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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LIUDMYLA IEGOROVA,
Plaintiff,
v.
TEROLD WILKERSON,
Defendant.

No. 2:17-cv-2222-JAM-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. 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 must be dismissed for failure to state a claim.

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

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 fails to set forth “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl.*
2 *Corp. v. Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41
3 (1957)); *see also* Fed. R. Civ. P. 12(b)(6). “[A] plaintiff’s obligation to provide the ‘grounds’ of
4 his ‘entitlement to relief’ requires more than labels and conclusions, and a formulaic recitation of
5 a cause of action’s elements will not do. Factual allegations must be enough to raise a right to
6 relief above the speculative level on the assumption that all of the complaint’s allegations are
7 true.” *Id.* (citations omitted). Dismissal is appropriate based either on the lack of cognizable
8 legal theories or the lack of pleading sufficient facts to support cognizable legal theories.
9 *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

10 Under this standard, the court must accept as true the allegations of the complaint in
11 question, *Hospital Bldg. Co. v. Rex Hosp. Trustees*, 425 U.S. 738, 740 (1976), construe the
12 pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff’s favor,
13 *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). A pro se plaintiff must satisfy the pleading
14 requirements of Rule 8(a) of the Federal Rules of Civil Procedure. Rule 8(a)(2) requires a
15 complaint to include “a short and plain statement of the claim showing that the pleader is entitled
16 to relief, in order to give the defendant fair notice of what the claim is and the grounds upon
17 which it rests.” *Twombly*, 550 U.S. at 555 (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).

18 Plaintiff’s complaint consists entirely of vague and disjointed allegations, which are
19 insufficient to state a claim upon which relief may be granted. For instance, plaintiff alleges that
20 defendant Terold Wilkerson, an employee of the United States government, has “refused to mail
21 [a] written response to” plaintiff for the past six to seven months. ECF No. 1 at 2. She further
22 alleges that Mr. Wilkerson visited her “without any calls or letters,” and that Mr. Wilkerson has
23 committed unspecified crimes against plaintiff. *Id.* Although Mr. Wilkerson is the only named
24 defendant, curiously, plaintiff requests that a judge from this district, Magistrate Judge Claire,
25 make payments to plaintiff’s “care provider,” and that President Donald Trump be ordered to pay
26 plaintiff 55 million British pounds. *Id.*

27 The complaint does not, however, identify any specific cause of action. Nor does it
28 contain coherent factual allegations that could plausibly support a cognizable claim for relief

1 against Terold Wilkerson, the only defendant identified in the complaint's caption page.

2 Accordingly, plaintiff's complaint must be dismissed for failure to state a claim.

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

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

26 Accordingly, IT IS ORDERED that:

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

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

DATED: November 15, 2018.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE