

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 Under this standard, the court must accept as true the allegations of the complaint in
13 question, *Hospital Bldg. Co. v. Rex Hosp. Trustees*, 425 U.S. 738, 740 (1976), construe the
14 pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff’s favor,
15 *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). A pro se plaintiff must satisfy the pleading
16 requirements of Rule 8(a) of the Federal Rules of Civil Procedure. Rule 8(a)(2) requires a
17 complaint to include “a short and plain statement of the claim showing that the pleader is entitled
18 to relief, in order to give the defendant fair notice of what the claim is and the grounds upon
19 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 is difficult to decipher. Liberally construed, it concerns a landlord-
7 tenant dispute between plaintiff and defendants Maric Felix, Nelson Felix, John Flanagan and
8 Fusion Property Corporation. *See generally* ECF No. 1. However, the allegations are so vague
9 and conclusory that the court is unable to discern the precise nature and basis for plaintiff's
10 claim(s). He appears to allege that defendants denied him equal protection by not allowing him to
11 renew a lease agreement. *Id.* at 1. He alleges, in conclusory fashion, that he was subjected to
12 discrimination and harassment, and that defendant Fusion Property Management retaliated against
13 him for complaining about an unlawful eviction. *Id.* at 6-7. He further claims that defendants
14 monitored him inside his apartment, disclosed his medical information to others, and provide his
15 genetic information to law enforcement. *Id.* at 7.

16 While plaintiff's allegations are too vague and conclusory to state a claim for relief, parts
17 of the complaint suggests that he is attempting to allege a Fourteenth Amendment equal
18 protection claim under 42 U.S.C. § 1983. *See id.* at 4. If so, he fails to state such a claim because
19 he does not allege that any of the defendants are state actors. *See West v. Atkins*, 487 U.S. 42, 48
20 (1988) (to state a claim under 42 U.S.C. § 1983, a plaintiff must allege: (1) that a right secured by
21 the Constitution or laws of the United States was violated, and (2) that the alleged violation was
22 committed by a person acting under the color of state law).

23 Accordingly, the complaint must be dismissed for failure to state a claim. However,
24 plaintiff is granted leave to file an amended complaint, if he can allege a cognizable legal theory
25 against a proper defendant and sufficient facts in support of that cognizable legal theory. *Lopez v.*
26 *Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (district courts must afford pro se
27 litigants an opportunity to amend to correct any deficiency in their complaints). Should plaintiff
28 choose to file an amended complaint, the amended complaint shall clearly set forth the allegations

1 against defendant and shall specify a basis for this court’s subject matter jurisdiction. Any
2 amended complaint shall plead plaintiff’s claims in “numbered paragraphs, each limited as far as
3 practicable to a single set of circumstances,” as required by Federal Rule of Civil Procedure
4 10(b), and shall be in double-spaced text on paper that bears line numbers in the left margin, as
5 required by Eastern District of California Local Rules 130(b) and 130(c). Any amended
6 complaint shall also use clear headings to delineate each claim alleged and against which
7 defendant or defendants the claim is alleged, as required by Rule 10(b), and must plead clear facts
8 that support each claim under each header.

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

20 Accordingly, IT IS ORDERED that:

- 21 1. Plaintiff’s request for leave to proceed *in forma pauperis* (ECF No. 2) is granted.
- 22 2. Plaintiff’s complaint is dismissed with leave to amend, as provided herein.
- 23 3. Plaintiff is granted thirty days from the date of service of this order to file an amended
24 complaint. The amended complaint must bear the docket number assigned to this case and must

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1 be labeled "First Amended Complaint." Failure to timely file an amended complaint in
2 accordance with this order will result in a recommendation this action be dismissed.

3 DATED: January 9, 2018.

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5 EDMUND F. BRENNAN
6 UNITED STATES MAGISTRATE JUDGE
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