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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

AKIKA PARKER,  
Plaintiff,  
v.  
ANTWAUN BILLOUPS,  
Defendant.

No. 2:16-cv-2008-KJM-EFB PS

ORDER

Plaintiff seeks leave to proceed *in forma pauperis* pursuant to 28 U.S.C. 1915.<sup>1</sup> 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. As discussed below, plaintiff’s complaint fails to state a claim and must be dismissed.

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<sup>1</sup> 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 The complaint concerns the troubled and failed romantic relationship between plaintiff  
7 and the defendant. Plaintiff, who is now 28 years old, alleges that the defendant first began  
8 courting her when she was 21. ECF No. 1 at 7. After the two had established a romantic  
9 relationship, plaintiff learned that defendant was married and also had a different girlfriend. *Id.* at  
10 8. She also claims that early in their relationship defendant “had forced intimacy with” plaintiff.  
11 *Id.* The parties’ relationship continued for several years, but eventually defendant told plaintiff  
12 that “he is going to get married, has a girlfriend, and wants nothing to do with [plaintiff].” *Id.* at  
13 11. Plaintiff alleges that she “doesn’t understand how to proceed in such a relationship and now  
14 it has landed [defendant] in court.” *Id.* at 9-10. She contends that defendant took advantage of  
15 her and that she “now wishes and requires to be compensated for her pain, suffering, and emotion  
16 distress.” *Id.* at 11.

17 It does not appear from plaintiff’s complaint that this court has subject matter jurisdiction  
18 over plaintiff’s claim(s). Plaintiff contends that this court has diversity jurisdiction pursuant to  
19 28 U.S.C. § 1332. *Id.* at 4. However, the complaint establishes that both plaintiff and defendant  
20 are citizens of California, and thus diversity of citizenship is lacking. *Id.* at 3. Furthermore, the  
21 complaint does not allege any specific claims for relief, and it is not clear how the facts in the  
22 complaint give rise to a federal claim. Accordingly, the complaint must be dismissed for lack of  
23 jurisdiction.

24 Plaintiff will be granted leave to file an amended complaint, if she can allege a basis for  
25 this court’s jurisdiction, as well as a cognizable legal theory against a proper defendant and with  
26 sufficient facts in support of that cognizable legal theory. *Lopez v. Smith*, 203 F.3d 1122, 1126-  
27 27 (9th Cir. 2000) (en banc) (district courts must afford pro se litigants an opportunity to amend  
28 to correct any deficiency in their complaints). Should plaintiff choose to file an amended

1 complaint, the amended complaint shall clearly set forth the claims and allegations against each  
2 defendant. Any amended complaint must cure the deficiencies identified above and also adhere  
3 to the following requirements. It must also contain a caption including the names of all  
4 defendants. Fed. R. Civ. P. 10(a).

5 Any amended complaint must be written or typed so that it so that it is complete in itself  
6 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended  
7 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the  
8 earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114  
9 F.3d 1467, 1474 (9th Cir. 1997) (the ““amended complaint supersedes the original, the latter  
10 being treated thereafter as non-existent.””) (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.  
11 1967)).

12 Finally, plaintiff is cautioned that failure to comply with the Federal Rules of Civil  
13 Procedure, this court’s Local Rules, or any court order may result in this action being dismissed.  
14 *See* E.D. Cal. L.R. 110.

15 Accordingly, it is hereby ORDERED that:

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

22 DATED: October 3, 2017.

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24 EDMUND F. BRENNAN  
25 UNITED STATES MAGISTRATE JUDGE  
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