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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

DEBRA BERRY,  
  
                                Plaintiff,  
  
                                v.  
  
MODESTO AREA EXPRESS  
REGIONAL TRANSIT, et al.,  
  
                                Defendants.

Case No. 1:18-cv-00022-DAD-BAM  
  
FINDINGS AND RECOMMENDATIONS  
REGARDING DISMISSAL OF ACTION FOR  
FAILURE TO STATE A CLAIM  
  
(Doc. No. 8)  
  
FOURTEEN-DAY DEADLINE

Plaintiff Debra Berry (“Plaintiff”) is proceeding pro se and in forma pauperis in this civil rights action. On April 17, 2018, the Court screened Plaintiff’s complaint and granted her leave to amend. (Doc. No. 1.) Plaintiff’s first amended complaint, filed on May 17, 2018, is currently before the Court for screening. (Doc. No. 8.)

**I. Screening Requirement and Standard**

The Court screens complaints brought by persons proceeding in pro se and in forma pauperis. 28 U.S.C. § 1915(e)(2). Plaintiff’s complaint, or any portion thereof, is subject to dismissal if it is frivolous or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B)(ii).

1 A complaint must contain “a short and plain statement of the claim showing that the  
2 pleader is entitled to relief . . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
3 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
4 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell  
5 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). While a plaintiff’s allegations are taken  
6 as true, courts “are not required to indulge unwarranted inferences.” Doe I v. Wal-Mart Stores,  
7 Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).

8 To survive screening, Plaintiff’s claims must be facially plausible, which requires  
9 sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable  
10 for the misconduct alleged. Iqbal, 556 U.S. at 678 (quotation marks omitted); Moss v. U.S.  
11 Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted  
12 unlawfully is not sufficient, and mere consistency with liability falls short of satisfying the  
13 plausibility standard. Iqbal, 556 U.S. at 678 (quotation marks omitted); Moss, 572 F.3d at 969.

## 14 **II. Plaintiff’s Allegations**

15 At all times relevant to this action, Plaintiff was a California resident and one-time  
16 passenger of the Modesto Area Regional Express, a federally-funded public transportation  
17 system. Plaintiff names the following defendants: (1) Modesto Area Express Regional Transit  
18 (“Modesto Express”); (2) Shelly Reid, Modesto Area Express Regional Transit bus driver; and  
19 (3) Michael Keith, Modesto Area Express Regional Transit manager/supervisor. Plaintiff brings  
20 suit against Defendants Reid and Keith in their individual and official capacities.

21 In relevant part, Plaintiff alleges that on May 18, 2016, at approximately 5:15 p.m., while  
22 she was waiting to board the Modesto Express bus, she was subjected to a discriminatory policy  
23 by a group of passengers that demanded first preference on the bus due to having monthly bus  
24 passes over Plaintiff and others that chose to deposit bus fare into the fare box creating a contract.  
25 Plaintiff contends that this conduct was enforced by Defendants Reid and Keith.

26 While Plaintiff was contemplating the contract and allegedly disparate treatment, Plaintiff  
27 allegedly was oppressed by another group of passengers “demanding to exercise their disparate  
28 treatment over Plaintiff by entering the bus first in spite of Plaintiff waiting in line to pay her fare

1 to travel.” (Doc. No. 8 at p. 5.)

2 As Plaintiff stood in line to pay her bus fare, she excused herself to walk to a store and get  
3 change to pay the bus fare. When she resumed her place in line, she allegedly was oppressed by  
4 another passenger that demanded to be first on the bus due to having a monthly bus pass in spite  
5 of being in line behind Plaintiff. After Plaintiff deposited the \$16.00 fare, all of the passengers  
6 with monthly passes began yelling at Plaintiff that they had a right to get on the bus before  
7 Plaintiff due to having monthly passes. Plaintiff alleges that this agitated all of the other  
8 passengers and created hostility, which was compounded by Defendant Reid.

