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**JS-6**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ARAMI CHEYENNE WALKER,  
  
Plaintiff,  
  
v.  
  
BOARD OF REGENTS, UNIVERSITY OF  
CALIFORNIA,  
  
Defendant.

Case No.: 2:22-cv-03279-MEMF (AFMx)

**ORDER GRANTING MOTION TO DISMISS  
[ECF NO. 15]**

Before the Court is the Motion to Dismiss filed by Defendant the Regents of the University of California. ECF No. 15. For the reasons stated herein, the Court GRANTS the Motion to Dismiss WITHOUT LEAVE TO AMEND.

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1       **I. Factual Background**<sup>1</sup>

2           On May 28, 2015, Plaintiff Arami Cheyenne Walker (“Walker”), then a student at the  
3 University of California, Los Angeles (“UCLA”)<sup>2</sup>, was approached on campus by a photographer in  
4 between classes. Compl. at 1. Walker agreed to be photographed. *Id.* In a process that took  
5 approximately five minutes, the photographer took a few images and asked for Walker to sign a  
6 release. *Id.* The release authorized use of the images so long as they were not defamatory. *Id.* The  
7 photographer did not offer Walker any compensation. *Id.*

8           On March 20, 2020, Walker received a text message from an individual that Walker’s image  
9 was being used for a campaign to raise money for the COVID vaccine. *Id.* at 1–2. In the photo,  
10 Walker’s eyes are half closed and she looks potentially ill. *Id.* at 2. On the photo was a caption  
11 reading, “UCLA is doing something about COVID.” *Id.* This image was featured on UCLA’s  
12 website, as well as on its Facebook and Instagram pages. *Id.* In response to this campaign, Walker  
13 received calls from her bandmates and friends, concerned that she had COVID. *Id.* Walker is a  
14 musician, author, and educator that for the most part interacts privately and publicly with citizens  
15 through concerts, curated exhibitions, and teaching. *Id.*

16           Shortly after, another individual copied the Facebook campaign to Walker’s public Facebook  
17 wall and said, “You are the Poster girl of Covid.” *Id.* Walker reported this to Facebook as  
18 harassment. *Id.* This individual continued to post the campaign and refused to take it down at  
19 Walker’s request. *Id.* As a result, Walker felt forced to delete her Facebook account. *Id.*

20           On March 25, 2020, Walker contacted Jennifer Wheelock (“Wheelock”) at the UCLA  
21 External Affairs Office, stating that she would like her images deleted and the release form  
22 terminated due to the fact that she was being bullied online. *Id.* That same day Wheelock replied that  
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26 <sup>1</sup> The facts set forth below are taken from the Complaint. ECF No. 1 (“Compl.”).

27 <sup>2</sup> While Walker does not explicitly allege in her Complaint that she was a student at UCLA at the time, the  
28 Court infers this fact based on her allegations that the photograph was taken “between classes” and her  
request that she be able to “retain her privileges as an alumni and retain articles written about her work during  
and after her time at UCLA.” Compl. at 1, 5.

1 Walker’s images were deleted and removed from the website and that the release form was  
2 terminated. *Id.*

3 On March 12, 2022, Walker received an Instagram message from a third individual that  
4 Walker’s image was on a large-scale banner on the Arthur Ashe Building for student health.

5 On March 12, 2022, Walker sent an email to Shilo Munk (“Munk”), UCLA’s Chief of Staff  
6 for Strategic Communication, stating that her image was still in use and she needed it to be removed.  
7 *Id.* On March 18, 2022, Munk emailed Walker the release form from 2015 and stated that it was the  
8 reason Walker’s image was still in use. *Id.* However, because of her demand, Munk responded that  
9 he would have the images removed from UCLA’s campus and website. *Id.* Walker replied that she  
10 would like to be compensated for the continued use of image since she had initially requested to  
11 have it taken down in March of 2020. *Id.* at 3.

## 12 **II. Procedural History**

13 On May 13, 2022, Walker filed this action against Defendant Board of Regents, University  
14 of California (the “Regents”)<sup>3</sup> for: (1) appropriation, CAL. CIV. CODE § 3344; (2) breach of contract;  
15 and (3) negligent infliction of emotional distress. *See generally* Compl. Walker alleges that the Court  
16 has subject matter jurisdiction under 28 U.S.C. § 1332 (diversity jurisdiction). *Id.* at 1. All of her  
17 claims are state law claims and she does not allege any other basis of subject matter jurisdiction.

