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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KRISTA DANDRIDGE-BARNETT)	Case No. EDCV 14-2254-JLS (KK)
)	
Plaintiff,)	
)	
v.)	ORDER DISMISSING PLAINTIFF'S
)	COMPLAINT WITH LEAVE TO AMEND
)	
BARNES AND NOBLE,)	
)	
Defendant.)	
)	
)	

I.

INTRODUCTION

On November 3, 2014, plaintiff Krista Dandridge-Barnett, who is at liberty, filed a Complaint alleging multiple civil rights claims against defendant Barnes and Noble. However, the Court finds plaintiff's allegations fail to state a claim and thus that dismissal under Federal Rule of Civil Procedure 12(b)(6) is warranted. However, the Court will provide Plaintiff an opportunity to cure the deficiencies discussed herein.

1
2 resolution," but that such efforts ultimately failed. Id. at 11-
3 14.

4 While not entirely clear, Plaintiff appears to assert claims
5 under 42 U.S.C. sections 1981, 1983, 1985(3), and 1986.

6 **III.**

7 **STANDARD OF REVIEW**

8 Pursuant to Federal Rule of Civil Procedure 12(b)(6), a
9 claim may be dismissed for failure to state a claim upon which
10 relief can be granted. The Ninth Circuit has held "[a] trial
11 court may dismiss a claim sua sponte under Fed. R. Civ. P.
12 12(b)(6)" and has also stated "[s]uch a dismissal may be made
13 without notice where the claimant cannot possibly win relief."
14 Omar v. Sea-Land Service, Inc., 813 F.2d 986, 991 (9th Cir. 1987)
15 (citing Wong v. Bell, 642 F.2d 359, 361-62 (9th Cir. 1981)).

16 In considering whether a complaint states a claim, a court
17 must accept as true all of the material factual allegations in
18 it. Hamilton v. Brown, 630 F.3d 889, 892-93 (9th Cir. 2011).
19 However, the court need not accept as true "allegations that are
20 merely conclusory, unwarranted deductions of fact, or
21 unreasonable inferences." In re Gilead Scis. Sec. Litig., 536
22 F.3d 1049, 1055 (9th Cir. 2008) (citation and internal quotation
23 marks omitted). Although a complaint need not include detailed
24 factual allegations, it "must contain sufficient factual matter,
25 accepted as true, to state a claim to relief that is plausible on
26 its face." Cook v. Brewer, 637 F.3d 1002, 1004 (9th Cir. 2011)
27 (citation and internal quotation marks omitted). A claim is

1 facially plausible when it "allows the court to draw the
2 reasonable inference that the defendant is liable for the
3 misconduct alleged." Id. (citation and internal quotation marks
4 omitted). The complaint "must contain sufficient allegations of
5 underlying facts to give fair notice and to enable the opposing
6 party to defend itself effectively." Starr v. Baca, 652 F.3d
7 1202, 1216 (9th Cir. 2011).

8 Especially in civil rights cases, a *pro se* plaintiff's
9 pleadings are liberally construed to afford the plaintiff "the
10 benefit of any doubt." Akhtar v. Mesa, 698 F.3d 1202, 1212 (9th
11 Cir. 2012) (quoting Bretz v. Kelman, 773 F.2d 1026, 1027 n.1 (9th
12 Cir. 1985) (*en banc*)) (internal quotation marks omitted). If,
13 however, a court finds that a *pro se* complaint has failed to
14 state a claim, dismissal may be with or without leave to amend.
15 Lopez v. Smith, 203 F.3d 1122, 1126-30 (9th Cir. 2000). *Pro se*
16 plaintiffs should be permitted leave to amend unless it is
17 absolutely clear that the complaint's deficiencies cannot be
18 cured. Cafasso v. General Dynamics C4 Sys., Inc., 637 F.3d 1047,
19 1058 (9th Cir. 2011) ("Normally, when a viable case may be pled,
20 a district court should freely grant leave to amend.").

21 IV.

22 DISCUSSION

23 A. PLAINTIFF'S SECTION 1981 CLAIM AGAINST BARNES AND NOBLE MUST 24 BE DISMISSED.

25 Plaintiff has alleged a claim against Barnes and Noble for a
26 violation of 42 U.S.C. section 1981 ("Section 1981"). Section
27 1981 prohibits discrimination in the making and enforcement of

1
2 contracts by reason of race, national origin, or ancestry. See
3 42 U.S.C. § 1981. In order to establish a claim under Section
4 1981, a plaintiff must allege facts in support of the following
5 elements: (1) Plaintiff is a member of a protected class; (2)
6 Plaintiff attempted to contract for certain services; and (3)
7 Plaintiff was denied the rights to contract for those services.
8 See, e.g., Lindsey v. SLT Los Angeles, LLC, 447 F.3d 1138, 1145
9 (9th Cir. 2006). Moreover, to withstand dismissal for failure to
10 state a claim, a plaintiff alleging a Section 1981 claim must
11 allege overt acts coupled with some direct evidence that the
12 defendants' conduct was motivated by animus against the protected
13 class. See Evans v. McKay, 869 F.2d 1341, 1345 (9th Cir. 1989).

14 Here, the allegations of the FAC are insufficient to satisfy
15 plaintiff's pleading burden with respect to any of the foregoing
16 elements. Thus, Plaintiff's Section 1981 claim must be
17 dismissed.

18 **B. PLAINTIFF'S SECTION 1983 CLAIM AGAINST A PRIVATE ENTITY MUST**
19 **BE DISMISSED.**

20 Plaintiff has alleged a claim against the Store for a
21 violation of 42 U.S.C. section 1983 ("Section 1983"). In order
22 to state a claim for a civil rights violation under Section 1983,
23 a plaintiff must allege that a particular defendant, acting *under*
24 *color of state law*, deprived plaintiff of a right guaranteed
25 under the U.S. Constitution or a federal statute. 42 U.S.C. §
26 1983; see West v. Atkins, 487 U.S. 42, 48, 108 S. Ct. 2250, 101
27 L. Ed. 2d 40 (1988). Thus, private parties cannot generally be

1 held liable under Section 1983. See Monroe v. Pape, 365 U.S.
2 167, 172, 81 S. Ct. 473, 5 L. Ed. 2d 492 (1961), overruled in
3 part by Monell v. Dep't of Soc. Servs., 436 U.S. 658, 98 S. Ct.
4 2018, 56 L. Ed. 2d 611 (1978). Rather, Section 1983 liability
5 attaches only to individuals "who carry a badge of authority of a
6 State and represent it in some capacity." Id.

7 Here, Plaintiff attempts to sue a private entity, the Store,
8 under Section 1983, but cannot establish Barnes and Noble was
9 carrying "a badge of authority of a State" or that it "represents
10 [the State] in some capacity." Id. Thus, Plaintiff's Section
11 1983 claim must be dismissed.

12 **C. PLAINTIFF'S SECTION 1985(3) AND 1986 CLAIMS MUST BE**
13 **DISMISSED.**

14 Finally, Plaintiff has alleged claims against the Store for
15 violations of 42 U.S.C. sections 1985(3) and 1986 (respectively
16 "Section 1985(3)" and "Section 1986").

17 A complaint alleging a violation of Section 1985(3) must
18 allege defendants did "(1) 'conspire or go in disguise on the
19 highway or on the premises of another' (2) 'for the purpose of
20 depriving, either directly or indirectly, any person or class of
21 persons of the equal protection of the laws, or of equal
22 privileges and immunities under the laws'" Griffin v.
23 Breckenridge, 403 U.S. 88, 102-03, 91 S. Ct. 1790, 29 L. Ed. 2d
24 338 (1971). The complaint must also allege one or more of the
25 conspirators did, or caused to be done, "any act in furtherance
26 of the object of [the] conspiracy," whereby another was "injured
27 in his person or property" or "deprived of having and exercising

1
2 any right or privilege of a citizen of the United States." Id.
3 at 103. Section 1985(3) further requires "some racial, or
4 perhaps otherwise class-based, invidiously discriminatory animus
5 behind the conspirators' action." Id. at 102.

6 Here, Plaintiff fails to adequately allege a claim under
7 Section 1985(3) because she has failed to plead facts sufficient
8 to establish any of the elements of her claim. Plaintiff merely
9 provides conclusory statements and restates the elements of a
10 Section 1985(3) claim without alleging specific facts in support
11 of each element. In turn, because plaintiff fails to state a
12 claim under Section 1985(3), Plaintiff also fails to state a
13 claim under Section 1986. See Trerice v. Pedersen, 769 F.2d
14 1398, 1403 (9th Cir. 1985) ("[A] cause of action is not provided
15 under 42 U.S.C. § 1986 absent a valid claim for relief under
16 section 1985.").

17 Accordingly, Plaintiff's "conspiracy" claims - whether
18 arising under Section 1985 or 1986 - must be dismissed.

19 *****

20 If plaintiff desires to pursue her claims, she is ORDERED to
21 file a First Amended Complaint ("FAC") within 28 days of the
22 service date of this Order, remedying the deficiencies discussed
23 above. The FAC should bear the docket number assigned to this
24 case, be labeled "First Amended Complaint," and be complete in
25 and of itself without reference to the original Complaint or any
26 other pleading, attachment, or document.

27 ///

1 Plaintiff is admonished that if she fails to timely file a
2 sufficient FAC, the Court will recommend this action be dismissed
3 with prejudice on the grounds set forth above and/or for failure
4 to diligently prosecute.

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6 DATED: November 5, 2014



HONORABLE KENLY KIYA KATO
UNITED STATES MAGISTRATE JUDGE

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