 1470, 1474 (9<sup>th</sup> Cir.  
15 1988), which addressed the timeliness of a Rule 12(b) motion made before the Defendants filed  
16 their responsive pleadings, Plaintiff contends that the Court need not reach this issue since  
17 Defendants failed to move to dismiss before or at the time of filing their answer. Plaintiff is  
18 wrong. Article III standing is not subject to waiver. *United States v. Hays*, 515 U.S. 737, 742  
19 (1995). A plaintiff must demonstrate standing at each successive stage of litigation. *Lujan v.*  
20 *Defenders of Wildlife*, 504 U.S. 555, 561 (1992); *Fortyune*, 364 F.3d at 1081. "If the court  
21 determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action."  
22 F.R.Civ.P. 12(h)(3).

23 Defendants correctly contend that Plaintiff lacks standing because the complaint failed to  
24 allege facts sufficient to establish that she has suffered an injury-in-fact. Despite the liberal  
25 pleading standards applicable to civil rights claimants, "a liberal interpretation of a . . . civil  
26 rights complaint may not supply essential elements of the claim that were not initially pled."  
27 *Pena v. Gardner*, 976 F.2d 469, 471 (9<sup>th</sup> Cir. 1992), quoting *Ivey v. Board of Regents*, 673 F.2d  
28 266, 268 (9<sup>th</sup> Cir. 1982). In *Chapman*, the Ninth Circuit concluded that the trial court should

1 have dismissed Chapman’s action at the outset because his complaint merely incorporated a  
2 laundry list of barriers (the “Accessibility Survey”) that Chapman claimed “denied him access to  
3 the Store, or which he seeks to remove on behalf of others under related state statutes.” 631 F.3d  
4 at 954. “The Accessibility Survey simply indentifie[d] alleged ADA and CBC violations without  
5 connecting the alleged violations to Chapman’s disability, or indicating whether or not he  
6 encountered any one of them in such a way as to impair his full and equal enjoyment of the  
7 Store.” *Id.* Merely listing the violations in a place of public accommodation is insufficient to  
8 establish the requirement that the Plaintiff allege an injury-in-fact. *Id.* A plaintiff must relate the  
9 alleged violations to his particular disability and explicitly allege that the violations deprived him  
10 of the full and equal access available to an individual who is not disabled. *Id.* at 955. Plaintiff’s  
11 complaint does not do this.

12         Neither is an expert’s assessment of the premises, identifying the premise’s ADAAG  
13 violations, sufficient to establish that the plaintiff has incurred an injury-in-fact. *Id.* at 955 n. 10.  
14 To meet this standard, Plaintiff must allege facts regarding the nature of her disability, how her  
15 disability relates to render the alleged defects barriers to her; and which particular barriers  
16 Plaintiff personally encountered and under what circumstances.

17         In *Oliver v. Ralph’s Grocery Co.*, 654 F.3d 903, 907 (9<sup>th</sup> Cir. 2011), the court observed  
18 that, as was the case in *Chapman*, Oliver’s complaint failed to allege an injury-in-fact because it  
19 stated that he had encountered barriers at the store and provided a list of the alleged barriers, but  
20 neither specified which barriers Oliver had personally encountered nor explained how the  
21 interaction of Oliver’s disability with each specified barrier denied him full and equal access to  
22 the store. As a result, Oliver’s complaint was jurisdictionally defective. *Id.*

23         The Supreme Court has observed:

24         For purposes of ruling on a motion to dismiss for want of standing, both the trial  
25 and reviewing courts must accept as true all material allegations of the complaint,  
26 and must construe the complaint in favor of the complaining party. E.g., *Jenkins*  
27 *v. McKeithen*, 395 U.S. 411, 42-422, 89 S.Ct. 1843, 1848-1849, 23 L.Ed.2d 404  
28 (1969). At the same time, it is within the trial court’s power to allow or to require  
the plaintiff to supply, by amendment to the complaint or by affidavits, further  
particularized allegations of fact deemed supportive of plaintiff’s standing. If

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1 after this opportunity, the plaintiff's standing does not adequately appear from all  
2 materials of record, the complaint must be dismissed.

3 *Warth*, 422 U.S. at 501-02.

4 Having failed to challenge Plaintiff's standing earlier, Defendants raise the issue well  
5 after the close of discovery and in the wake of their own efforts to unduly delay the case's  
6 progress and the Court's imposition of sanctions that preclude their use of an expert on Comfort  
7 Inn's compliance with ADAAG standards. This Court has repeatedly observed that Defendants'  
8 litigation tactics appear designed to delay resolution of this case rather than encourage resolution.  
9 Nonetheless, because Rule 12(h)(3) requires this Court to dismiss the complaint, this Court will  
10 dismiss the complaint with leave to amend.

11 In the course of documentary discovery and Plaintiff's deposition, Plaintiff has introduced  
12 sufficient factual evidence to support an allegation of injury-in-fact. She simply failed to  
13 adequately plead the elements of her claims. Her amended complaint should properly allege  
14 facts supporting her claim, and minimize and eliminate the extensive legal conclusions and  
15 argumentative re-statement of applicable law that characterizes the original complaint.