18 On August 8, 2022, the Regents filed the instant Motion to Dismiss. *See generally* ECF No.  
19 15 (“Mot.”). This Motion was fully briefed on September 14, 2022. *See* ECF Nos. 17 (“Opp’n”), 22  
20 (“Reply”). The Court heard oral argument on September 29, 2022 and took the matter under  
21 submission. ECF No. 24.

## 22 **III. Applicable Law**

23 The “[f]ederal courts are courts of limited jurisdiction.” *Corral v. Select Portfolio Servicing,*  
24 *Inc.*, 878 F.3d 770, 773 (9th Cir. 2017) (internal quotation marks omitted). The plaintiff bears the  
25 burden of establishing that subject matter jurisdiction exists. *Kokkonen v. Guardian Life Ins. Co. of*  
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28 <sup>3</sup> Defendant indicates in its Motion that it was erroneously sued as “Board of Regents, University of California.”

1 *Am.*, 511 U.S. 375, 377 (1994). A “court of the United States may not grant relief absent a  
2 constitutional or valid statutory grant of jurisdiction.” *U.S. v. Bravo-Diaz*, 312 F.3d 995, 997 (9th  
3 Cir. 2002). Under the Federal Rules of Civil Procedure Rule 12(b)(1), a party may bring a motion to  
4 dismiss for lack of subject matter jurisdiction.

5 District courts have diversity jurisdiction over civil actions where the matter in controversy  
6 exceeds \$75,000 and is between citizens of different states. “There is no question that a State is not a  
7 ‘citizen’ for purposes of the diversity jurisdiction.” *Moor v. Alameda Cnty.*, 411 U.S. 693, 717  
8 (1973). The Ninth Circuit has extended this proposition to state agencies, finding that “neither a state  
9 nor a state agency [can] be a party to a diversity action.” *Dep’t of Fair Emp. & Hous. v. Lucent*  
10 *Techs., Inc.*, 642 F.3d 728, 737 (9th Cir. 2011) (internal quotations omitted).

#### 11 **IV. Discussion**

##### 12 **A. Walker cannot establish subject matter jurisdiction over the Regents.**

13 Walker alleges that the Court has subject matter jurisdiction under diversity jurisdiction, as  
14 she is a citizen of Washington and the Regents is a citizen of California. Compl. at 1. The Regents  
15 argues that this action should be dismissed pursuant to the Federal Rules of Civil Procedure Rule  
16 12(b)(1) because the Regents is not considered a citizen of California for the purpose of establishing  
17 diversity. Mot. at 4.

18 *ITSI T.V. Prods., Inc. v. Agric. Ass’ns*, 3 F.3d 1289, 1292 (9th Cir. 1993) supplies the binding  
19 test for the Ninth Circuit to determine whether an entity is an “arm of the state” for purposes of 11<sup>th</sup>  
20 Amendment immunity, and thus may not be considered a citizen of that State. Both the Regents and  
21 Walker cite to this test in their respective briefing. *ITSI* provides:

22 To determine whether a governmental agency is an arm of the state, the following  
23 factors must be examined: [1] whether a money judgment would be satisfied out of  
24 state funds, [2] whether the entity performs central governmental functions, [3]  
25 whether the entity may sue or be sued, [4] whether the entity has power to take  
property in its own name or only the name of the state, and [5] the corporate status  
of the entity. To determine these factors, the court looks to the way state law treats  
the entity.

26 *ITSI*, 3 F.3d at 1292; *see also* Mot. at 11; Opp’n at 1–2.

27 It is well established that neither a state nor an arm of the state is a citizen of that state for  
28 diversity purposes. *See Moor*, 411 U.S. at 717; *State Highway Comm’n of Wyoming v. Utah Const.*

1 *Co.*, 278 U.S. 194, 199 (1929); *Postal Tel. Cable Co. v. State of Alabama*, 155 U.S. 482, 487 (1894).

2 The question presented by this case is whether the Regents constitute an arm of the state. The 11<sup>th</sup>  
3 Amendment also prohibits suits against a state. *ITSI* supplies the binding test for determining  
4 whether an entity is an arm of the state for purposes of 11<sup>th</sup> Amendment immunity. *ITSI*, 3 F.3d at  
5 1292. Both parties cite to *ITSI* as the test this court should apply in determining whether the Regents  
6 is an arm of the state for purposes of diversity jurisdiction.

