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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

VILMA NAVA,

Plaintiff,

No. CIV S-11-0012 FCD EFB PS

vs.

CALIFORNIA DEPARTMENT OF
MOTOR VEHICLES,

Defendant.

ORDER

On April 28, 2011, the undersigned granted plaintiff’s request for leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915, but dismissed plaintiff’s complaint with leave to amend pursuant to 28 U.S.C. § 1915(e)(2). Dckt. No. 3. The court noted that “[a]lthough [plaintiff’s] complaint does not state what statutes or constitutional provisions plaintiff alleges defendant violated, the civil cover sheet attached to plaintiff’s complaint indicates that plaintiff is purporting to state a claim under Titles I and IV of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12101 *et seq.*” *Id.* at 3. The court then dismissed plaintiff’s complaint since plaintiff failed to establish any of the elements of a Title I or a Title IV ADA claim, but gave plaintiff leave to file an amended complaint. *Id.* at 4. The court informed plaintiff that should she choose to file an amended complaint, she needed to allege the elements of an ADA claim. *Id.* The court provided that to allege a Title I claim, the amended

1 complaint “must allege that [plaintiff] is disabled within the meaning of the ADA and that she is
2 a qualified individual who can perform the essential function of her position with reasonable
3 accommodations, and she shall specifically allege how defendant discriminated against her on
4 the basis of that disability,” and to allege a Title IV claim, the amended complaint “must allege
5 that [plaintiff] was involved in a protected activity, that defendant subjected her to an adverse
6 action, and that there is a causal link between the protected activity and defendant’s action.” *Id.*

7 On June 29, 2011, plaintiff filed an amended complaint. Dckt. No. 6. The amended
8 complaint alleges that defendant terminated her health benefits and her life insurance benefits.
9 *Id.* However, the amended complaint still does not allege any of the elements of either a Title I
10 or a Title IV ADA claim, nor does it allege the elements of any other federal causes of action.

11 As noted in the April 28, 2011 order, although *pro se* pleadings are liberally construed,
12 *see Haines v. Kerner*, 404 U.S. 519, 520-21 (1972), a complaint, or portion thereof, should be
13 dismissed for failure to state a claim if it fails to set forth “enough facts to state a claim to relief
14 that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554, 562-563 (2007)
15 (citing *Conley v. Gibson*, 355 U.S. 41 (1957)); *see also* Fed. R. Civ. P. 12(b)(6). “[A] plaintiff’s
16 obligation to provide the ‘grounds’ of his ‘entitlement to relief’ requires more than labels and
17 conclusions, and a formulaic recitation of a cause of action’s elements will not do. Factual
18 allegations must be enough to raise a right to relief above the speculative level on the assumption
19 that all of the complaint’s allegations are true.” *Id.* (citations omitted). Dismissal is appropriate
20 based either on the lack of cognizable legal theories or the lack of pleading sufficient facts to
21 support cognizable legal theories. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th
22 Cir. 1990).

23 In reviewing a complaint under this standard, the court must accept as true the allegations
24 of the complaint in question, *Hospital Bldg. Co. v. Rex Hosp. Trustees*, 425 U.S. 738, 740
25 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all doubts in
26 the plaintiff’s favor, *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). A *pro se* plaintiff must

1 satisfy the pleading requirements of Rule 8(a) of the Federal Rules of Civil Procedure. Rule
2 8(a)(2) “requires a complaint to include a short and plain statement of the claim showing that the
3 pleader is entitled to relief, in order to give the defendant fair notice of what the claim is and the
4 grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554, 562-563 (2007)
5 (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).

6 Additionally, a federal court is a court of limited jurisdiction, and may adjudicate only
7 those cases authorized by the Constitution and by Congress. *Kokkonen v. Guardian Life Ins.*
8 *Co.*, 511 U.S. 375, 377 (1994). The basic federal jurisdiction statutes, 28 U.S.C. §§ 1331 &
9 1332, confer “federal question” and “diversity” jurisdiction, respectively. Federal question
10 jurisdiction requires that the complaint (1) arise under a federal law or the U. S. Constitution, (2)
11 allege a “case or controversy” within the meaning of Article III, § 2 of the U. S. Constitution, or
12 (3) be authorized by a federal statute that both regulates a specific subject matter and confers
13 federal jurisdiction. *Baker v. Carr*, 369 U.S. 186, 198 (1962). To invoke the court’s diversity
14 jurisdiction, a plaintiff must specifically allege the diverse citizenship of all parties, and that the
15 matter in controversy exceeds \$75,000. 28 U.S.C. § 1332(a); *Bautista v. Pan American World*
16 *Airlines, Inc.*, 828 F.2d 546, 552 (9th Cir. 1987). A case presumably lies outside the jurisdiction
17 of the federal courts unless demonstrated otherwise. *Kokkonen*, 511 U.S. at 376-78. Lack of
18 subject matter jurisdiction may be raised at any time by either party or by the court. *Attorneys*
19 *Trust v. Videotape Computer Products, Inc.*, 93 F.3d 593, 594-95 (9th Cir. 1996).

20 Because plaintiff’s amended complaint still fails to allege the elements of either a Title I
21 or a Title IV ADA claim, the amended complaint will once again be dismissed. However,
22 plaintiff is granted leave to file a second amended complaint to the extent that she can allege
23 each of the elements of a Title I and/or Title IV ADA claim, as described above, or the elements
24 of another federal cause of action. *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en
25 banc) (district courts must afford pro se litigants an opportunity to amend to correct any
26 deficiency in their complaints).

1 Plaintiff is reminded that the court cannot refer to prior pleadings in order to make an
2 amended complaint complete. Local Rule 220 requires that an amended complaint be complete
3 in itself. This is because, as a general rule, an amended complaint supersedes the original
4 complaint. *See Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967). Accordingly, once plaintiff files a
5 second amended complaint, the first amended complaint no longer serves any function in the
6 case. Therefore, “a plaintiff waives all causes of action alleged in the original complaint which
7 are not alleged in the amended complaint,” *London v. Coopers & Lybrand*, 644 F.2d 811, 814
8 (9th Cir. 1981), and defendants not named in an amended complaint are no longer defendants.
9 *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992).

10 Finally, the court cautions plaintiff that failure to comply with the Federal Rules of Civil
11 Procedure, this court’s Local Rules, or any court order may result in a recommendation that this
12 action be dismissed. *See* Local Rule 110.

13 Accordingly, IT IS ORDERED that:

- 14 1. Plaintiff’s first amended complaint is dismissed with leave to amend.
- 15 2. Plaintiff is granted thirty days from the date of service of this order to file a second
16 amended complaint that complies with the directives herein. The amended complaint must bear
17 the docket number assigned to this case and must be labeled “Second Amended Complaint.”
18 Plaintiffs must file an original and two copies of the second amended complaint. Failure to
19 timely file a second amended complaint in accordance with this order will result in a
20 recommendation this action be dismissed.

21 DATED: July 8, 2011.

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23 EDMUND F. BRENNAN
24 UNITED STATES MAGISTRATE JUDGE
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