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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 KIMBERLY R. OLSON,
12 Plaintiff,

13 v.

14 PATRICIA SLOTE, et al.,
15 Defendants.
16

No. 2:16-cv-956-KJM-EFB PS

ORDER

17 Plaintiff seeks leave to proceed *in forma pauperis* pursuant to 28 U.S.C. 1915.¹ Her
18 declaration makes the showing required by 28 U.S.C. §1915(a)(1) and (2). *See* ECF No. 3.
19 Accordingly, the request to proceed *in forma pauperis* is granted. 28 U.S.C. § 1915(a).

20 Determining that plaintiff may proceed *in forma pauperis* does not complete the required
21 inquiry. Pursuant to § 1915(e)(2), the court must dismiss the case at any time if it determines the
22 allegation of poverty is untrue, or if the action is frivolous or malicious, fails to state a claim on
23 which relief may be granted, or seeks monetary relief against an immune defendant.

24 Although pro se pleadings are liberally construed, *see Haines v. Kerner*, 404 U.S. 519,
25 520-21 (1972), a complaint, or portion thereof, should be dismissed for failure to state a claim if it
26 fails to set forth “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl.*

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28 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 *Corp. v. Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41
2 (1957)); *see also* Fed. R. Civ. P. 12(b)(6). “[A] plaintiff’s obligation to provide the ‘grounds’ of
3 his ‘entitlement to relief’ requires more than labels and conclusions, and a formulaic recitation of
4 a cause of action’s elements will not do. Factual allegations must be enough to raise a right to
5 relief above the speculative level on the assumption that all of the complaint’s allegations are
6 true.” *Id.* (citations omitted). Dismissal is appropriate based either on the lack of cognizable
7 legal theories or the lack of pleading sufficient facts to support cognizable legal theories.
8 *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

9 In reviewing a complaint under this standard, the court must accept as true the allegations
10 of the complaint in question, *Hospital Bldg. Co. v. Rex Hosp. Trustees*, 425 U.S. 738, 740 (1976),
11 construe the pleading in the light most favorable to the plaintiff, and resolve all doubts in the
12 plaintiff’s favor, *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). A pro se plaintiff must satisfy
13 the pleading requirements of Rule 8(a) of the Federal Rules of Civil Procedure. Rule 8(a)(2)
14 “requires a complaint to include a short and plain statement of the claim showing that the pleader
15 is entitled to relief, in order to give the defendant fair notice of what the claim is and the grounds
16 upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing
17 *Conley v. Gibson*, 355 U.S. 41 (1957)).

18 Additionally, a federal court is a court of limited jurisdiction, and may adjudicate only
19 those cases authorized by the Constitution and by Congress. *Kokkonen v. Guardian Life Ins. Co.*,
20 511 U.S. 375, 377 (1994). The basic federal jurisdiction statutes, 28 U.S.C. §§ 1331 & 1332,
21 confer “federal question” and “diversity” jurisdiction, respectively. Federal question jurisdiction
22 requires that the complaint (1) arise under a federal law or the U. S. Constitution, (2) allege a
23 “case or controversy” within the meaning of Article III, § 2 of the U. S. Constitution, or (3) be
24 authorized by a federal statute that both regulates a specific subject matter and confers federal
25 jurisdiction. *Baker v. Carr*, 369 U.S. 186, 198 (1962). To invoke the court’s diversity
26 jurisdiction, a plaintiff must specifically allege the diverse citizenship of all parties, and that the
27 matter in controversy exceeds \$75,000. 28 U.S.C. § 1332(a); *Bautista v. Pan American World*
28 *Airlines, Inc.*, 828 F.2d 546, 552 (9th Cir. 1987). A case presumably lies outside the jurisdiction

1 of the federal courts unless demonstrated otherwise. *Kokkonen*, 511 U.S. at 376-78. Lack of
2 subject matter jurisdiction may be raised at any time by either party or by the court. *Attorneys*
3 *Trust v. Videotape Computer Products, Inc.*, 93 F.3d 593, 594-95 (9th Cir. 1996).

4 Here, plaintiff's complaint fails to state a claim. Plaintiff brings this action against the
5 Hornbook Community Services District ("HCSD") and its officers, agents, and legal counsel; the
6 Hornbrook Community Bible Church and its employees; and Basic Labs. ECF No. 1. Liberally
7 construed, the complaint alleges that the defendants were involved in a conspiracy to improperly
8 manage HCSD. Plaintiff purports to allege claims for violation of her rights to freedom of
9 speech, equal protection, and due process under 42 U.S.C. §§ 1983 and 1985, violations of Title
10 II of the Americans with Disabilities Act and the Racketeer Influenced and Corruption
11 Organization Act, and more than 20 state law claims. *Id.* at 49-83.

12 However, as drafted the complaint fails to provide defendants with "fair notice" of
13 plaintiff's claims against them. Rather than providing a short and plain statement of a plaintiff's
14 claims, the complaint is so prolix and convoluted that deciphering the factual basis for any of
15 plaintiff's claims as to any particular defendant is nearly impossible. The first 49 pages of the 88-
16 page complaint identify the defendants and state background information. Plaintiff then provides
17 a paragraph explaining that she incorporates all the background information as support for each of
18 the 32 asserted claims. *See id.* at 49. By proceeding in this fashion, it is not possible for the court
19 or defendants to ascertain which facts in the complaint support each particular claim.

20 Although the Federal Rules adopt a flexible pleading policy, a complaint must give fair
21 notice and state the elements of the claim plainly and succinctly. *Jones v. Community Redev.*
22 *Agency*, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least some degree of
23 particularity overt acts which defendants engaged in that support plaintiff's claim. *Id.* The
24 allegations must be short and plain, simple and direct and describe the relief plaintiff seeks. Fed.
25 R. Civ. P. 8(a); *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002); *Galbraith v. County of*
26 *Santa Clara*, 307 F.3d 1119, 1125 (9th Cir. 2002). The complaint fails to satisfy these
27 requirements.

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1 Moreover, the complaint is replete with redundancy and vague and conclusory allegations
2 that fail to support a cognizable claim for relief. For instance, the complaint alleges on several
3 occasions that HCSD's board members "conspired with, aided, and abetted the other Board
4 Defendants (and thus the HCSD), in acting to: hold illegal, wrongful, and/or improper meetings
5 of the HCSD Board, and then . . . violated State law (and particularly the Brown Act, and CPRA),
6 and/or the HCSD Bylaws" *Id.* at 4-8. Plaintiff also claims that the defendants operated
7 "HCSD in a manner contrary to law and thus causing a nuisance per se to Plaintiff and other
8 members of the public who are served by the HCSD." *Id.* at 19. Such conclusory allegations fail
9 to satisfy Rule 8 and are insufficient to provide defendants with notice of the factual basis
10 underlying each claim. *See McHenry v. Renne*, 84 F.3d 1172, 1177-78 (9th Cir. 1996) (affirming
11 Rule 8 dismissal of complaint that was "argumentative, prolix, replete with redundancy, and
12 largely irrelevant" and providing an example of a properly pleaded claim, which could be "read in
13 seconds and answered in minutes").

14 Accordingly, plaintiff's complaint must be dismissed for failure to comply with Rule 8
15 and for failure to state a claim upon which relief may be granted. Plaintiff, however, is granted
16 leave to file an amended complaint. *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en
17 banc) (district courts must afford pro se litigants an opportunity to amend to correct any
18 deficiency in their complaints). The amended complaint must allege a cognizable legal theory
19 against a proper defendant and contains sufficient facts in support of that cognizable legal theory.
20 Thus, should plaintiff choose to file an amended complaint, the amended complaint shall clearly
21 set forth the allegations against each defendant and shall specify a basis for this court's subject
22 matter jurisdiction. Any amended complaint shall plead plaintiffs' claims in "numbered
23 paragraphs, each limited as far as practicable to a single set of circumstances," as required by
24 Federal Rule of Civil Procedure 10(b), and shall be in double-spaced text on paper that bears line
25 numbers in the left margin, as required by Eastern District of California Local Rules 130(b) and
26 130(c). Any amended complaint shall also use clear headings to delineate each claim alleged and
27 against which defendant or defendants the claim is alleged, as required by Rule 10(b), and must

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1 plead clear facts that support each claim under each header. It must also contain a caption
2 including the names of all defendants. Fed. R. Civ. P. 10(a).

3 Additionally, plaintiff is informed that the court cannot refer to prior pleadings in order to
4 make an amended complaint complete. Local Rule 220 requires that an amended complaint be
5 complete in itself. This is because, as a general rule, an amended complaint supersedes the
6 original complaint. *See Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967). Accordingly, once
7 plaintiff files an amended complaint, the original no longer serves any function in the case.
8 Therefore, “a plaintiff waives all causes of action alleged in the original complaint which are not
9 alleged in the amended complaint,” *London v. Coopers & Lybrand*, 644 F.2d 811, 814 (9th Cir.
10 1981), and defendants not named in an amended complaint are no longer defendants. *Ferdik v.*
11 *Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). Finally, the court cautions plaintiff that failure to
12 comply with the Federal Rules of Civil Procedure, this court’s Local Rules, or any court order
13 may result in a recommendation that this action be dismissed. *See* E.D. Cal. L.R. 110.

14 Accordingly, IT IS ORDERED that:

- 15 1. Plaintiff’s request for leave to proceed *in forma pauperis* (ECF No. 3) is granted.
- 16 2. Plaintiff’s complaint is dismissed with leave to amend, as provided herein.
- 17 3. Plaintiff is granted thirty days from the date of service of this order to file an amended
18 complaint. The amended complaint must bear the docket number assigned to this case and must
19 be labeled “Amended Complaint.” Failure to timely file an amended complaint in accordance
20 with this order will result in a recommendation this action be dismissed.

21 DATED: October 3, 2017.

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23 EDMUND F. BRENNAN
24 UNITED STATES MAGISTRATE JUDGE
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