7 Although *ITSI* is not about diversity, and technically does not establish the test to be applied  
8 for diversity purposes, this Court finds that it is appropriate to apply. The jurisprudence of the 11<sup>th</sup>  
9 Amendment and diversity jurisdiction both seem to be concerned with whether a suit is effectively  
10 against the state itself. Both the 11<sup>th</sup> Amendment and the Judiciary Act of 1789, which first  
11 established diversity jurisdiction, were enacted at the founding of our nation. There appears to be no  
12 reason why the same factors that determine whether an entity is an arm of the state for purposes of  
13 the 11<sup>th</sup> Amendment would not apply to determining whether that entity is an arm of the state for  
14 purposes of diversity. And numerous other courts have applied the *ITSI* test in just this fashion.  
15 Since *ITSI*, the Ninth Circuit has repeatedly held “that the University [of California] is an arm of the  
16 State of California under the test of *ITSI TV Prods. v. Agric. Ass’ns*, 3 F.3d 1289, 1292 (9th Cir.  
17 1993).” See, e.g., *Doe v. Lawrence Livermore Nat. Lab’y*, 131 F.3d 836, 839 (9th Cir. 1997);  
18 *Jackson v. Hayakawa*, 682 F.2d 1344, 1350 (9th Cir. 1982) (“[T]he University of California and the  
19 Board of Regents are considered to be instrumentalities of the state.”). Pursuant to the law of the  
20 circuit doctrine, this Court defers to the Ninth Circuit’s determination that the Regents of the  
21 University of California is an arm of the State and shall not independently apply the test in *ITSI* to  
22 the facts here. See *Hart v. Massanari*, 266 F.3d 1155, 1170 (9th Cir. 2001) (“Binding authority  
23 within this regime cannot be considered and cast aside; it is not merely evidence of what the law is.  
24 Rather, caselaw on point is the law.”).

25 While the Court appreciates the serious nature of the harm Walker is alleged to have  
26 suffered, for the reasons stated above, the Court finds that Walker is unable to establish subject  
27 matter jurisdiction on grounds of diversity. As the Court stated at the September 29, 2022, the Court  
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1 advises Walker that it makes no determination as to whether this action might be properly brought in  
2 state court. In any event, this action is hereby DISMISSED.<sup>4</sup>

3 **V. Pro Se Resources**

4 As discussed at the hearing, the Court appreciates the challenges that come with self-  
5 representation and wishes to provide guidance to Walker on the following resources, which she may  
6 wish to consult:

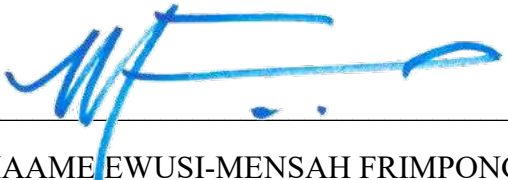
- 7 • Information on the Federal Pro Se Clinic in Los Angeles, which offers on-site information  
8 and guidance to individuals who are representing themselves, can be found at  
9 <https://prose.cacd.uscourts.gov/los-angeles>.
- 10 • Information and resources on representing yourself from the LA Law Library, available at  
11 the <https://www.lalawlibrary.org/>.
- 12 • General information on how parties may represent themselves in civil cases in the Central  
13 District of California can be found at <https://prose.cacd.uscourts.gov/>.

14 **VI. Conclusion**

15 In light of the foregoing, the Court hereby GRANTS Defendant’s Motion to Dismiss  
16 WITHOUT LEAVE TO AMEND.

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18 **IT IS SO ORDERED.**

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20 Dated: October 13, 2022

  
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 MAAME EWUSI-MENSAH FRIMPONG  
 United States District Judge

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<sup>4</sup> The Regents additionally argues that Walker’s claims should be dismissed on grounds of sovereign immunity under the 11<sup>th</sup> Amendment and under the Federal Rule of Civil Procedure 12(b)(6). Furthermore, the Regents argue that Walker fails to state a claim for relief because: (1) she fails to state a claim for appropriation; (2) she consented to the use of her image; and (3) she fails to plead that the Regents owed a duty to her. Mot. at 7–10. However, as the Court “determines . . . that it lacks subject-matter jurisdiction [and thus] must dismiss the action,” the Court cannot address these arguments. FED. R. CIV. P. 12(h)(3).