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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

APRIL PREMO WILLIAMS,
Plaintiff,
v.
HOME DEPOT INC., COURTS OF THE
STATE OF CALIFORNIA and DOES 1
through 10,
Defendants.

) 1:11-cv-00034 LJO GSA
) **FINDINGS AND RECOMMENDATION**
) **DISMISSING THE COMPLAINT**
) **ORDER DENYING REQUESTS FOR**
) **STAYS**
) **ORDER STRIKING PLAINTIFF'S**
) **FIRST AMENDED COMPLAINT**
) (Docs. 1, 5 and 7)

INTRODUCTION

On January 7, 2011, Plaintiffs April Premo Williams, filed a complaint alleging “violations of Title I and Title II of the American with Disabilities Act, violations of Section 504 of the Vocational Rehabilitation Act,¹ violations of the Thirteenth and Fourteenth Amendment of the Constitution, violations of the State of California Workers’ Compensation and Labor Laws, Breach of Contract, Breach of Expressed Contract, Breach of Covenant of Good Fair Dealings,

¹ The Court presumes that Plaintiff is referring to the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* (“ADA”) and the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791 *et seq.* “(the Rehabilitation Act).”

1 and Intentional Infliction of Emotional Harm.” (Doc. 1). Plaintiff has named Home Depot Inc.,
2 the Courts of the State of California, and Does one through ten as defendants.² Plaintiff seeks
3 declaratory and injunctive relief. *Id.*

4 Plaintiff has also filed two Motions to Stay on February 28, and April 5, 2011 in which
5 she requests that this Court stay the other Courts’ proceedings based on the filing of the instant
6 complaint. (Docs. 5 and 7).

7 On May 18, 2011, Plaintiff also filed a First Amended Complaint (“FAC”). (Doc. 9). The
8 FAC is identical to the initial complaint filed except that Plaintiff names eight additional
9 defendants in the caption: 1) the Worker’s Compensation Board of the State of California; 2) the
10 Department of Industrial Relations of the State of California; 3) Shavonda Early, DWC
11 Disabilities Coordinator; 4) Judge David Bovett; 5) Judge Timothy Salter; 6) Judge Vincent
12 Misent; 7) the Department of Social Services of the State of California; and 8) the Superior Court
13 of the State of California County of Stanislaus.

14 A review of the FAC reveals that it was improperly filed and will be STRICKEN. As
15 noted above, the only difference between the complaint and the FAC are the additional
16 defendants named in the caption of the pleading. The body of the complaint does not link any of
17 the newly named defendants to any alleged unlawful activity in any of the causes action.
18 Therefore, this Court is unable to ascertain what conduct the newly added defendants allegedly
19 engaged in, or how their conduct relates to any of the causes of actions. Moreover, the Court did
20 not give Plaintiff leave to amend the complaint.³ As such, the governing pleading in this case is

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22 ² It is not entirely clear from Plaintiff’s complaint whether she alleges the causes of action against both
23 defendants. Generally, the Court would allow Plaintiff an opportunity to amend the complaint to correct this
24 deficiency. However, as outlined below, the Court will recommend that Plaintiff’s complaint be dismissed.
Therefore, for purposes of this screening order, the Court presumes Plaintiff intended to name both defendants in all
causes of action.

25 ³ Fed. R. Civ. P. 15 provides that a Plaintiff may amend the complaint within 21 days of serving it. F.R.C.P.
26 § 15(a)(1)(A). In all other circumstances, a party may amend the pleading only with the opposing party’s written
27 consent, or with the Court’s leave. In this case, Plaintiff filed two proofs of service however, each of these proofs
are deficient. (Docs. 4 and 8).

28 As a preliminary matter, the Courts of the State of California is not a proper defendant as this is not a

1 the complaint filed on January 7, 2011. Finally, as outlined in more detail below, this Court will
2 not exercise its jurisdiction over this matter. Accordingly, an amendment would be futile.

3 **FACTUAL SUMMARY**

4 Plaintiff's complaint is confusing, however, it appears that she is contesting a Worker's
5 Compensation proceeding. According to the complaint, Plaintiff suffers from epilepsy, diabetes,
6 Hashimoto Thyroiditis, melanoma, and learning disabilities including mental retardation in the
7 areas of "visual perception, auditory recall, comprehension of abstract concepts of numbers, and
8 coordination of visual and motor dexterity." (Doc. 1 at pg. 2). Plaintiff contends she was injured
9 on April 15, 2003, while she was employed at Home Depot. At this time, she allegedly fell while
10 throwing items into the trash compactor which resulted in injuries to her left shoulder, knee,
11 neck, and back. (Doc. 1 at pg. 4).

12 Plaintiff subsequently filed a Worker's Compensation claim to obtain remediation for her
13 injuries. She contends that during this proceeding, Home Depot requested that she see its doctors
14 rather than Plaintiff's own doctor. (Doc. 1 at pg. 4). Plaintiff also contends that Home Depot
15 agreed to pay for two surgeries and other medical services but refused to pay for the services
16 rendered as agreed upon. (Doc. 1 at pgs. 4-5). Plaintiff filed an appeal with the Worker's
17 Compensation Appeals Board and requested a hearing for a "breach of contract" by Home Depot.

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20 properly named defendant. Furthermore, Fed. R. Civ. P. 4(j) requires that when a complaint or pleading is served on
21 a state or local government, the state's law for serving a summons governs. California Civil Procedure § 416.50
22 provides that a summons may be served on a public entity by delivering a copy of the summons and of the complaint
23 to the clerk, secretary, president, presiding officer, or other head of its governing body. In this case, Plaintiff
initially served the Attorney General for the State of California on January 21, 2011. (Doc. 4). This was not proper
service. Plaintiff attempted to re-serve the complaint on several agencies which were not named in the initial
complaint, however, this proof of service is also defective as the date and manner of service are not indicated on the
proof of service, and the appropriate parties were still not properly served. (Doc. 8).

24 Similarly, Plaintiff's service of the complaint on Home Depot was also improper. Plaintiff sent a copy of
25 the complaint to "Albert and Mackenzie" the alleged attorney's office for Home Depot. Pursuant to Fed. R. Civ. P.
26 4(h), Plaintiff may serve a corporation by delivering a copy of the summons and the complaint to an officer,
27 managing or general agent, or by delivering a copy to an agent authorized to receive service. See, Fed. R. Civ. P.
4(h) and 4(e). Plaintiff could have also effected service by properly following California law governing service on a
corporation, however, she also failed to properly implement any of these procedures. See, California Civil Procedure
§ 416.10. Therefore, Plaintiff was required to obtain leave of the Court in order to file an amended complaint. No
such leave was filed and as a result, the FAC will be stricken.

1 *Id.* She also requested that the hearing be completed in writing due to her disability. As of the
2 date of the filing of the complaint, Plaintiff had not received notification that her request for a
3 written hearing was granted and she therefore, presumes it was denied. (Doc. 1 at pg. 5).

4 As a result of the above, Plaintiff has alleged causes of action for “violations of Title I
5 and Title II of the American with Disabilities Act, violations of Section 504 of the Vocational
6 Rehabilitation Act, violations of the Thirteenth and Fourteenth Amendment of the Constitution,
7 violations of the State of California Workers’ Compensation and Labor Laws, Breach of
8 Contract, Breach of Expressed Contract, Breach of Covenant of Good Fair Dealings, and
9 Intentional Infliction of Emotional Harm.” (Doc. 1). Plaintiff is seeking *inter alia*, declaratory
10 relief, compensatory damages, and attorney’s fees.

11 In addition to the Complaint, Plaintiff filed two Motions for Stay wherein she indicates
12 that she has filed a Writ of Mandate in the Stanislaus County Superior Court.⁴ In the motions,
13 Plaintiff requests that this Court stay the proceedings at the Stanislaus Superior Court, as well as
14 before the Worker’s Compensation Appeals Board, because she has made requests that the
15 proceedings be completed in writing rather than orally and the judges have refused to honor her
16 requests.

17 DISCUSSION

18 A. *Screening Standard*

19 “Notwithstanding any filing fee, or any portion thereof, that may have been paid,” the
20 Court shall dismiss a case at any time if it determines that the action or appeal is frivolous or
21 malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief
22 against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). *See also Omar v.*
23 *Sea-Land Service, Inc.*, 813 F.2d 986, 991 (9th Cir. 1987); *Wong v. Bell*, 642 F.2d 359, 361-62

24
25 ⁴ Plaintiff did not explicitly indicate that the Writ of Mandate was filed in Stanislaus Superior Court,
26 however, the Court has inferred this fact from the rest of the information contained in the pleadings and has
27 confirmed that Plaintiff did in fact file a civil action against Stanislaus County, State of California, case number
660647 in the Stanislaus County Superior Court on December 14, 2010. See, www.stahnc.org.

1 (9th Cir. 1981). If the Court determines that the complaint fails to state a claim, leave to amend
2 may be granted to the extent that the deficiencies of the complaint can be cured by amendment.
3 *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc).

4 A complaint must contain “a short and plain statement of the claim showing that the
5 pleader is entitled to relief . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
6 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
7 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) (citing
8 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65 (2007)). Plaintiff
9 must set forth “sufficient factual matter, accepted as true, to ‘state a claim that is plausible on its
10 face.’” *Iqbal*, 129 S.Ct. at 1949 (quoting *Twombly*, 550 U.S. at 555). While factual allegations
11 are accepted as true, legal conclusion are not. *Id.* at 1949.

12 If the Court determines that the complaint fails to state a claim, leave to amend should be
13 granted to the extent that the deficiencies of the complaint can be cured by amendment. *Lopez v.*
14 *Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000). Dismissal of a pro se complaint for failure to state a
15 claim is proper only where it is obvious that the Plaintiff cannot prevail on the facts that he has
16 alleged and that an opportunity to amend would be futile. *Lopez*, at 1128.

17 A claim is frivolous if it lacks an arguable basis either in law or fact. *Neitzke v. Williams*,
18 490 U.S. 319, 324, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989). A frivolous claim is based on an
19 inarguable legal conclusion or a fanciful factual allegation. *Id.* A federal court may dismiss a
20 claim as frivolous if it is based on an indisputably meritless legal theory or if the factual
21 contentions are clearly baseless. *Id.*

22 **B. Younger Abstention**

23 Plaintiff is asking this Court to intervene in two state proceedings: a Worker’s
24 Compensation Appeal Board hearing, and a Writ of Mandate at the Stanislaus Superior Court.⁵

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26 ⁵ Although Plaintiff’s complaint only references the Worker’s Compensation Appeal Board proceeding, her
27 subsequent motion clearly references proceedings pending in the Stanislaus County Superior Court and the Court
addresses this proceeding as well.

1 As a preliminary matter, the Court finds that abstention is appropriate and therefore declines to
2 exercise jurisdiction over Plaintiff’s action.

3 “Younger abstention is a common law equitable doctrine holding that a federal court
4 generally should refrain from interfering with a *pending* state court proceeding.” [Poulos v.](#)
5 [Caesars World, Inc., 379 F.3d 654, 669 \(9th Cir. 2004\)](#) (emphasis added) (citations omitted).
6 Younger abstention is required if: (1) state proceedings are ongoing; (2) the proceedings
7 implicate important state interests; and (3) the state proceedings provide an adequate opportunity
8 to raise federal questions. [Wiener v. County of San Diego, 23 F.3d 263, 266 \(9th Cir.1994\)](#).

9 It is clear that the state law proceedings are ongoing in this instance. Moreover, the state
10 has an important and substantial interest in overseeing, managing and adjudicating Worker’s
11 compensation issues. Thus, the state has a substantial interest in insuring that the program gets
12 implemented fairly and that disputes are handled consistently. Although Plaintiff may not be able
13 to raise federal constitutional claims in the Workers’ Compensation action per se, “[her] ability
14 to raise the claims via state judicial review of the administrative proceedings suffices.”
15 [Kenneally v. Lungren, 967 F.2d 329, 332 \(9th Cir.1992\)](#) (internal quotation marks and citations
16 omitted). [California Labor Code section 5952](#) provides for judicial review of the WCAB
17 decision, including a determination as to whether the WCAB acted in excess of its powers, or the
18 order, decision or award was unreasonable.” Cal. Labor Code, §§ 5950, 5952(a) and (c).

19 Finally, although Plaintiff is alleging violations of the American with Disabilities Act and
20 the Rehabilitation Act, these are issues that can be raised in the state court proceedings and
21 addressed on appeal if needed. Similarly, even if the Court did not abstain under Younger,
22 Plaintiff’s other causes of action in the complaint would fail for the reasons set forth below

23 **C. Constitutional Violations**

24 Plaintiff has alleged violations of the Thirteenth and Fourteenth Amendments of the
25 Constitution. Although Plaintiff failed to so, the proper manner in which to plead this cause of
26 action is by alleging violations of 42 U.S.C. § 1983.

