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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

GLORIA PALACIOS,)	1:09cv0554 OWW DLB
)	
Plaintiff,)	FINDINGS AND RECOMMENDATION
)	REGARDING DISMISSAL OF CERTAIN
v.)	CLAIMS AND CERTAIN DEFENDANTS
)	WITHOUT LEAVE TO AMEND
FRESNO COUNTY SUPERIOR COURT,)	ORDER GRANTING PLAINTIFF LEAVE TO
et al.,)	AMEND THE 42 U.S.C. § 1983 CLAIM
)	
Defendants.)	
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Plaintiff Gloria Palacios (“Plaintiff”), appearing pro se, filed the instant civil rights action on March 25, 2009. Pursuant to Court order, she filed her First Amended Complaint (“FAC”) on October 5, 2009. Plaintiff alleges civil rights violations pursuant to [42 U.S.C. § 1983](#), as well as violations of the Americans with Disabilities Act (“ADA”), Section 504 of the Rehabilitation Act (“RA”), and the California Unruh Civil Rights Act.

DISCUSSION

A. Screening Standard

A trial court may dismiss a claim sua sponte under [Fed. R. Civ. P. 12\(b\)\(6\)](#) where the claimant cannot possibly win relief. [Omar v. Sea-Land Service, Inc., 813 F.2d 986, 991 \(9th Cir. 1987\)](#); [Wong v. Bell, 642 F.2d 359, 361-62 \(9th Cir. 1981\)](#). A claim is legally frivolous when it lacks an arguable basis either in law or fact. [Neitzke v. Williams, 490 U.S. 319, 325 \(1989\)](#); [Franklin v. Murphy, 745 F.2d 1221, 1227-28 \(9th Cir. 1984\)](#). A federal court may dismiss a

1 claim as frivolous where it is based on an indisputably meritless legal theory or where the factual
2 contentions are clearly baseless. [Nietzke, 490 U.S. at 327.](#)

3 Further, a plaintiff's complaint must satisfy the requirement of [Federal Rule of Civil](#)
4 [Procedure 8\(a\)](#), which provides:

5 A pleading which sets forth a claim for relief, whether an original claim,
6 counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain
7 statement of the grounds upon which the court's jurisdiction depends, unless the court
8 already has jurisdiction and the claim needs no new grounds of jurisdiction to support it,
(2) a short and plain statement of the claim showing that the pleader is entitled to relief,
and (3) a demand for judgment for the relief the pleader seeks. Relief in the alternative or
of several different types may be demanded.

9 A complaint must contain a short and plain statement as required by [Fed. R. Civ. P.](#)
10 [8\(a\)\(2\)](#). Although the Federal Rules adopt a flexible pleading policy, a complaint must give fair
11 notice and state the elements of the claim plainly and succinctly. [Jones v. Community Redev.](#)
12 [Agency, 733 F.2d 646, 649 \(9th Cir. 1984\)](#). Plaintiff must allege with at least some degree of
13 particularity overt acts which the defendants engaged in that support Plaintiff's claim. [Id.](#)

14 B. Plaintiff's Allegations

15 Plaintiff's allegations arise from her perceived treatment during years of litigation in the
16 Fresno County Superior Court and the Fifth District Court of Appeal. She contends that the
17 alleged wrongs began in May 2002 and continued through 2009. Plaintiff names the following
18 Defendants: Fresno County Superior Court ("FCSC"), Judge James Petrucelli, Judge David
19 Kalemakarian, Judge Gary Austin, Judge Brian Arax, Judge Kimberly Gaab, Temporary Judge
20 Charles Soley, Commissioner B. Nytrom-Gist, FCSC CEO Tamara Beard, FCSC employees Fran
21 Collins (Manager Family Services), Linda Beckett (Assistant Manager Family Services), Terri
22 La Flori (Appeals Supervisor), Teresa Doe (Appeals Division), Fran Riley (Court Reporter
23 Services Manager), Sara Campbell, D. Brengelman (clerk), Jane Doe 1 (clerk), and Sharon Doe
24 (Librarian), the Fifth District Court of Appeal, Justice James Ardaiz, Fifth District Court of
25 Appeal employees Diane Monopoly (clerk) and Jane Doe 2 (clerk), the Fresno County Sheriff's
26 Office, Fresno County Sheriff Margaret Mims, Deputy Sheriff Francis Devins, Deputy Sheriff
27 Manuel Chavez, and "Sheriff Officers 'Doe' 3-8 Central Valley Citizens." FAC, at 7.

1 In her FAC, Plaintiff contends that she is a qualified individual under the ADA because
2 of a cognitive/brain injury, which she contends results in reading, writing, comprehension, and
3 communication problems. Plaintiff complains that the FCSC and Fifth District Court of Appeal
4 failed to comply with the ADA by not properly informing of her right to accommodations despite
5 requesting accommodations numerous times. Plaintiff believes that this failure resulted in the
6 denial of meaningful access to the courts. For example, Plaintiff contends that she was not
7 allowed to apply for a waiver of fees, was not allowed in chambers to discuss her case, was not
8 provided with copies of documents, was not allowed to check books out of the library and was
9 not allowed to defend herself. She also contends that FCSC employees ridiculed and humiliated
10 her and that the judges did not fairly decide her motions and treated her unfairly. Plaintiff
11 believes that employees purposely misrepresented facts and withheld information relating to her
12 cases. She also alleges that court staff refused to provide assistance with copying, made her
13 leave the lobby just prior to closing time and falsely accused her of having prohibited items in
14 her purse.

15 As to the law enforcement Defendants, Plaintiff references an incident in February 2008
16 during which the officers were “rude, discourteous and disrespectful.” FAC 17. For instance,
17 she alleges that Officer Devins conspired with Defendant Collins to deny Plaintiff access to the
18 court by refusing to accept a grievance about the officers’ discriminatory treatment in the court
19 lobby. She contends that Officer Devins arrested her without probable cause, physically hurt her
20 during the arrest, failed to follow procedures relating to frisking and misrepresented facts in the
21 police report. Officer Chavez, according to Plaintiff, followed orders that he knew to be against
22 standard arresting procedure. Plaintiff alleges that Officers John Doe and Jane Doe continuously
23 discriminated against her and violated her constitutional rights at the court entrance by their rude
24 and intimidating behavior. Plaintiff states that she was criminally charged, but that the charges
25 were eventually dismissed.

26 Based on these allegations, Plaintiff alleges the following causes of action:

27 1. Violation of the ADA, resulting in denial of meaningful access to the courts and
28 violation of Plaintiff’s rights to freedom of speech, due process and equal protection. This cause

1 of action is based on the alleged conduct of court employees, as well as the officers' alleged
2 refusal to allow her to file a grievance, use of excessive force and arrest without probable cause.

3 2. Violation of Section 504 of the Rehabilitation Act, based on Defendants'
4 discrimination, harassment and failure to provide adequate services and meaningful access. She
5 also alleges that Defendant Beard failed to investigate the issues presented to her and failed to
6 train her staff to ensure that people with disabilities are allowed meaningful access.

7 3. [Violation of 42 U.S.C. §§ 1983](#) and 1985, as well as the California Unruh Civil Rights
8 Act, based on the law enforcement Defendants' failure to train and supervise employees and their
9 alleged violation of Plaintiff's First, Fourth and Fourteenth Amendment rights.

10 Plaintiff requests injunctive relief as well as compensatory and punitive damages. She
11 also requests that her criminal record be expunged.

12 C. DISCUSSION

13 1. *Defendant Judges are Entitled to Absolute Immunity*

14 It is well settled that judges are generally immune from suit for money damages. [Mireles](#)
15 [v. Waco, 502 U.S. 9, 9-10 \(1991\)](#); [Duvall v. County of Kitsap, 260 F.3d 1124 \(9th Cir. 2001\)](#).

