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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ELESHA SOTO,
Plaintiff,
v.
CHILD PROTECTIVE SERVICES
DEPARTMENT, et al.,
Defendants.

Case No. 20-cv-6520-JCS

**ORDER GRANTING APPLICATION
TO PROCEED IN FORMA PAUPERIS**

**ORDER TO SHOW CAUSE WHY
COMPLAINT SHOULD NOT BE
DISMISSED**

United States District Court
Northern District of California

I. INTRODUCTION

The Court previously ordered Plaintiff Elesha Soto, pro se,¹ to show cause why this action should not be dismissed for failure to pay the filing fee. Dkt. 4. Soto has now filed an application to proceed in forma pauperis. Dkt. 8. Good cause having been shown, that application is GRANTED.

The Court now reviews Soto’s complaint to determine whether the case should go forward under 28 U.S.C. § 1915(e)(2)(B). For the reasons discussed below, Soto is ORDERED TO SHOW CAUSE why the complaint should not be dismissed, by filing no later than January 22, 2021 either an amended complaint or a response arguing why her current complaint is sufficient. If Soto does not file a response by that date, the case will be reassigned to a United States district judge with a recommendation that it be dismissed.

The case management conference previously set for December 18, 2020 is CONTINUED to March 19, 2021 at 2:00 PM.

¹ An attachment to Soto’s complaint may be intended to name Soto’s biological children DGIII and PJG, who are minors, as additional plaintiffs. See Compl. (dkt. 7) at 7. Minors cannot appear in federal court without representation by a licensed attorney. See *Johns v. County of San Diego*, 114 F.3d 874, 877 (9th Cir. 1997). There is no indication that Soto is an attorney admitted to practice in this Court. Soto therefore cannot assert claims on behalf of her biological children.

1 **II. ALLEGATIONS OF THE COMPLAINT**

2 Soto’s complaint concerns the adoption of her biological children by a couple living in
3 Santa Rosa, California. *See generally* Compl. (dkt. 7).² Soto describes the adoption as follows:

4 These minor boys were illegally ripped from their home and placed
5 with two illegal immigrants posing as united states citizens with false
6 identities living as a married lesbian LGBT couple in california with
7 altered last names, also to add these womens full legal names or
8 identities were never disclosed by county offices or upon any court
9 documents of the legal justice system, superior courts, 2nd district
appellate courts, child protective services or with any city, state or
government agency ever documents as of current with the superior
courts of sonoma county santo rosa or throughout the state of
california within a 31/2 years this case remained open. As this is
remains true to this day.

10 *Id.* at 8 (capitalization and grammar as in original).

11 In a section of her form complaint addressing “[w]here the events giving rise to [her]
12 claim(s) occur[red],” Soto states:

13 Sonoma County clerks office of records legal certified documents
14 birth certificates
15 Upon submitted by mail requesting certified copies of birth
16 certificates the Location, addresses, emails, places of contact
17 including forms to submit were completely altered and recessed
stating in regards to adopted or guardianship issues needing a court
approval during times of covid causing hardships also to mention the
efile court system currently in play.

18 Compl. at 4.

19 In the section addressing the facts underlying her claims, Soto states:

20 Illegal Adoption involving Sonoma county child protective services ,
21 Sonoma County Superior Courts , appellate 2nd District Courts San
22 Francisco California. Requesting certified legal copies of birth
23 certificates as a record of events. I am the biological mother to the
24 minor children both males who are ward of the courts until age 18 or
sooner. I believe it to be in the best interest and protection of minors
I access a legal copy. Steven Consiglio sonoma county attorney
appointed by the state to represent mother Elesha Soto. Julia state

25 ² The Court previously sealed the version of the complaint that Soto initially filed (dkt. 1) for
26 failure to redact names of minors and dates of birth as required by Rule 5.2 of the Federal Rules of
27 Civil Procedure. The Court ordered to Soto to file a redacted version of her complaint complying
28 with that rule. Soto’s current complaint replaces the minors’ names with initials as required by
Rule 5.2, but still includes their dates of birth. *See* Compl. at 8. Because those dates of birth are
no longer connected to any person’s full name, the Court declines to require further redaction of
this document, but Soto is reminded to comply fully with Rule 5.2 going forward, including its
prohibition against filing more than the year of any person’s birth. *See* Fed. R. Civ. P. 5.2(a)(2).