16 **V. Timeliness**

17 Defendant contends that because Plaintiff admits that she did not stay at the Comfort Inn  
18 within two years of filing, her suit is barred by the statute of limitations. The ADA provides that  
19 "[n]othing in this section shall require a person with a disability to engage in a futile gesture if  
20 such person has actual notice that a person or organization covered by this subchapter does not  
21 intend to comply with its provisions." 42 U.S.C. § 12188 (a)(1). "[A] disabled individual who is  
22 currently deterred from patronizing a public accommodation due to a defendant's failure to  
23 comply with the ADA has suffered 'actual injury.'" *Pickern v. Holiday Quality Foods, Inc.*, 293  
24 F.3d 1133, 1138 (9<sup>th</sup> Cir. 2002), *cert. denied*, 537 U.S. 1030 (2002).

25 In *Pickern*, the appellant's single visit to the defendant's supermarket occurred outside  
26 the limitations period. *Id.* at 1135. Because of the barriers he encountered in the course of his  
27 first visit, when the appellant returned to the store within the limitations period, he waited in the  
28 car while his companion entered to make purchases on the appellant's behalf. *Id.* at 1136. The  
court held that "in stating that he is currently deterred from attempting to gain access to the

1 Paradise store, [the plaintiff] has stated sufficient facts to show concrete, particularized injury.”  
2 *Id.* at 1137-38. The court added that, when a plaintiff’s awareness of discriminatory conditions  
3 deter him from patronizing a place of public accommodation, the deterrent effect is sufficient to  
4 constitute an injury in fact for purposes of the ADA. *Id.* at 1136-37. The court wrote:

5 We hold that when a plaintiff who is disabled within the meaning of the ADA has  
6 actual knowledge of illegal barriers at a public accommodation to which he or she  
7 desires access, that plaintiff need not engage in the “futile gesture” of attempting  
8 to gain access in order to show actual injury during the limitations period. When  
9 such a plaintiff seeks injunctive relief against an ongoing violation, he or she is  
10 not barred from seeking relief . . . . by the statute of limitations.

11 *Pickern*, 293 F.3d at 1134.

12 According to her deposition testimony, Plaintiff, a minister, patronized the Comfort Inn  
13 for many years in the course of regular visits to preach at an area church. But after a 2006  
14 accident in which she broke both legs made her more dependent on her wheelchair, Plaintiff  
15 discovered that she was unable to use the bathroom in her room at Comfort Inn because the  
16 bathroom did not include sufficient space to allow her to transfer easily from her wheelchair to  
17 the commode. Knowing that she was unable to navigate the Comfort Inn’s bathroom, Plaintiff  
18 did not return to Comfort Inn thereafter.

19 According to *Pickern*, Plaintiff was not required to return within the two-year limitations  
20 period. If she had actual knowledge of the conditions in the hotel room and the violation was  
21 ongoing, the statute of limitations did not bar this action. Plaintiff did not allege these facts in  
22 her complaint. Her amended complaint should do so.

## 23 **VI. Conclusion and Order**

24 Plaintiff’s complaint fails to state facts sufficient to establish that this Court has subject  
25 matter jurisdiction even though facts disclosed in the course of discovery, particularly through  
26 Plaintiff’s deposition testimony, appear to indicate that subject matter jurisdiction exists. The  
27 Court will provide Plaintiff with the opportunity to file an amended complaint curing the  
28 deficiencies identified by the Court in this order. Plaintiff may not change the nature of this suit  
by adding new, unrelated claims in the amended complaint. *George v. Smith*, 507 F.3d 605, 607  
(7th Cir. 2007).

1 Plaintiff's amended complaint should be brief, but must allege sufficient facts to establish  
2 subject matter jurisdiction. Fed. R. Civ. P. 8(a). Plaintiff should focus on identifying her legal  
3 claims and setting forth, as briefly but specifically as possible, the facts necessary to establish her  
4 standing to bring the claims.

5 Plaintiff is advised that an amended complaint supercedes the original complaint, *Forsyth*  
6 *v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997), *aff'd*, 525 U.S. 299 (1999); *King v. Atiyeh*,  
7 814 F.2d 565, 567 (9th Cir. 1987), and must be "complete in itself without reference to the prior  
8 or superceded pleading," Local Rule 15-220. "All causes of action alleged in an original  
9 complaint which are not alleged in an amended complaint are waived." *King*, 814 F.2d at 567;  
10 *accord Forsyth*, 114 F.3d at 1474.

11 Based on the foregoing, it is HEREBY ORDERED that:

- 12 1. Plaintiff's complaint is dismissed with leave to amend for failure to state facts  
13 sufficient to establish subject matter jurisdiction;
- 14 2. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file  
15 an amended complaint curing the deficiencies identified by the Court in this order;  
16 and
- 17 3. If Plaintiff fails to file an amended complaint within **thirty (30) days** from the  
18 date of service of this order, this action will be dismissed with prejudice for lack  
19 of subject matter jurisdiction.

20  
21 IT IS SO ORDERED.

22 **Dated: March 27, 2012**

23 /s/ Sandra M. Snyder  
24 UNITED STATES MAGISTRATE JUDGE  
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