9 Plaintiff alleges that Defendant Reid stated to Plaintiff that the passengers with bus passes  
10 have first priority to get on the bus. Plaintiff explained to Defendant Reid that she stood in line  
11 like every other passenger, was paying for her bus fare with cash, and should not be discriminated  
12 against due to not having a monthly pass. Defendant Reid also stated that Plaintiff had only  
13 deposited \$8.00 into the fare box. Plaintiff told Defendant Reid that she was incorrect because  
14 Plaintiff had just received change for twenty dollar bill, had only four dollars left and knew for  
15 certain that she had deposited sixteen dollars into the fare box. Defendant Reid became agitated  
16 and irate, stating that she would have Plaintiff forcefully removed from her bus if Plaintiff did not  
17 deposit more money. At this point, Plaintiff requested a refund of the money she had deposited in  
18 order to have a receipt for the exact amount and to prove that she had deposited the correct  
19 amount. Defendant Reid refused to provide a refund. Plaintiff then requested a travel receipt so  
20 that she could take another bus.

21 After Defendant Reid refused to refund Plaintiff her money or provide a travel receipt,  
22 Defendant Reid got off of the bus and made a call on her cell phone. A female police officer later  
23 walked up to Defendant Reid and they had a discussion. Defendant Reid came back on the bus  
24 and took her seat behind the wheel. Plaintiff again asked for a refund and a travel receipt.  
25 Defendant Reid again refused.

26 While Plaintiff stood in front of Defendant Reid, a passenger came up to Plaintiff and  
27 stated that he wanted to speak with her. As Plaintiff turned to address the passenger, the  
28 passenger pushed Plaintiff down the steps and Defendant Reid closed the door, partly trapping

1 Plaintiff's body in the door while driving away and pulling Plaintiff. Defendant Reid eventually  
2 stopped the bus after allegedly causing further injury to Plaintiff.

3 One of the passengers reported the incident to the Modesto Express office and called the  
4 BART police department. Officers Kassandra Watts and Cassandra Rinnert arrived on the scene  
5 and created an Incident Report (#1605-1216). The paramedics arrived and evaluated Plaintiff's  
6 medical injuries. She was transported to Valley Care Hospital for a follow-up examination. An  
7 ace bandage wrap was placed on Plaintiff's arm and leg and she was discharged from the hospital  
8 the same day.

9 On May 18, 2016, Officer Watts attempted to call Defendant Reid to discuss the incident  
10 and Defendant Reid did not answer.

11 On May 22, 2016, Officer Watts called Defendant Reid to discuss the incident, but  
12 Defendant Reid stated that it was not a good time.

13 Plaintiff filed a complaint with the Modesto Area Express office and spoke with  
14 Defendant Keith about the incident. Plaintiff spoke with the receptionist regarding the incident.  
15 She also inquired about the training and supervision of Defendant Reid and the allegedly  
16 discriminatory policy of privilege for passengers with monthly passes versus cash-paying  
17 citizens. The receptionist stated that this was Modesto area Express' policy and was in support of  
18 Defendant Reid's position.

19 As relief, Plaintiff seeks monetary damages, a declaration that Defendants violated  
20 Plaintiff's rights to non-disparate treatment under the Fourteenth Amendment and 42 U.S.C. §§  
21 1981, 1983 and 2000d *et seq.*, and injunctive relief. She also pursues a claim for intentional  
22 physical harm against Defendant Reid.

### 23 **III. Discussion**

#### 24 **A. 42 U.S.C § 1981**

25 Plaintiff fails to state a cognizable claim under 42 U.S.C. § 1981. Section 1981 was  
26 meant, by its broad terms, to proscribe discrimination in making or enforcement of contracts  
27 against, or in favor of, any race. Gratz v. Bollinger, 539 U.S. 244, 276 n. 23 (2003). To obtain  
28 relief under section 1981, a plaintiff must allege intentional or purposeful discrimination based on

1 race. Gen. Bldg. Contractors Ass’n, Inc. v. Penn., 458 U.S. 375, 391 (1982) (holding that section  
2 1981 can only be violated when there is purposeful discrimination); Evans v. McKay, 869 F.2d  
3 1341, 1344 (9th Cir. 1989) (“What is required in a section 1981 action, however, is that the  
4 plaintiffs must show intentional discrimination on account of race.”). Plaintiff does not allege a  
5 claim for racial discrimination based on the making or enforcement of a contract. Although  
6 Plaintiff makes a conclusory assertion, the amended complaint and attached documents fail to  
7 allege any facts demonstrating intentional or purposeful discrimination on the basis of race.  
8 Instead, Plaintiff merely complains about Modesto Area Express’ policy of granting priority to  
9 boarding to monthly pass holders, which has no apparent connection to any protected class.