16 However, absolute judicial immunity does not apply to non-judicial acts, i.e. the administrative,
17 legislative, and executive functions that judges may on occasion be assigned to perform.

18 [Forrester v. White, 484 U.S. 219, 227 \(1988\)](#). The Ninth Circuit has identified the following
19 factors as relevant to the determination of whether a particular act is judicial in nature: (1) the
20 precise act is a normal judicial function; (2) the events occurred in the judge's chambers; (3) the
21 controversy centered around a case then pending before the judge; and (4) the events at issue
22 arose directly and immediately out of a confrontation with the judge in his or her official
23 capacity. [Duvall, 260 F.3d at 1133](#); [Meek v. County of Riverside, 183 F.3d 962, 967 \(9th](#)
24 [Cir.1999\)](#).

25 Based on the allegations in her complaint, the Court concludes that Defendant Judges
26 Petrucelli, Kalemakarian, Austin, Arax, Gaab, Soley, Nytrom-Gist and Ardaiz were acting in
27 their judicial capacities. Plaintiff's allegations against the Defendant Judges include the
28 following: (1) Judge Solely made comments about Plaintiff in the courtroom, did not allow her to

1 file motions due to her vexatious litigant status, and did not disclose his relationship with Judge
2 Petrucelli; (2) Judge Kalemakian did not allow Plaintiff into his chambers to discuss her case
3 and denied her motion; (3) Judge Nystrom-Gist “discussed and advised” Judge Solely “in
4 [Plaintiff’s] presence not realizing that [Plaintiff] could hear her conversation;” (4) Judges
5 Petrucelli, Kalemakian, Austin, Arax and Gaab “demanded a higher level of compliance to show
6 proof of disability” and expected her to act as an attorney; (5) Judge Arax denied Plaintiff’s
7 request to represent herself and “threatened” to make her go to trial; (6) Judge Gaab
8 discriminated against Plaintiff due to her “inability to do court paperwork correctly” and scolded
9 and humiliated her; and (7) Justice Ardaiz denied her request for accommodations and struck her
10 opening brief.

11 It is clear that Defendant Judges were acting in a judicial capacity in making decisions in
12 Plaintiff’s case(s) and in exercising control of their courtrooms/chambers. Insofar as Plaintiff
13 contends that Defendant Judges refused to accommodate her, any such decisions were made in
14 the course of Plaintiff’s case(s) and Plaintiff presents no facts to remove the actions from the
15 realm of judicial functions.

16 Therefore, Judges Petrucelli, Kalemakarian, Austin, Arax, Gaab, Soley, Nytrom-Gist and
17 Ardaiz are entitled to absolute judicial immunity and Plaintiff’s claims for monetary damages
18 under all theories of recovery are barred.

19 While judges are immune to suits seeking damages, judicial immunity does not bar
20 claims for injunctive or declaratory relief. See, e.g., Pulliam v. Allen, 466 U.S. 522 (1984);
21 Partington v. Gedan, 961 F.2d 852 (9th Cir.1992). However, Plaintiff’s claims for injunctive
22 relief against the Defendant Judges should be dismissed for other reasons. A review of
23 Plaintiff’s requested injunctive relief reveals that it is directed at the FCSC and the Fifth District
24 Court of Appeal, rather than the Defendant Judges. Specifically, Plaintiff requests that the Court
25 “order defendants to train all judges/personnel, plus design and implement a program specifically
26 to provide meaningful access to court/justice services and programs for all disabled persons with
27 [her] type of disability.” FAC, at 27. See Brown v. Cowlitz County, 2009 WL 3172778, *4
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1 [\(W.D. Wash, 2009\)](#) (finding a similar injunctive request against a judge, court and county
2 “redundant and duplicative” against the judge because it was directed to the county).

3 In addition, to the extent that Plaintiff seeks to hold the Defendant Judges personally
4 liable, there is no individual capacity liability under the ADA or RA. See [Vinson v. Thomas, 288](#)
5 [F.3d 1145-56 \(9th Cir.2002\)](#); [Becker v. Oregon, 170 F.Supp.2d 1061, 1067 \(D.Or.2001\)](#); [Van](#)
6 [Hulle v. Pacific Telesis Corp., 124 F.Supp.2d 642 \(N.D.Cal.2000\)](#). Thus, the ADA and RA
7 claims against the Defendant Judges are subject to dismissal.

8 Finally, to the extent Plaintiff challenges decisions made in state court litigation, the
9 Rooker-Feldman doctrine prevents her from challenging the Defendant Judges’ orders in this
10 federal action. Under Rooker-Feldman, a federal district court does not have subject matter
11 jurisdiction to hear a direct appeal from the final judgment of a state court. [District of Columbia](#)
12 [Court of Appeals v. Feldman, 460 U.S. 462, 482 \(1983\)](#); [Rooker v. Fidelity Trust Co., 263 U.S.](#)
13 [413, 415-16 \(1923\)](#); [Noel v. Hall, 341 F.3d 1148, 1154 \(9th Cir.2003\)](#). Plaintiff’s request to
14 expunge her record also fails under the Rooker-Feldman doctrine.

15 Accordingly, the Court finds that Defendant Judges Petrucelli, Kalemakarian, Austin,
16 Arax, Gaab, Soley, Nytrom-Gist and Ardaiz are not proper defendants and should be
17 DISMISSED.

18 2. *Court Clerk Defendants are Entitled to Quasi-Judicial Immunity*

19 Court clerks have absolute quasi-judicial immunity from damages for civil rights
20 violations when they perform tasks that are an integral part of the judicial process. [Mullis v.](#)
21 [United States Bankruptcy Court, 828 F.2d 1385 \(9th Cir. 1987\)](#); [Morrison v. Jones, 607 F.2d](#)
22 [1269, 1273 \(9th Cir. 1979\), cert. denied, 445 U.S. 962 \(1980\)](#). Clerks qualify for quasi-judicial
23 immunity unless they acted in the clear absence of jurisdiction. [Mullis, 828 F.2d 1385](#).

24 Plaintiff alleges that the Defendant Clerks withheld information relating to her case,
25 refused to allow her to file a fee waiver application, misrepresented facts, made administrative
26 mistakes, provided “different” information than that provided to others, provided incorrect
27 information about filing motions, refused to allow her to file documents, refused to answer phone
28 calls, failed to provide her with copies, failed to help her make copies and failed to allow her to

1 check out library books. FAC, 12. These allegations, however, involve tasks performed during
2 the adjudication of Plaintiff's action(s) and she has not demonstrated that the Defendant Clerks
3 acted in clear absence of jurisdiction. In fact, most of the alleged acts may have been performed
4 based on Court procedures, not based on Plaintiff's alleged disability. Plaintiff's conclusory
5 allegations that the Clerks "continuously discriminated, abused, humiliated, [and] ridiculed" her
6 do not change this result. FAC, 8.

7 Plaintiff's claims for injunctive relief against the Clerk Defendants are also subject to
8 dismissal. As explained above, Plaintiff's requested injunctive relief is directed at the FCSC and
9 the Fifth District Court of Appeal, rather than the Defendant Clerks. See [Brown v. Cowlitz](#)
10 [County, 2009 WL 3172778, *4 \(W.D. Wash, 2009\)](#).

11 Therefore, Defendants Beard, Collins, Beckett, La Flori, Teresa Doe, Fran Riley, Sara
12 Campbell, D. Brengelman, Jane Doe, Sharon Doe, Diane Monopoly and Jane Doe(2), are entitled
13 to quasi-judicial immunity and Plaintiff's claims for monetary damages under all theories of
14 recovery are barred.

15 To the extent that Plaintiff seeks to hold the Clerk Defendants personally liable, there is
16 no individual capacity liability under the ADA or RA. See [Vinson v. Thomas, 288 F.3d 1145-56](#)
17 [\(9th Cir.2002\)](#); [Becker v. Oregon, 170 F.Supp.2d 1061, 1067 \(D.Or.2001\)](#); [Van Hulle v. Pacific](#)
18 [Telesis Corp., 124 F.Supp.2d 642 \(N.D.Cal.2000\)](#). Thus, the ADA and RA claims against the
19 Clerk Defendants are subject to dismissal.

20 The Court also notes that Plaintiff's similar 2008 complaint was dismissed without leave
21 to amend based in part on the Judges' absolute immunity and the court clerks' quasi-judicial
22 immunity. In the April 23, 2009, order dismissing the complaint with leave to amend, Plaintiff
23 was cautioned against continuing to assert section 1983 claims against judges and court staff. In
24 her FAC, she states that because the 2008 action was not decided on the merits, she can allege
25 the same issues against the same defendants. Plaintiff is incorrect. "The law of the case doctrine
26 is a judicial invention designed to aid in the efficient operation of court affairs." [Milgard](#)
27 [Tempering, Inc. v. Selas Corp. of Am., 902 F.2d 703, 715 \(9th Cir.1990\)](#). Under the doctrine, a
28 court is generally precluded from reconsidering an issue previously decided by the same court, or

1 a higher court in the identical case. Id. Although the Court could dismiss Plaintiff’s action
2 outright for failure to follow a Court order, it has given Plaintiff, who is proceeding pro se, the
3 benefit of the doubt by screening her FAC.

4 Accordingly, the Court finds that Defendants Beard, Collins, Beckett, La Flori, Teresa
5 Doe, Fran Riley, Sara Campbell, D. Brengelman, Jane Doe, Sharon Doe, Diane Monopoly and
6 Jane Doe(2) are not proper defendants and should be DISMISSED.

7 3. *Plaintiff’s ADA and RA Claims*

8 Title II of the ADA provides:

9 ... [N]o qualified individual with a disability shall, by reason of such disability, be
10 excluded from participation in or be denied the benefits of the services, programs, or
activities of a public entity, or be subjected to discrimination by any such entity.

11 [42 U.S.C. § 12132](#). To prove that a public program or service violated Title II of the ADA, a
12 plaintiff must show: (1) she is a “qualified individual with a disability”; (2) she was either
13 excluded from participation in, or denied the benefits of, a public entity’s services, programs, or
14 activities, or was otherwise discriminated against by the public entity; and (3) such exclusion,
15 denial of benefits, or discrimination was by reason of her disability. [Weinreich v. Los Angeles
16 County Metropolitan Transp. Auth., 114 F.3d 976, 978 \(9th Cir.1997\)](#).

17 Title II of the ADA was expressly modeled after section 504 of the RA. A plaintiff
18 bringing suit under section 504 must show (1) she is an individual with a disability; (2) she is
19 otherwise qualified to receive the benefit; (3) she was denied the benefits of the program solely
20 by reason of her disability; and (4) the program receives federal financial assistance. Id.

21 The ADA provides that a person is disabled if he has a physical impairment that
22 “substantially limits” a major life activity. [42 U.S.C. § 12102\(2\)](#). Major life activities include
23 speaking, performing manual tasks, working, caring for one’s self, walking, seeing, hearing,
24 breathing, and learning. [28 CFR § 35.104](#).

