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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KRISTINA ANDERSON HANSON,

Plaintiff,

v.

CLEAR CONVEYANCE
CORPORATION aka CLEAR RECON
CORPORATION; WELLS FARGO, N.A,
fka WORLD SAVINGS BANK; and
DOES 1 to 100, inclusive,

Defendants.

No. 2:17-cv-2007-TLN-EFB PS

ORDER

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

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 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, 562-563, 570 (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.* at 555 (citations omitted). Dismissal is appropriate based either on the lack of
10 cognizable legal theories or the lack of pleading sufficient facts to support cognizable legal
11 theories. *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*, 355 U.S. at 47).

20 Plaintiff brings this action against defendants Clear Conveyance Corporation and Wells
21 Fargo Bank, N. A. ECF No. 1 at 1. The complaint appears to concern a mortgage dispute
22 between plaintiff and defendants related to real property located at 5610 Bears Den Road,
23 Placerville, California (“subject property”). *Id.* at 5. But the specific factual basis of the dispute
24 is not easily gleaned from the complaint, which consists almost exclusively of legal conclusions.
25 Plaintiff alleges that she was denied her right due to process and other unspecified constitutional
26 rights by “improper mortgage company procedures.” *Id.* at 5. She also alleges that defendants do
27 not have a legal right, title, or interest in the subject property,” and that the “existence of any valid
28 trustee’s deed which could benefit Defendants would be null and void” *Id.* She further

1 claims that a “cloud on all title activity exists due to no definitive claimant of ownership of the
2 note(s), due to divergent paths taken by both the mortgage note and the deed of trust.”

3 These allegations are insufficient to state a claim upon which relief may be granted.
4 Although the Federal Rules adopt a flexible pleading policy, a complaint must give fair notice
5 and state the elements of the claim plainly and succinctly. *Jones v. Community Redev. Agency*,
6 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least some degree of particularity
7 overt acts which defendants engaged in that support plaintiff’s claim. *Id.* The allegations must be
8 short and plain, simple and direct and describe the relief plaintiff seeks. Fed. R. Civ. P. 8(a);
9 *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002); *Galbraith v. County of Santa Clara*, 307
10 F.3d 1119, 1125 (9th Cir. 2002).

11 Plaintiff’s contention that she was denied her right to due process and other constitutional
12 rights suggests that she seeks to asserts a claim under 42 U.S.C. § 1983. To state a claim for
13 violation of a constitutional right under 42 U.S.C. § 1983, a plaintiff must allege: (1) that a right
14 secured by the Constitution or laws of the United States was violated, and (2) that the alleged
15 violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S.
16 42, 48 (1988). “‘Section 1983 excludes from its reach merely private conduct, no matter how
17 discriminatory or wrong.’” *Sutton v. Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 835 (9th
18 Cir. 1999) (quoting *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999)); *see also Apao v.*
19 *Bank of New York*, 324 F.3d 1091, 1093 (9th Cir. 2003) (Fourteenth Amendment “shields citizens
20 from unlawful governmental action, but does not affect conduct by private entities.”). Here,
21 plaintiff fails to allege that either defendant is a state actor or was otherwise acting under color of
22 state law.

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

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

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

19 Accordingly, IT IS ORDERED that:

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

26 DATED: November 15, 2018.

27 
28 EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE