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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANQUENITA S. HALL,

Plaintiff,

v.

WENDY SMITH, CPS Worker; BRIAN
BOUKNIGHT, CPS Supervisor,

Defendants.

No. 2:18-cv-2488-MCE-EFB PS

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff seeks leave to proceed *in forma pauperis* pursuant to 28 U.S.C. 1915.¹ ECF No. 2 & 7. She has also filed a request to file documents electronically (ECF No. 6) and motions seeking to transfer her state court child custody case to federal court (ECF No. 9) and compel defendant Solano County Child Protective Services to produce documents (ECF No. 11). For the reasons provided below, plaintiff’s application to proceed *in forma pauperis* is granted, her motions are denied, and her second amended complaint² is dismissed with leave to amend.

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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).

² Plaintiff amended her complaint twice before the court had an opportunity to screen her prior complaints.

1 I. Application to Proceed *in Forma Pauperis* and Motion to File Electronically

2 Plaintiff's application to proceed *in forma pauperis* application makes the showing
3 required by 28 U.S.C. §1915(a)(1) and (2). *See* ECF No. 2. Accordingly, her request to proceed
4 *in forma pauperis* is granted. 28 U.S.C. § 1915(a).

5 Plaintiff's request to file documents electronically with the court is denied. ECF No. 6.
6 Local Rule 133 requires pro se parties to file and serve paper documents unless the assigned
7 district judge or magistrate judge grants permission to file electronically. E.D. Cal. L.R. 133(a),
8 (b)(2). Here, plaintiff has demonstrated an ability to file documents conventionally, and there are
9 no circumstances warranting a deviation from the local rule. Accordingly, the request is denied.

10 II. Screening Requirement

11 Determining that plaintiff may proceed *in forma pauperis* does not complete the required
12 inquiry. Pursuant to § 1915(e)(2), the court must dismiss the case at any time if it determines the
13 allegation of poverty is untrue, or if the action is frivolous or malicious, fails to state a claim on
14 which relief may be granted, or seeks monetary relief against an immune defendant. As discussed
15 further below, plaintiff's second amended complaint must be dismissed for failure to state a
16 claim.

17 Although pro se pleadings are liberally construed, *see Haines v. Kerner*, 404 U.S. 519,
18 520-21 (1972), a complaint, or portion thereof, should be dismissed for failure to state a claim if it
19 fails to set forth "enough facts to state a claim to relief that is plausible on its face." *Bell Atl.*
20 *Corp. v. Twombly*, 550 U.S. 544, 562-563, 570 (2007) (citing *Conley v. Gibson*, 355 U.S. 41
21 (1957)); *see also* Fed. R. Civ. P. 12(b)(6). "[A] plaintiff's obligation to provide the 'grounds' of
22 his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of
23 a cause of action's elements will not do. Factual allegations must be enough to raise a right to
24 relief above the speculative level on the assumption that all of the complaint's allegations are
25 true." *Id.* at 555 (citations omitted). Dismissal is appropriate based either on the lack of
26 cognizable legal theories or the lack of pleading sufficient facts to support cognizable legal
27 theories. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

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1 Under this standard, the court must accept as true the allegations of the complaint in
2 question, *Hospital Bldg. Co. v. Rex Hosp. Trustees*, 425 U.S. 738, 740 (1976), construe the
3 pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff’s favor,
4 *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). A pro se plaintiff must satisfy the pleading
5 requirements of Rule 8(a) of the Federal Rules of Civil Procedure. Rule 8(a)(2) requires a
6 complaint to include “a short and plain statement of the claim showing that the pleader is entitled
7 to relief, in order to give the defendant fair notice of what the claim is and the grounds upon
8 which it rests.” *Twombly*, 550 U.S. at 555 (citing *Conley*, 355 U.S. at 47).

9 Liberally construed, plaintiff’s second amended complaint alleges that defendant Solano
10 County Child Protective Services (“CPS”) removed her children from her care shortly after she
11 moved into a home for domestic violence victims. ECF No. 12 at 5. Plaintiff claims that she was
12 tricked into dealing with CPS after being informed that the agency would assist her with finding
13 housing. *Id.* Instead of assisting plaintiff, CPS allegedly took her children and are now
14 attempting to have them adopted. *Id.* at 5-6.

15 These allegations are too vague and conclusory to provide defendants with sufficient
16 notice of the factual basis for plaintiff’s claim(s). *Jones v. Community Redev. Agency*, 733 F.2d
17 646, 649 (9th Cir. 1984). Plaintiff must allege with at least some degree of particularity overt acts
18 which defendants engaged in that support plaintiff’s claim. *Id.* The allegations must be short and
19 plain, simple and direct and describe the relief plaintiff seeks. Fed. R. Civ. P. 8(a); *Swierkiewicz*
20 *v. Sorema N.A.*, 534 U.S. 506, 514 (2002); *Galbraith v. County of Santa Clara*, 307 F.3d 1119,
21 1125 (9th Cir. 2002). Plaintiff’s complaint does not identify any specific cause of action, nor
22 does it identify the specific statute defendants purportedly violated.

23 Plaintiff’s allegations suggest that she is attempting to allege a 42 U.S.C. § 1983 claim for
24 violating her right to familial association under the Fourteenth Amendment. *See Zion v. Cnty. of*
25 *Orange*, 874 F.3d 1072, 1076 (9th Cir. 2017) (“Parents have a Fourteenth Amendment liberty
26 interest in the companionship and society of their children.”) (quotations omitted). The right to
27 familial association is violated where “a state official removes children from their parents without
28 their consent, and without a court order, unless information at the time of the seizure, after

1 reasonable investigation, establishes reasonable cause to believe that the child is in imminent
2 danger of serious bodily injury, and the scope, degree, and duration of the intrusion are
3 reasonably necessary to avert the specific injury at issue.” *Keates v. Koile*, 883 F.3d 1228, 1237-
4 38 (9th Cir. 2018). The complaint’s allegations are conclusory and fail to explain how the
5 removal of her children was improper.

6 Furthermore, the complaint does not allege that plaintiff’s children were improperly
7 removed pursuant to a policy or custom, which is required to assert a claim against an agency,
8 such as defendant CPS. *Villegas v. Gilroy Garlic Festival Ass’n*, 951 F.3d 950, 957 (9th Cir.
9 2008) (a municipality or its departments is liable under section 1983 only if plaintiff shows that
10 his injury was caused by employees acting pursuant to the municipality’s policy or custom).

11 Accordingly, plaintiff’s second amended complaint must be dismissed for failure to state a
12 claim. Plaintiff is granted leave to file an amended complaint. Any amended complaint must
13 allege a cognizable legal theory against a proper defendant and contain sufficient facts in support
14 of that cognizable legal theory. Should plaintiff choose to file an amended complaint, the
15 amended complaint shall clearly set forth the allegations against each defendant and shall specify
16 a basis for this court’s subject matter jurisdiction. Any amended complaint shall plead plaintiff’s
17 claims in “numbered paragraphs, each limited as far as practicable to a single set of
18 circumstances,” as required by Federal Rule of Civil Procedure 10(b), and shall be in double-
19 spaced text on paper that bears line numbers in the left margin, as required by Eastern District of
20 California Local Rules 130(b) and 130(c). Any amended complaint shall also use clear headings
21 to delineate each claim alleged and against which defendant or defendants the claim is alleged, as
22 required by Rule 10(b), and must plead clear facts that support each claim under each header.

23 Additionally, plaintiff is informed that the court cannot refer to prior pleadings in order to
24 make an amended complaint complete. Local Rule 220 requires that an amended complaint be
25 complete in itself. This is because, as a general rule, an amended complaint supersedes the
26 original complaint. *See Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967). Accordingly, once
27 plaintiff files an amended complaint, the original no longer serves any function in the case.

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1 Therefore, “a plaintiff waives all causes of action alleged in the original complaint which are not
2 alleged in the amended complaint,” *London v. Coopers & Lybrand*, 644 F.2d 811, 814 (9th Cir.
3 1981), and defendants not named in an amended complaint are no longer defendants. *Ferdik v.*
4 *Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). Finally, the court cautions plaintiff that failure to
5 comply with the Federal Rules of Civil Procedure, this court’s Local Rules, or any court order
6 may result in a recommendation that this action be dismissed. *See* E.D. Cal. L.R. 110.

7 III. Motions to Transfer State Court Case and Compel Production of Documents

8 Plaintiff also moves to have her state court child custody case transferred to this court,
9 arguing that she will not be able to get a fair trial in state court. ECF No. 9. That motion must be
10 denied. Aside from lacking authority to issue a writ of mandamus directed at the state court,
11 *Demos v. U.S. District Court*, 925 F.2d 1160, 1161 (9th Cir. 1991), this court lacks jurisdiction
12 over matters involving child custody decrees pursuant to the domestic relations exception to
13 federal jurisdiction. That exception “divests the federal courts of power to issue divorce, alimony
14 and child custody decrees.” *Ankenbrandt v. Richards*, 504 U.S. 689, 703 (1992); *see also Coats*
15 *v. Woods*, 819 F.2d 236, 237 (9th Cir. 1987) (courts “traditionally decline to exercise jurisdiction
16 in domestic relations cases when the core issue involves the status of parent and child or husband
17 and wife.”).

18 Plaintiff also moves to compel defendant CPS to produce all documents related to the
19 removal of her children. Because plaintiff has yet to state a claim and, consequently, defendant
20 has not appeared in this action, her motion to compel is denied. *See* Fed. R. Civ. P. 26(d)
21 (prohibiting parties from engaging in discovery until they have conferred as required by Rule
22 26(f)).

23 Accordingly, IT IS ORDERED that:


- 24 1. Plaintiff’s request for leave to proceed *in forma pauperis* (ECF Nos. 2 & 7) is granted.
- 25 2. Plaintiff’s motion to file documents electronically (ECF No. 6) is denied.
- 26 3. Plaintiff’s motion to compel the production of documents (ECF No. 11) is denied.
- 27 4. Plaintiff’s second amended complaint is dismissed with leave to amend, as provided
28 herein.

1 5. 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 "Third 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 Further, it is RECOMMENDED that plaintiff's motion to transfer her state court child
6 custody case to federal court (ECF No. 9) be denied.

7 These findings and recommendations are submitted to the United States District Judge
8 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
9 after being served with these findings and recommendations, any party may file written
10 objections with the court and serve a copy on all parties. Such a document should be captioned
11 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections
12 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
13 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

14 DATED: March 4, 2020.

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16 EDMUND F. BRENNAN
17 UNITED STATES MAGISTRATE JUDGE
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