25 Plaintiff alleges that she is a qualified individual with a cognitive problem and/or brain
26 injury. She contends that her disability impairs her ability to read, write, comprehend, analyze
27 and focus. She also alleges that her disability causes problems with her speech and an inability to
28 “react to issues at the pace of court proceedings...” FAC, 5. Given Plaintiff’s description, it is

1 questionable whether Plaintiff qualifies as disabled because it does not appear that she is
2 substantially limited in a major life activity.¹

3 Even assuming that Plaintiff is a qualified individual with a disability, her allegations do
4 not demonstrate that she was denied meaningful access to the courts because of this disability.
5 For example, Plaintiff contends that she was denied her rights to “copies, law library, permission
6 to apply for waiver of costs,” as well as what she perceives to be her right to access a judge’s
7 chambers. FAC, 21. Such allegations, even if true, do not rise to the level of a deprivation of
8 access to the courts. Moreover, as explained above, most, if not all, of the actions she complains
9 of were likely based on court-related procedure rather than her disability. Instead, Plaintiff’s
10 allegations appear to arise from her displeasure over the unfavorable results in her state court
11 action(s) and what she perceives to be unfair treatment.

12 Although Plaintiff does not specifically state what kind of accommodation she sought, the
13 allegations and her request for accommodations for someone with a cognitive injury suggest that
14 she expected the FCSC and Fifth District Court of Appeal to provide assistance with her ability
15 to comprehend the legal aspects of her action(s). In other words, rather than providing assistance
16 with performing basic tasks such as hearing, seeing and speaking, Plaintiff would have the FCSC
17 and Fifth District Court of Appeal assist her with understanding the underlying legal theories and
18 concepts. Such assistance is beyond the requirements of the ADA or RA.

19 Therefore, for the above reasons, the Court finds that Plaintiff’s ADA and RA claims
20 should be DISMISSED WITHOUT LEAVE TO AMEND for failure to state a claim upon which
21 relief can be granted. This also means that Defendants FCSC and the Fifth District Court of
22 Appeal are dismissed as there are no remaining claims against them.

23 4. *Plaintiff’s Section 1983 Claim*

24 Plaintiff’s remaining claim is brought under [42 U.S.C. § 1983](#) against the Fresno County
25 Sheriff’s Office, Sheriff Margaret Mims, Deputy Sheriff Francis Devins and Deputy Sheriff
26 Manuel Chavez.

27
28 ¹ The Court also notes that Plaintiff’s FAC, like her original complaint, is written somewhat clearly and does not evidence any communication issues.

1 The Civil Rights Act under which this action was filed provides:

2 Every person who, under color of [state law] . . . subjects, or causes
3 to be subjected, any citizen of the United States . . . to the
4 deprivation of any rights, privileges, or immunities secured by the
Constitution . . . shall be liable to the party injured in an action at
law, suit in equity, or other proper proceeding for redress.

5 [42 U.S.C. § 1983](#). Under section 1983, Plaintiff is required to show that (1) each defendant acted
6 under color of state law and (2) each defendant deprived him of rights secured by the
7 Constitution or federal law. [Long v. County of Los Angeles, 442 F.3d 1178, 1185 \(9th Cir.](#)
8 [2006\)](#). Plaintiff must demonstrate that each defendant personally participated in the deprivation
9 of his rights. [Jones v. Williams, 297 F.3d 930, 934 \(9th Cir. 2002\)](#). Additionally, there is no
10 respondeat superior liability under section 1983, and therefore, each defendant is only liable for
11 his own misconduct. [Ashcroft v. Iqbal, 129 S.Ct. 1937, 1948-49 \(2009\)](#).

12 The facts relating to this claim are very vague. From the allegations, it appears that
13 Plaintiff's claim arises from an incident in February 2008, possibly at the FCSC or Fifth District
14 Court of Appeal, during which Plaintiff contends that she was physically hurt and arrested
15 without probable cause by Defendants Devins and Chavez. It appears that she was arrested for
16 trespassing in a public building and resisting arrest, and she indicates that the charges were
17 eventually dismissed. Plaintiff also alleges that Defendants Devins and Chavez failed to follow
18 frisking policies/procedures, and that Defendant Devins misrepresented facts in a subsequent
19 police report. As to Defendant Fresno County Sheriff's Office and Defendant Mims, Plaintiff
20 alleges that they violated her constitutional rights by failing to properly train and supervise
21 personnel, and that this failure to train led to the alleged constitutional violations.

