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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LIUDMYLA IEGOROVA,  
Plaintiff,  
v.  
VINTAGE KNOOLS AND VINTAGE  
WOODS,  
Defendant.

No. 2:15-cv-0884-TLN-KJN PS

ORDER

Plaintiff Liudmyla Iegorova, who proceeds in this action without counsel, has requested leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (ECF No. 2.)<sup>1</sup> Plaintiff's application in support of her request to proceed *in forma pauperis* makes the showing required by 28 U.S.C. § 1915. Accordingly, the court grants plaintiff's request to proceed *in forma pauperis*.

The determination that a plaintiff may proceed *in forma pauperis* does not complete the required inquiry. Pursuant to 28 U.S.C. § 1915, the court is directed to dismiss the case at any time if it determines that 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.

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<sup>1</sup> This case proceeds before the undersigned pursuant to E.D. Cal. L.R. 302(c)(21) and 28 U.S.C. § 636(b)(1).

1 To avoid dismissal for failure to state a claim, a complaint must contain more than “naked  
2 assertions,” “labels and conclusions,” or “a formulaic recitation of the elements of a cause of  
3 action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57 (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, 556 U.S. 662, 678 (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, 556 U.S.  
9 at 678. When considering whether a complaint states a claim upon which relief can be granted,  
10 the court must accept the factual allegations as true, Erickson v. Pardus, 551 U.S. 89, 94 (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 Pro se pleadings are liberally construed. See Haines v. Kerner, 404 U.S. 519, 520-21  
14 (1972); Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1988). Unless it is clear  
15 that no amendment can cure the defects of a complaint, a pro se plaintiff proceeding *in forma*  
16 *pauperis* is ordinarily entitled to notice and an opportunity to amend before dismissal. See Noll  
17 v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987); Franklin v. Murphy, 745 F.2d 1221, 1230 (9th  
18 Cir. 1984).

19 As an initial matter, the court notes that the allegations asserted in plaintiff’s complaint are  
20 rambling, vague, and generally unintelligible. Nevertheless, when plaintiff’s complaint is  
21 liberally construed, it appears to allege that plaintiff is a senior citizen who resides in defendant’s  
22 senior living development where defendant’s employees provided plaintiff with an apartment that  
23 contained a number of alleged health and safety issues, including a leaky sink, odors emanating  
24 from carpeted areas and the kitchen, dust, and damage to the refrigerator, stove, and front door.  
25 (ECF No. 1 at 5-6.) Plaintiff claims that this constitutes a “hostile housing environment.” (Id. at  
26 3.) Plaintiff further appears to allege that defendant’s employees committed unspecified acts of  
27 “senior citizen harassment” and “senior citizen retaliation” against plaintiff. (Id. at 2.) She also  
28 claims that these unspecified employees “committed crime against [her] privacy, [her] health,

1 [her] property[,] and intentionally harass[ed her].” (Id.) She further alleges that defendant’s  
2 management permitted other residents to smoke despite plaintiff’s complaints and ignored a  
3 report that plaintiff’s credit card and plaintiff’s caregiver’s driver’s license had been stolen. (Id.  
4 at 8.)

5 Plaintiff also seems to assert that Helen Brunello, a manager for defendant who is not  
6 named as a defendant to this action, committed the crime of perjury during proceedings held  
7 before the Sacramento County Superior Court in February of 2012 by falsely stating that plaintiff  
8 did not pay her monthly rent to defendant. (Id. at 3.) Furthermore, plaintiff appears to claim that  
9 Helen Brunello also burglarized plaintiff’s car, “intentionally damaged [plaintiff’s] car and tires  
10 to bring stress and emotional suffering to [plaintiff],” and eventually stole plaintiff’s car. (Id. at  
11 3-4, 6.)

12 Plaintiff appears to seek compensatory damages for the various expenses plaintiff  
13 allegedly incurred as a result of defendant’s conduct, in addition to damages for emotional  
14 distress and suffering. (Id. at 9-12.)

15 There are number of problems with the allegations in plaintiff’s complaint. First, although  
16 the complaint broadly alleges discrimination and retaliation based on her status as a senior citizen,  
17 plaintiff fails to allege which federal or state statute, constitutional provision, or other cause of  
18 action her claims are based upon. Furthermore, the complaint does not even remotely allege  
19 sufficient facts from which the court can draw a reasonable inference that the individuals  
20 involved engaged in discrimination or retaliation based on plaintiff’s status as a senior citizen.

21 Second, plaintiff fails to clarify in her complaint what specific claims she is asserting  
22 against defendant, what factual allegations support each of those claims, and how defendant is  
23 liable for the alleged actions of its employees. Plaintiff’s factual allegations concerning  
24 defendant’s employees’ purportedly illegal actions consist largely of vague assertions and  
25 conclusory statements that give little indication to the court or to defendant as to what specific act  
26 or acts underlie each of plaintiff’s claims. In short, based on what the court can ascertain from  
27 the complaint, plaintiff does not plead sufficient facts which, if accepted as true, would allow the  
28 court to draw the reasonable inference that defendant is liable for the misconduct alleged.

1 Finally, it appears that the complaint asserts claims against defendant based on allegations  
2 of criminal law violations, specifically, allegations of perjury and burglary. However, plaintiff  
3 may not premise her claims against defendant on this basis because criminal statutes do not give  
4 rise to civil liability. Allen v. Gold Country Casino, 464 F.3d 1044, 1048 (9th Cir. 2006).  
5 Similarly, when a criminal statute is violated, the question of whether to prosecute and what  
6 criminal charges to file or bring are decisions that generally rest in the discretion of the  
7 prosecutor, not the court. United States v. Batchelder, 442 U.S. 114, 124 (1979). Accordingly,  
8 insofar as plaintiff alleges criminal conduct by defendant or its employees, she cannot sue to  
9 prosecute these criminal acts, or compel the state or federal government to investigate or  
10 prosecute these alleged crimes.

11 Given the above-mentioned deficiencies, plaintiff's complaint is subject to dismissal.  
12 Nevertheless, in light of plaintiff's pro se status, and because it is at least conceivable that  
13 plaintiff could cure such deficiencies, the court finds it appropriate to grant plaintiff an  
14 opportunity to amend the complaint.

15 If plaintiff elects to file an amended complaint, it shall be captioned "First Amended  
16 Complaint"; shall clearly identify the named defendant and the names of the employees whose  
17 conduct forms the basis of plaintiff's allegations; shall clearly identify the claims plaintiff seeks  
18 to bring; shall outline the specific factual allegations in support of those claims; shall state why  
19 defendant is liable for its employees' alleged conduct; shall specify the relief sought; and shall be  
20 typed or written in legible handwriting.

21 Plaintiff is informed that the court cannot refer to a prior complaint or other filing in order  
22 to make plaintiff's first amended complaint complete. Local Rule 220 requires that an amended  
23 complaint be complete in itself without reference to any prior pleading. As a general rule, an  
24 amended complaint supersedes the original complaint, and once the first amended complaint is  
25 filed, the original complaint no longer serves any function in the case.

26 Finally, nothing in this order requires plaintiff to file a first amended complaint. If  
27 plaintiff determines that she is unable to amend her complaint in compliance with the court's  
28 order at this juncture, she may alternatively file a notice of voluntary dismissal of her claims


1 without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) within 28 days of  
2 this order.

3 Accordingly, for the reasons outlined above, IT IS HEREBY ORDERED that:

- 4 1. Plaintiff's motion to proceed in forma pauperis (ECF No. 2) is granted.
- 5 2. Plaintiff's complaint is dismissed, but with leave to amend.
- 6 3. Within 28 days of this order, plaintiff shall file either a first amended complaint in  
7 compliance with this order, or a notice of voluntary dismissal of the action without  
8 prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i).
- 9 4. Failure to file either a first amended complaint in compliance with this order or a  
10 notice of voluntary dismissal by the required deadline may result in a recommendation  
11 that the action be dismissed with prejudice pursuant to Federal Rule of Civil Procedure  
12 41(b).

13 IT IS SO ORDERED.

14 Dated: June 30, 2015

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17 KENDALL J. NEWMAN  
18 UNITED STATES MAGISTRATE JUDGE  
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