1 attorney appointed to represent minors. DGIII, and PJG annette
2 Johnson state attorney appointed to represent father David Griffin.
Current guardians adoptees Tema and lupita no last names ever
provided.

3 *Id.* at 5. Soto also notes that “[t]his particular case continued and remained open and active from
4 8/2013 thru 8/2017 in appelett [sic] 2nd district court proceedings in San Francisco California,”
5 but “all matters were ignored over ruled illegally and unjustly revoked.” *Id.* at 8.

6 Soto’s complaint names as defendants: (1) the Child Protective Services Department in
7 Santa Rosa, California; (2) the Sonoma County Superior Courts; (3) the minor children’s adoptive
8 parents, identified only by their first names Tema and Lupita; and (4) Monica Julian, an attorney
9 appointed to represent the minor children. *Id.* at 2.

10 **III. ANALYSIS**

11 **A. Legal Standard for Review Under § 1915**

12 Where a plaintiff is found to be indigent under 28 U.S.C. § 1915(a)(1) and is granted leave
13 to proceed in forma pauperis, courts must engage in screening and dismiss any claims which:
14 (1) are frivolous or malicious; (2) fail to state a claim on which relief may be granted; or (3) seek
15 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *see*
16 *Marks v. Solcum*, 98 F.3d 494, 495 (9th Cir. 1996). Rule 8(a)(2) of the Federal Rules of Civil
17 Procedure provides that a pleading must contain a “short and plain statement of the claim showing
18 that the pleader is entitled to relief.” A complaint that lacks such statement fails to state a claim
19 and must be dismissed.

20 In determining whether a plaintiff fails to state a claim, the court assumes that all factual
21 allegations in the complaint are true. *Parks Sch. of Bus. v. Symington*, 51 F.3d 1480, 1484 (9th
22 Cir. 1995). However, “the tenet that a court must accept a complaint’s allegations as true is
23 inapplicable to legal conclusions” and to “mere conclusory statements.” *Ashcroft v. Iqbal*, 556
24 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). The pertinent
25 question is whether the factual allegations, assumed to be true, “state a claim to relief that is
26 plausible on its face.” *Id.* (citing *Twombly*, 550 U.S. at 570).

27 Where the complaint has been filed by a pro se plaintiff, as is the case here, courts must
28 “construe the pleadings liberally . . . to afford the petitioner the benefit of any doubt.” *Hebbe v.*

1 *Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (citations omitted). “A district court should not dismiss a
2 pro se complaint without leave to amend unless ‘it is absolutely clear that the deficiencies of the
3 complaint could not be cured by amendment.’” *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir.
4 2012) (quoting *Schucker v. Rockwood*, 846 F.2d 1202, 1203–04 (9th Cir. 1988) (per curiam)).

5 **B. No Basis for Federal Jurisdiction Is Apparent**

6 Federal courts are courts of limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of*
7 *Am.*, 511 U.S. 375, 377 (1994). Accordingly, “federal courts have a continuing independent
8 obligation to determine whether subject-matter jurisdiction exists” over a given claim. *Leeson v.*
9 *Transamerica Disability Income Plan*, 671 F.3d 969, 975 (9th Cir. 2012) (internal quotation marks
10 and citations omitted). Two of the most common grounds for federal subject matter jurisdiction
11 are “federal question jurisdiction” under 28 U.S.C. § 1331, which allows federal courts to hear
12 claims arising under federal law, and “diversity jurisdiction” under 28 U.S.C. § 1332(a), which
13 allows federal courts to hear claims arising under state law if the plaintiff and defendant are
14 citizens of different states and the amount in controversy exceeds \$75,000.

15 Because Soto’s complaint does not identify any federal law giving rise to her claims, the
16 case does not appear to fall within “federal question” jurisdiction under § 1331. And while there
17 appears to be complete diversity of citizenship between Soto, who is a resident of Utah, and the
18 defendants, all of whom appear to be California citizens, there is no indication that the amount in
19 controversy exceeds \$75,000. The only relief Soto seeks is “to access a certified legal birth
20 certificate for each minor.” Compl. at 8.

21 A plaintiff seeking to invoke a federal court’s diversity jurisdiction must affirmatively
22 allege facts showing that the amount in controversy threshold is satisfied. *Rainero v. Archon*
23 *Corp.*, 844 F.3d 832, 840 (9th Cir. 2016). “In actions seeking declaratory or injunctive relief [as
24 opposed to monetary damages], it is well established that the amount in controversy is measured
25 by the value of the object of the litigation.” *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir.
26 2002) (quoting *Hunt v. Wash. State Apple Adver. Comm’n*, 432 U.S. 333, 347 (1977)). “In
27 determining the value of injunctive relief in the amount in controversy, the Ninth Circuit considers
28 the value of the injunctive relief to either party in the action.” *Ronquillo v. BMW of N. Am., LLC*,

1 No. 3:20-CV-1413-W-WVG, 2020 WL 6741317, at *4 (S.D. Cal. Nov. 17, 2020) (citing *Ridder*
2 *Bros. v. Blethen*, 142 F.2d 395, 399 (9th Cir. 1944)). Nothing in Soto’s complaint indicates that
3 the requested access to birth certificates is worth more than \$75,000. Soto is therefore ORDERED
4 TO SHOW CAUSE why this case should not be dismissed for lack of subject matter jurisdiction.

5 As a separate jurisdictional problem, even if a case would otherwise fall within the Court’s
6 jurisdiction under § 1331 or § 1332, federal district courts generally lack jurisdiction over “cases
7 brought by state-court losers complaining of injuries caused by state-court judgments rendered
8 before the district court proceedings commenced and inviting district court review and rejection of
9 those judgments.” *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005)
10 (discussing *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *D.C. Court of Appeals v. Feldman*,
11 460 U.S. 462 (1983)). This rule is known as the “*Rooker-Feldman* doctrine.” In most cases, the
12 only appropriate means for a federal court to review a decision by the California courts is a
13 petition for certiorari to the U.S. Supreme Court. Soto’s complaint suggests that she seeks to
14 relitigate a case she lost in a California appellate court. Soto is therefore ORDERED TO SHOW
15 CAUSE why her complaint should not be dismissed for lack of jurisdiction under the *Rooker-*
16 *Feldman* doctrine.

17 **C. Soto’s Complaint Does Not Appear to State a Claim**

18 Even if Soto can establish jurisdiction, her complaint identifies no law that would entitle
19 her to access the birth certificates at issue. While the Federal Rules of Civil Procedure “do not
20 countenance dismissal of a complaint for *imperfect* statement of the legal theory supporting the
21 claim asserted,” they require at least ““a short and plain statement of the claim showing that the
22 pleader is entitled to relief.”” *See Johnson v. City of Shelby*, 574 U.S. 10, 11 (2014) (quoting Fed.
23 R. Civ. P. 8(a)(2)) (emphasis added). Soto’s complaint fails to put Defendants on notice of any
24 legal basis for her claim. Soto is therefore ORDERED TO SHOW CAUSE why the complaint
25 should not be dismissed for failure to state a claim on which relief may be granted.

26 **IV. CONCLUSION**

27 For the reasons discussed above, Soto is ordered to show cause why this case should not be
28 dismissed for lack of federal subject matter jurisdiction, or for failure to state a claim on which

1 relief may be granted, by filing no later than January 22, 2021 either an amended complaint or a
2 response to this order arguing that her current complaint is sufficient.

3 Any amended complaint must include the caption and civil case number used in this order
4 (20-cv-06520) and the words FIRST AMENDED COMPLAINT on the first page. Because an
5 amended complaint completely replaces the previous complaint, any amended complaint may not
6 incorporate claims or allegations of Soto's original complaint by reference, but instead must
7 include all of the facts and claims Soto wishes to present and all of the defendants she wishes to
8 sue. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992).

9 Soto, who is not represented by counsel, is encouraged to contact the Federal Pro Bono
10 Project's Pro Se Help Desk for assistance as she continues to pursue this case. Lawyers at the
11 Help Desk can provide basic assistance to parties representing themselves but cannot provide legal
12 representation. Although in-person appointments are not currently available due to the COVID-19
13 public health emergency, Soto may contact the Help Desk at (415) 782-8982 or FedPro@sfbar.org
14 to schedule a telephonic appointment

15 **IT IS SO ORDERED.**

16 Dated: December 15, 2020

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19 JOSEPH C. SPERO
20 Chief Magistrate Judge
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