22 While Plaintiff may be able to state causes of action against these Defendants, her
23 allegations are simply too vague to be sufficient under Rule 8. Pursuant to Rule 8(a), a complaint
24 must contain "a short and plain statement of the claim showing that the pleader is entitled to
25 relief" [Fed. R. Civ. P. 8\(a\)](#). Rule 8(a) expresses the principle of notice-pleading, whereby
26 the pleader need not give an elaborate recitation of every fact he may ultimately rely upon at trial,
27 but only a statement sufficient to "give the defendant fair notice of what the plaintiff's claim is
28

1 and the grounds upon which it rests.” [Swierkiewicz v. Sorema N. A., 534 U.S. 506, 511-12,](#)
2 [122 S.Ct. 992 \(2002\)](#) (quoting [Conley v. Gibson, 355 U.S. 41, 47, 78 S.Ct. 99 \(1957\)](#)).

3 Plaintiff’s facts relating to her section 1983 claim are conclusory statements without *any*
4 factual information to support her allegations. The section 1983 claim is therefore DISMISSED
5 WITH LEAVE TO AMEND. In amending, Plaintiff must provide some factual explanation to
6 support her allegations.

7 For example, Plaintiff cannot simply state that Defendant Fresno County Sheriff’s Office
8 and Defendant Mims failed to properly train the officers. Rather, Plaintiff’s allegations must
9 contain facts to support her theory of liability. Generally, a claim against a local government unit
10 for municipal or county liability requires an allegation that “a deliberate policy, custom, or
11 practice . . . was the ‘moving force’ behind the constitutional violation . . . suffered.” [Galen v.](#)
12 [County of Los Angeles, 477 F.3d 652, 667 \(9th Cir. 2007\)](#); [City of Canton, Ohio, v. Harris, 489](#)
13 [U.S. 378, 385 \(1989\)](#). Alternatively, and more difficult to prove, municipal liability may be
14 imposed where the local government unit’s omission led to the constitutional violation by its
15 employee. [Gibson](#) at 1186. Under this route to municipal liability, the “plaintiff must show that
16 the municipality’s deliberate indifference led to its omission and that the omission caused the
17 employee to commit the constitutional violation.” [Id.](#) Deliberate indifference requires a showing
18 “that the municipality was on actual or constructive notice that its omissions would likely result
19 in a constitutional violation.” [Id.](#)

20 As to the individual officers sued in their personal capacity, Plaintiff must demonstrate
21 how their actions resulted in a deprivation of her constitutional rights. [See Ellis v. Cassidy, 625](#)
22 [F.2d 227 \(9th Cir. 1980\)](#). The complaint must allege in specific terms how each named
23 defendant is involved. There can be no liability under section 1983 unless there is some
24 affirmative link or connection between a defendant’s actions and the claimed deprivation. [Rizzo](#)
25 [v. Goode, 423 U.S. 362 \(1976\)](#); [May v. Enomoto, 633 F.2d 164, 167 \(9th Cir. 1980\)](#); [Johnson v.](#)
26 [Duffy, 588 F.2d 740, 743 \(9th Cir. 1978\)](#).

1 Insofar as Plaintiff attempts to state an ADA and/or RA claim against any of the
2 individual officers, she cannot do so because, as discussed above, there is no personal liability
3 under either statute.

4 5. *Conspiracy Allegations*

5 Finally, Plaintiff makes vague references to a conspiracy under [42 U.S.C. § 1985](#) among
6 certain Defendants. For instance, she alleges that Defendants Collins, La Flori, Teresa “Doe”
7 and Riley conspired to prevent Plaintiff from having meaningful access to services and programs
8 available through the FCSC. She also alleges that Defendant Collins conspired with Defendant
9 Devins to deprive her of meaningful access by “failing to accept a grievance complaint about her
10 officers’ discriminatory treatment in court lobby entrance.” FAC, 18.