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

2 Every person who, under color of [state law] ... subjects, or causes to be subjected,
3 any citizen of the United States ... to the deprivation of any rights, privileges, or
4 immunities secured by the Constitution... shall be liable to the party injured in an
5 action at law, suit in equity, or other proper proceedings for redress. [42 U.S.C. §
6 1983...](#)

7 Here, Plaintiff alleges violations by Home Depot, however, Home Depot is not a state
8 actor. As a result, Plaintiff is unable to make allegations of constitutional violations against this
9 Defendant. Moreover, the statute plainly requires that there be an actual connection or link
10 between the actions of the defendants and the deprivation alleged to have been suffered by
11 plaintiff. See [Monell v. Department of Social Services, 436 U.S. 658 \(1978\)](#); [Rizzo v. Goode,
12 423 U.S. 362 \(1976\)](#). The Ninth Circuit has held that “[a] person ‘subjects’ another to the
13 deprivation of a constitutional right, within the meaning of section 1983, if he does an
14 affirmative act, participates in another’s affirmative acts or omits to perform an act which he is
15 legally required to do that causes the deprivation of which complaint is made.” [Johnson v.
16 Duffy, 588 F.2d 740, 743 \(9th Cir. 1978\)](#). To state a claim for relief under section 1983, plaintiff
17 must link each named defendant with some affirmative act or omission that demonstrates a
18 violation of plaintiff’s federal rights. In this case, the only state actor that Plaintiff has named is
19 the “Courts of the State of California,” however, Plaintiff has not alleged conduct by a particular
20 individual that violates any amendment of the Constitution.

21 *a. Fourteenth Amendment*

22 Plaintiff alleges a violation of the Fourteenth Amendment because she is entitled to
23 accommodation and Defendants’ refusal to do so violates her right to due process. Plaintiff
24 argues that because courts provide attorneys for illegal immigrants who are charged with a crime,
25 Defendants should have known that failure to accommodate her disability would result in
26 emotional distress.

27 The Due Process Clause of the Fourteenth Amendment protects individuals from being
28 deprived of life, liberty, or property without due process of law. [Wolff v. McDonnell, 418 U.S.](#)

1 [539, 556 \(1974\)](#). Procedural due process claims require (1) a deprivation of a constitutionally
2 protected liberty or property interest, and (2) a denial of adequate procedural protections. [Kildare](#)
3 [v. Saenz, 325 F.3d 1078, 1085 \(9th Cir. 2003\)](#). However, the Supreme Court has held that “state
4 proceedings need to no more than satisfy the minimum procedural requirements of the
5 Fourteenth Amendment Due Process Clause in order to qualify for the full faith and credit
6 guaranteed by federal law. [Kremer v. Chemical Construction Corporation, 456 U.S. 461, 481](#)
7 [\(1982\)](#). Appropriate safeguards include the right to submit exhibits, present evidence, present the
8 testimony of witnesses, rebut evidence submitted and be assisted by counsel. [Kremer v.](#)
9 [Chemical Construction 456 U.S. at 483-484](#). Plaintiff has appeal rights in the state system to
10 address any alleged due process violations during those proceedings. Therefore, she has failed to
11 state a claim for this cause of action.

12 *b. Thirteenth Amendment*

13 Plaintiff also alleges a violation of the Thirteenth Amendment of the Constitution on the
14 basis that there is a statutory prohibition of involuntary servitude. Plaintiff alleges Home Depot
15 violated this amendment by failing to perform various duties. However, as noted above, Home
16 Depot is not a state actor and therefore cannot be subject to a cause of action based on a
17 constitutional violation.

18 *D. Eleventh Amendment Immunity*

19 Defendant “Courts of the State of California” is entitled to immunity under the Eleventh
20 Amendment to the federal Constitution which provides “[t]he Judicial power of the United
21 States shall not be construed to extend to any suit in law or equity, commenced or prosecuted
22 against one of the United States by Citizens of Another State, or by Citizens or Subjects of any
23 Foreign State.” The United States Supreme Court has noted: “The [Eleventh] Amendment ...
24 enacts a sovereign immunity from suit, rather than a nonwaivable limit on the federal judiciary's
25 subject matter jurisdiction.” [Idaho v. Couer d'Alene Tribe, 521 U.S. 261, 117 S.Ct. 2028, 2033,](#)
26 [138 L.Ed.2d 438 \(1997\)](#).

1 “The Eleventh Amendment prohibits federal courts from hearing suits brought against an
2 unconsenting state. Though its language might suggest otherwise, the Eleventh Amendment has
3 long been construed to extend to suits brought against a state by its own citizens, as well as by
4 citizens of other states.” Brooks v. Sulphur Springs Valley Elec. Coop., 951 F.2d 1050, 1053 (9th
5 Cir.1991), cert. denied, 503 U.S. 938, 112 S.Ct. 1478, 117 L.Ed.2d 621 (1992) (citation omitted);
6 see also Seminole Tribe of Fla. v. Florida, 517 U.S. 44, 116 S.Ct. 1114, 1122, 134 L.Ed.2d 252
7 (1996); Puerto Rico Aqueduct Sewer Auth. v. Metcalf & Eddy, Inc., 506 U.S. 139, 144, 113
8 S.Ct. 684, 121 L.Ed.2d 605 (1993); Austin v. State Indus. Ins. Sys., 939 F.2d 676, 677 (9th
9 Cir.1991).

10 The Eleventh Amendment bars suits against state agencies as well as those where the
11 state itself is named as a defendant. See Puerto Rico Aqueduct & Sewer Authority v. Metcalf &
12 Eddy, Inc., 506 U.S. 139, 144, 113 S.Ct. 684, 121 L.Ed.2d 605 (1993); Natural Resources
13 Defense Council v. California Dept. of Transportation, 96 F.3d 420, 421 (9th Cir.1996); Brooks,
14 951 F.2d at 1053; see also Lucas v. Department of Corrections, 66 F.3d 245, 248 (9th Cir.1995)
15 (per curiam) (Board of Corrections is agency entitled to immunity); Taylor v. List, 880 F.2d
16 1040, 1045 (9th Cir.1989) (Nevada Department of Prisons was a state agency entitled to
17 Eleventh Amendment immunity). In this instance, Plaintiff names the “Courts of the State of
18 California” as a defendant which is a state entity and therefore, it is immune from liability for the
19 constitutional challenges.⁶

20 ***E. State Law Causes of Action***

21 Plaintiff alleges several state law causes of action including, violations of the State of
22 California Workers’ Compensation and Labor Laws, Breach of Contract, Breach of Expressed
23 Contract, Breach of Covenant of Good Fair Dealings, and Intentional Infliction of Emotional
24 Harm. As the Court will recommend that the claims over which it had original jurisdiction be
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26 ⁶ The Court does not make a ruling on whether Defendant, the Courts of the State of California are immune
27 under the Plaintiff’s claims under the ADA or the Rehabilitation Act.

1 dismissed, it declines to exercise supplemental jurisdiction over these state law claims. [See 28](#)
2 [U.S.C. § 1367\(c\)\(3\)](#); see also [Ove v. Gwinn, 264 F.3d 817, 826 \(9th Cir.2001\)](#) (holding that the
3 district court may decline to exercise supplemental jurisdiction over related state-law claims once
4 it has dismissed all claims over which it had original jurisdiction).

5 **CONCLUSION**

6 Based on the above, this Court recommends that all of the causes of action in Plaintiff's
7 complaint be DISMISSED WITHOUT LEAVE TO AMEND. Moreover, it is recommended that
8 the following order issue: IT IS HEREBY ORDERED that Plaintiff's motions for stay are
9 DENIED as moot (Docs. 5 and 7), and the First Amended Complaint (Doc. 9) is STRICKEN.

10 These findings and recommendations regarding the dismissal of the complaint are
11 submitted to the Honorable Lawrence J. O'Neill, pursuant to [28 U.S.C. § 636\(b\)\(1\)\(B\)](#).⁷ Within
12 thirty (30) days of service of this recommendation, Plaintiff may file written objections to these
13 *findings and recommendations* with the Court and serve a copy on all parties. Such a document
14 should be captioned "Objections to Magistrate Judge's Findings and Recommendation." The
15 district judge will review the magistrate judge's findings and recommendations pursuant to [28](#)
16 [U.S.C. § 636\(b\)\(1\)\(c\)](#) Plaintiff is advised that failure to file objections within the specified time
17 may waive the right to appeal the district judge's order. [Martinez v. Ylst, 951 F.2d 1153 \(9th](#)
18 [Cir. 1991\)](#).

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22 IT IS SO ORDERED.

23 **Dated: May 23, 2011**

24 **/s/ Gary S. Austin**
25 UNITED STATES MAGISTRATE JUDGE

26 _____
27 ⁷ Objections may be filed only with regard to the Findings and Recommendations dismissing the complaint
28 without leave to amend. The orders denying Plaintiff's motions for stays and striking the FAC are final orders.