

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LIUDMYLA IEGOROVA,
Plaintiff,
v.
CHARLES LIENINGER,
Defendant.

No. 2:14-cv-3016-GEB-EFB PS

ORDER

Plaintiff seeks leave to proceed *in forma pauperis* pursuant to 28 U.S.C. 1915.¹ Her declaration makes the showing required by 28 U.S.C. §1915(a)(1) and (2). *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.

/////
/////
/////

¹ This case, in which plaintiff is proceeding *in propria persona*, was referred to the undersigned under Local Rule 302(c)(21). *See* 28 U.S.C. § 636(b)(1).

1 Although pro se pleadings are liberally construed, *see Haines v. Kerner*, 404 U.S. 519,
2 520-21 (1972), a complaint, or portion thereof, should be dismissed for failure to state a claim if it
3 fails to set forth “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl.*
4 *Corp. v. Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41
5 (1957)); *see also* Fed. R. Civ. P. 12(b)(6). “[A] plaintiff’s obligation to provide the ‘grounds’ of
6 his ‘entitlement to relief’ requires more than labels and conclusions, and a formulaic recitation of
7 a cause of action’s elements will not do. Factual allegations must be enough to raise a right to
8 relief above the speculative level on the assumption that all of the complaint’s allegations are
9 true.” *Id.* (citations omitted). Dismissal is appropriate based either on the lack of cognizable
10 legal theories or the lack of pleading sufficient facts to support cognizable legal theories.
11 *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

12 In reviewing a complaint under this standard, the court must accept as true the allegations
13 of the complaint in question, *Hospital Bldg. Co. v. Rex Hosp. Trustees*, 425 U.S. 738, 740 (1976),
14 construe the pleading in the light most favorable to the plaintiff, and resolve all doubts in the
15 plaintiff’s favor, *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). A pro se plaintiff must satisfy
16 the pleading requirements of Rule 8(a) of the Federal Rules of Civil Procedure. Rule 8(a)(2)
17 requires a complaint to include “a short and plain statement of the claim showing that the pleader
18 is entitled to relief, in order to give the defendant fair notice of what the claim is and the grounds
19 upon which it rests.” *Twombly*, 550 U.S. at 555 (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).

20 Additionally, a federal court is a court of limited jurisdiction, and may adjudicate only
21 those cases authorized by the Constitution and by Congress. *Kokkonen v. Guardian Life Ins. Co.*,
22 511 U.S. 375, 377 (1994). The basic federal jurisdiction statutes, 28 U.S.C. §§ 1331 & 1332,
23 confer “federal question” and “diversity” jurisdiction, respectively. Federal question jurisdiction
24 requires that the complaint (1) arise under a federal law or the U. S. Constitution, (2) allege a
25 “case or controversy” within the meaning of Article III, § 2 of the U. S. Constitution, or (3) be
26 authorized by a federal statute that both regulates a specific subject matter and confers federal
27 jurisdiction. *Baker v. Carr*, 369 U.S. 186, 198 (1962). To invoke the court’s diversity
28 jurisdiction, a plaintiff must specifically allege the diverse citizenship of all parties, and that the

1 matter in controversy exceeds \$75,000. 28 U.S.C. § 1332(a); *Bautista v. Pan American World*
2 *Airlines, Inc.*, 828 F.2d 546, 552 (9th Cir. 1987). A case presumably lies outside the jurisdiction
3 of the federal courts unless demonstrated otherwise. *Kokkonen*, 511 U.S. at 376-78. Lack of
4 subject matter jurisdiction may be raised at any time by either party or by the court. *Attorneys*
5 *Trust v. Videotape Computer Products, Inc.*, 93 F.3d 593, 594-95 (9th Cir. 1996).

6 Plaintiff's complaint consists almost entirely of incoherent rambling and is unintelligible.
7 *See generally* ECF No. 1. Plaintiff purports to allege claims against attorney Charles Lieninger,
8 but the precise basis for plaintiff's claim(s) cannot be discerned from the complaint. Plaintiff
9 alleges that she became the victim of "open terror in Sacramento by members American cash
10 economy gang, by Supreme Court State of California and Judicial Branch Government USA
11 employee Attorney Lieninger." *Id.* at 2 (emphasis omitted). She claims that defendant Lieninger
12 was "officially assigned attorney government USA to protect member Russian – American
13 conspiracy in Sacramento, child abuser terrorist Melnichuk Nelya." She contends that defendant
14 harassed her and invented fraudulent statements that plaintiff had been "kidnapped by members
15 American cash economy gang" *Id.* at 3. She further alleges that defendant committed
16 perjury and fraud inside a court room to increase plaintiff's stress, anxiety, "blood pressure and
17 level of sugar to most dangerous condition which could be fatal to [plaintiff]."

18 Given these allegations, the court is unable to determine whether it has subject matter
19 jurisdiction over plaintiff's intended claim(s). She does not allege the citizenship of the parties,
20 nor is it clear how the allegations in the complaint give rise to a federal claim. Thus there is no
21 basis upon which either federal question or diversity jurisdiction can be established. Although the
22 complaint's caption page does list a number of criminal statutes codified in Title 18 of the United
23 States Code, those criminal statutes do not give rise to civil liability. *See Allen v. Gold Country*
24 *Cascino*, 464 F.3d 1044, 1048 (9th Cir. 2006) (no private right of action for violation of criminal
25 statutes). Accordingly, to the extent plaintiff's claim(s) are premised on defendant's alleged
26 violation of criminal statutes, such a claim(s) fails.

27 The caption page also indicates that this action is based upon "crime against constitution
28 USA," possibly indicating plaintiff's intention to assert a claim under 42 U.S.C. § 1983. To state

1 a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right
2 secured by the Constitution or laws of the United States was violated, and (2) that the alleged
3 violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S.
4 42, 48 (1988). The complaint fails to satisfy both elements. It does not allege that defendant
5 Lieninger is a state actor, nor does it specifically identify a constitutional provision that defendant
6 allegedly violated.

7 Accordingly, plaintiff's complaint will be dismissed. However, plaintiff is granted leave
8 to file an amended complaint to afford her another opportunity to allege a basis for this court's
9 jurisdiction, as well as a cognizable legal theory against a proper defendant and sufficient facts in
10 support of that cognizable legal theory. *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000)
11 (en banc) (district courts must afford pro se litigants an opportunity to amend to correct any
12 deficiency in their complaints). Should plaintiff choose to file an amended complaint, the
13 amended complaint shall clearly set forth the allegations against defendant and shall specify a
14 basis for this court's subject matter jurisdiction. Any amended complaint shall plead plaintiff's
15 claims in "numbered paragraphs, each limited as far as practicable to a single set of
16 circumstances," as required by Federal Rule of Civil Procedure 10(b), and shall be in double-
17 spaced text on paper that bears line numbers in the left margin, as required by Eastern District of
18 California Local Rules 130(b) and 130(c). Any amended complaint shall also use clear headings
19 to delineate each claim alleged and against which defendant or defendants the claim is alleged, as
20 required by Rule 10(b), and must plead clear facts that support each claim under each header.

21 Additionally, plaintiff is cautioned that the court cannot refer to prior pleadings in order to
22 make an amended complaint complete. Local Rule 220 requires that an amended complaint be
23 complete in itself. This is because, as a general rule, an amended complaint supersedes the
24 original complaint. *See Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967). Accordingly, once
25 plaintiff files an amended complaint, the original no longer serves any function in the case.
26 Therefore, "a plaintiff waives all causes of action alleged in the original complaint which are not
27 alleged in the amended complaint," *London v. Coopers & Lybrand*, 644 F.2d 811, 814 (9th Cir.
28 1981), and defendants not named in an amended complaint are no longer defendants. *Ferdik v.*

1 *Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). Finally, the court cautions plaintiff that failure to
2 comply with the Federal Rules of Civil Procedure, this court's Local Rules, or any court order
3 may result in a recommendation that this action be dismissed. See Local Rule 110.

4 Accordingly, it is hereby ORDERED that:

- 5 1. Plaintiff's request for leave to proceed *in forma pauperis* (ECF No. 2) is granted.
- 6 2. Plaintiff's complaint is dismissed with leave to amend, as provided herein.
- 7 3. Plaintiff is granted thirty days from the date of service of this order to file an amended
8 complaint. The amended complaint must bear the docket number assigned to this case and must
9 be labeled "Amended Complaint." Failure to timely file an amended complaint in accordance
10 with this order will result in a recommendation this action be dismissed.

11 DATED: May 17, 2016.



EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE