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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHALLA ALFARO BRITTANY,
Plaintiff,
v.
MODESTO POLICE DEPARTMENT,
Defendant.

No. 2:16-cv-1349-GEB-EFB PS

ORDER

Plaintiff seeks leave to proceed *in forma pauperis* pursuant to 28 U.S.C. 1915.¹ His 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. As discussed below, plaintiff’s complaint fails to state a claim and must be dismissed.

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

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.” *Twombly*, 550 U.S. at 555 (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).

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

1 subject matter jurisdiction may be raised at any time by either party or by the court. *Attorneys*
2 *Trust v. Videotape Computer Products, Inc.*, 93 F.3d 593, 594-95 (9th Cir. 1996).

3 Plaintiff's complaint is difficult to decipher and largely unintelligible. The complaint
4 purports to allege a claim(s) against the Modesto Police Department and the landlord of a
5 residence located at 207, Linden Street, Modesto, California (the "landlord"). ECF No. 1 at 2.
6 Plaintiff alleges that the "landlord . . . and his tenants [sic] are still participating in Identity Theft."
7 *Id.* at 4. Under the section of her complaint entitled "statement of claim," plaintiff provides the
8 following allegations: "They are threanting [sic] my helpers and crew. And she is asking to
9 through [sic] off of her name and can use someone I know credinatials [sic]. That's bad news.
10 And overnight delivery is FedEx Overnight." *Id.* at 5.

11 These allegations are insufficient to state a claim upon which relief may be granted.
12 Although the Federal Rules adopt a flexible pleading policy, a complaint must give fair notice
13 and state the elements of the claim plainly and succinctly. *Jones v. Community Redev. Agency*,
14 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least some degree of particularity
15 overt acts which defendants engaged in that support plaintiff's claim. *Id.* The allegations must be
16 short and plain, simple and direct and describe the relief plaintiff seeks. Fed. R. Civ. P. 8(a);
17 *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002); *Galbraith v. County of Santa Clara*, 307
18 F.3d 1119, 1125 (9th Cir. 2002).

19 The complaint, as drafted, does not allege any facts that would support a cognizable legal
20 claim against either of the named defendants, nor does it allege a basis for this court's
21 jurisdiction. Accordingly, the complaint must be dismissed. Plaintiff, however, is granted leave
22 to file an amended complaint, if she can allege a cognizable legal theory and sufficient facts in
23 support of that cognizable legal theory. *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000)
24 (en banc) (district courts must afford pro se litigants an opportunity to amend to correct any
25 deficiency in their complaints). Should plaintiff choose to file an amended complaint, the
26 amended complaint shall clearly set forth the allegations against defendant and shall specify a
27 basis for this court's subject matter jurisdiction. Any amended complaint shall plead plaintiff's
28 claims in "numbered paragraphs, each limited as far as practicable to a single set of

1 circumstances,” as required by Federal Rule of Civil Procedure 10(b), and shall be in double-
2 spaced text on paper that bears line numbers in the left margin, as required by Eastern District of
3 California Local Rules 130(b) and 130(c). Any amended complaint shall also use clear headings
4 to delineate each claim alleged and against which defendant or defendants the claim is alleged, as
5 required by Rule 10(b), and must plead clear facts that support each claim under each header.

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

17 Accordingly, it is hereby ORDERED that:

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

24 DATED: March 21, 2017.

25 
26 EDMUND F. BRENNAN
27 UNITED STATES MAGISTRATE JUDGE
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