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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GRACIELA M. CONTRERAS,
Plaintiff,
v.
GEN. FRANK J. GRASS, et al.,
Defendants.

No. 2:14-cv-1282-MCE-EFB PS

ORDER

This case, in which plaintiff is proceeding *in propria persona*, was referred to the undersigned under Local Rule 302(c)(21), pursuant to 28 U.S.C. § 636(b)(1). Plaintiff requests authority pursuant to 28 U.S.C. § 1915 to proceed *in forma pauperis*, and has submitted the affidavit required thereunder which demonstrates that plaintiff is unable to prepay fees and costs or give security for them. *See* ECF No. 2. Accordingly, the request to proceed *in forma pauperis* is granted. 28 U.S.C. § 1915(a).

Determining that plaintiff may proceed *in forma pauperis* does not complete the required inquiry. Pursuant to § 1915(e)(2), the court must dismiss the case at any time if it determines 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. After plaintiff initiated this action, plaintiff filed a letter with the court indicating that she wanted to assert claims against an additional defendant. ECF No. 3. The court construes plaintiff's letter as a motion to amend the complaint.

1 Federal Rule of Civil Procedure 15(a)(1) provides that “[a] party may amend its pleading
2 once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to
3 which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days
4 after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.” As plaintiff has not
5 previously amended her complaint and a responsive pleading has not been filed, plaintiff may
6 amend her complaint as a matter of course and leave of court is not needed. However, Local Rule
7 220 requires that “every pleading to which an amendment or supplement is permitted as a matter
8 of right or has been allowed by court order shall be retyped and filed so that it is complete in itself
9 without reference to the prior or superseded pleading.” E.D. Cal. L.R. 220. Thus, for plaintiff to
10 add an additional, she must submit an amended complaint that is complete in and of itself without
11 reference to the previous complaint or any other pleading, attachment, or document.

12 In light of plaintiff’s indication that she wants to file an amended complaint, the court will
13 defer screening the original complaint until plaintiff has filed an amended complaint. Plaintiff is
14 directed to file her amended complaint within 30 days of the date of service of this order. If
15 plaintiff fails to do so, the court will screen plaintiff’s original complaint.

16 Plaintiff is reminded that the court cannot refer to prior pleadings in order to make an
17 amended complaint complete. Local Rule 220 requires that an amended complaint be complete
18 in itself. This is because, as a general rule, an amended complaint supersedes the original
19 complaint. *See Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967). Accordingly, once plaintiff files
20 an amended complaint, the original no longer serves any function in the case. Therefore, “a
21 plaintiff waives all causes of action alleged in the original complaint which are not alleged in the
22 amended complaint,” *London v. Coopers & Lybrand*, 644 F.2d 881, 814 (9th Cir. 1981), and
23 defendants not named in an amended complaint are no longer defendants. *Ferdik v. Bonzelet*, 963
24 F.2d 1258, 1262 (9th Cir. 1992).

25 Accordingly, it is hereby ORDERED that:

- 26 1. Plaintiff’s request for leave to proceed *in forma pauperis*, ECF No. 2, is granted;
- 27 2. Plaintiff’s motion to amend, ECF No. 3, is denied as unnecessary; and

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3. Plaintiff is granted thirty days from the date of service of this order to file an amended complaint. The amended complaint must bear the docket number assigned to this case and must be labeled "First Amended Complaint." If plaintiff fails to file an amended complaint, the court will screen plaintiff's original complaint.

DATED: June 22, 2015.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE