



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 As a threshold matter, plaintiff Calysta Sharp appears to bring this suit on her behalf and  
7 on behalf of her two minor children. ECF No. 1 at 1; ECF No. 2 at 5. There is no indication from  
8 the record that Ms. Sharp is an attorney. While Ms. Sharp may represent herself in this action,  
9 she is not permitted to bring an action on behalf of the minor children without first retaining an  
10 attorney. *See Johns v. County of San Diego*, 114 F.3d 874, 876 877 (9th Cir. 1997) (a non-lawyer  
11 has no authority to appear as an attorney for another, and general power of attorney does not give  
12 non-lawyer right to assert the personal constitutional claims of another).

13 More significantly, review of the complaint indicates that it must be dismissed for failure  
14 to state a claim. The complaint identifies the Unites States as the sole defendant and alleges that  
15 the federal jurisdiction is present pursuant to “USSCODE 896, et al.” The complaint also states  
16 that this case concerns “Family/Community Reinstatement” and “Reinstatement [of] Parental  
17 Rights.” *Id.* at 3-4. Plaintiff, however, left blank the sections of the form complaint reserved for  
18 the statement of claim and relief sought. Consequently, the complaint does not contain any facts  
19 supporting a cognizable claim.<sup>2</sup>

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 defendant engaged in that support plaintiff’s claim. *Id.* As plaintiff  
24 complaint is devoid of any factual allegations, it must be dismiss for failure to state a claim.

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27 <sup>2</sup> Because plaintiff does not allege any facts nor identify any specific claim, she fails to  
28 identify any reason why her action against the United States is not barred by sovereign immunity.  
*See Lehman v. Nakshian*, 453 U.S. 156, 160 (1981) (as a sovereign, the United States is immune  
from suit except according to its consent to be sued).

1           Accordingly, the complaint must be dismissed. Plaintiff, however, is granted leave to file  
2 an amended complaint. *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)  
3 (district courts must afford pro se litigants an opportunity to amend to correct any deficiency in  
4 their complaints). Should plaintiff choose to file an amended complaint, the amended complaint  
5 shall clearly identify the claims asserted as to each defendant and set forth the factual allegations  
6 against that defendant(s) which give rise to a cause. It shall specify a basis for this court’s subject  
7 matter jurisdiction. Any amended complaint shall plead plaintiff’s claims in “numbered  
8 paragraphs, each limited as far as practicable to a single set of circumstances,” as required by  
9 Federal Rule of Civil Procedure 10(b), and shall be in double-spaced text on paper that bears line  
10 numbers in the left margin, as required by Eastern District of California Local Rules 130(b) and  
11 130(c). Any amended complaint shall also use clear headings to delineate each claim alleged and  
12 against which defendant or defendants the claim is alleged, as required by Rule 10(b), and must  
13 plead clear facts that support each claim under each header.

14           Additionally, plaintiff is informed that the court cannot refer to prior pleadings in order to  
15 make an amended complaint complete. Local Rule 220 requires that an amended complaint be  
16 complete in itself. This is because, as a general rule, an amended complaint supersedes the  
17 original complaint. *See Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967). Accordingly, once  
18 plaintiff files an amended complaint, the original no longer serves any function in the case.  
19 Therefore, “a plaintiff waives all causes of action alleged in the original complaint which are not  
20 alleged in the amended complaint,” *London v. Coopers & Lybrand*, 644 F.2d 811, 814 (9th Cir.  
21 1981), and defendants not named in an amended complaint are no longer defendants. *Ferdik v.*  
22 *Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). Finally, the court cautions plaintiff that failure to  
23 comply with the Federal Rules of Civil Procedure, this court’s Local Rules, or any court order  
24 may result in a recommendation that this action be dismissed. *See E.D. Cal. L.R. 110.*

25           Accordingly, IT IS ORDERED that:

- 26           1. Plaintiff’s request for leave to proceed *in forma pauperis* (ECF No. 2) is granted.
- 27           2. Plaintiff’s complaint is dismissed with leave to amend, as provided herein.

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1           3. Plaintiff is granted thirty days from the date of service of this order to file an amended  
2 complaint. The amended complaint must bear the docket number assigned to this case and must  
3 be labeled "First Amended Complaint." Failure to timely file an amended complaint in  
4 accordance with this order will result in a recommendation this action be dismissed.

5 DATED: January 9, 2018.

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7 EDMUND F. BRENNAN  
8 UNITED STATES MAGISTRATE JUDGE  
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