11 A claim brought for violation of section 1985(3) requires “four elements: (1) a
12 conspiracy; (2) for the purpose of depriving, either directly or indirectly, any person or class of
13 persons of the equal protection of the laws, or of equal privileges and immunities under the laws;
14 and (3) an act in furtherance of this conspiracy; (4) whereby a person is either injured in his
15 person or property or deprived of any right or privilege of a citizen of the [United States.](#)” [Sever](#)
16 [v. Alaska Pulp Corp., 978 F.2d 1529, 1536 \(9th Cir. 1992\)](#) (citation omitted).

17 In interpreting these standards, the Ninth Circuit has held that a claim under section 1985
18 must allege specific facts to support the allegation that defendants conspired together. [Karim-](#)
19 [Panahi v. Los Angeles Police Dept., 839 F.2d 621, 626 \(9th Cir. 1988\)](#). A mere allegation of
20 conspiracy without factual specificity is insufficient to state a claim under [42 U.S.C. § 1985](#). [Id.](#);
21 [Sanchez v. City of Santa Anna, 936 F.2d 1027, 1039 \(9th Cir. 1991\)](#).

22 Plaintiff’s conspiracy allegations do not meet the above requirements because she again
23 fails to provide sufficient factual support. Plaintiff’s section 1985 claims also fails because
24 Officer Devins’ alleged co-conspirators are entitled to immunity, as explained above. By
25 definition, there can be no conspiracy without at least two individuals. [42 U.S.C. § 1985\(3\)](#) (“If
26 two or more persons in any State or Territory conspire...”). Therefore, Plaintiff’s section 1985(3)
27 claims are DISMISSED WITHOUT LEAVE TO AMEND.
28

1 **RECOMMENDATION**

2 For the reasons set forth above, the Court RECOMMENDS that Plaintiff’s ADA, RA and
3 section 1985(3) claims BE DISMISSED WITHOUT LEAVE TO AMEND. Defendants
4 Petrucelli, Kalemakarian, Austin, Arax, Gaab, Soley, Nytrom-Gist, Ardaiz, Beard, Collins,
5 Bequette, La Flori, Teresa Doe, Fran Riley, Sara Campbell, D. Brengelman, Jane Doe, Sharon
6 Doe, Diane Monopoly and Jane Doe(2) should also BE DISMISSED.

7 The Court further RECOMMENDS that the remaining claims BE DISMISSED WITH
8 LEAVE TO AMEND. Plaintiff SHALL file an amended complaint within thirty (30) days of the
9 date of service of this order. Plaintiff is only granted leave to amend the section 1983 claims
10 against the Fresno County Sheriff’s Office, Sheriff Mims, Deputy Sheriff Devins and Deputy
11 Sheriff Chavez. If Plaintiff attempts to amend beyond this claim, the Court will recommend that
12 the entire action be dismissed.

13 Plaintiff is advised that Local Rule 15-220 requires that an amended complaint be
14 complete in itself without reference to any prior pleading. As a general rule, an amended
15 complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967).
16 Once plaintiff files an amended complaint, the original pleading no longer serves any function in
17 the case. Therefore, in an amended complaint, as in an original complaint, each claim and the
18 involvement of each defendant must be sufficiently alleged.

19 These findings and recommendations will be submitted to the Honorable Oliver W.
20 Wanger, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30) days after
21 being served with these Findings and Recommendations, Plaintiff may file written objections
22 with the Court. The document should be captioned “Objections to Magistrate Judge's Findings
23 and Recommendations.” Plaintiff is advised that failure to file objections within the specified
24 time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153
25 (9th Cir. 1991).

26 IT IS SO ORDERED.

27 **Dated: October 20, 2009**

28 **/s/ Dennis L. Beck**
UNITED STATES MAGISTRATE JUDGE