10 **B. 42 U.S.C. § 1983**

11 Plaintiff fails to state a cognizable claim under 42 U.S.C. § 1983. In order to state a §  
12 1983 claim, Plaintiff must allege: (1) that a right secured by the Constitution or laws of the  
13 United States was violated, and (2) that the alleged violation was committed by a person acting  
14 under color of law. West v. Atkins, 487 U.S. 42, 48 (1988). Here, Plaintiff alleges that her rights  
15 under the Fourteenth Amendment were violated by defendants because of the disparate impact  
16 experienced by bus ticket purchasers not possessing a monthly bus pass. However, to state a  
17 claim for violation of the Equal Protection Clause, a plaintiff must “show that the defendants  
18 acted with an intent or purpose to discriminate against plaintiff based on membership in a  
19 protected class.” Thornton v. City of St. Helens, 425 F.3d 1158, 1166 (9th Cir. 2005). As with  
20 her § 1981 claim, Plaintiff’s amended complaint fails to allege any facts demonstrating that  
21 defendants acted with an intent or purpose to discriminate against her based on membership in  
22 any protected class.

23 **C. Title VI, 42 U.S.C. § 2000d**

24 Plaintiff appears to assert a claim for violation of Title VI of the Civil Rights Act of 1964.  
25 Title VI states that “[n]o person . . . shall, on the ground of race, color, or national origin, be  
26 excluded from participation in, be denied the benefits, or be subjected to discrimination under any  
27 program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d. To state a claim  
28 under Title VI, “a plaintiff must allege that (1) the entity involved is engaging in race

1 discrimination; and (2) the entity involved is receiving federal financial assistance.” Fobbs v.  
2 Holy Cross Health Sys. Corp., 29 F.3d 1439, 1447 (9th Cir. 1994), overruled on other grounds,  
3 Daviton v. Columbia/HCA Healthcare Corp., 241 F.3d 1131, 1133 (9th Cir. 2001). Dismissal of a  
4 Title VI claim is appropriate where a plaintiff fails to allege any evidence to indicate racial bias  
5 motivated a defendant’s action. See Joseph v. Boise State Univ., 998 F. Supp. 2d 928, 944 (D.  
6 Idaho 2014), aff’d, 667 Fed.Appx. 241 (9th Cir. 2016). As with her other claims, Plaintiff does  
7 not allege any facts related to racial discrimination sufficient to support a Title VI claim. Again,  
8 the basis of her claims is priority boarding for monthly pass holders over cash-paying customers.

9 **D. State Law Claims**

10 Plaintiff may be able to assert a state law cause of action against Defendant Reid related to  
11 her alleged physical injury. Pursuant to 28 U.S.C. § 1367(a), in any civil action in which the  
12 district court has original jurisdiction, the district court “shall have supplemental jurisdiction over  
13 all other claims in the action within such original jurisdiction that they form part of the same case  
14 or controversy under Article III,” except as provided in subsections (b) and (c). The Supreme  
15 Court has cautioned that “if the federal claims are dismissed before trial, . . . the state claims  
16 should be dismissed as well.” United Mine Workers of America v. Gibbs, 383 U.S. 715, 726  
17 (1966). Although the court may exercise supplemental jurisdiction over state law claims, Plaintiff  
18 must first have a cognizable claim for relief under federal law. See 28 U.S.C. § 1367. In the  
19 absence of any cognizable federal claims, it is recommended that the Court decline to screen or  
20 otherwise address any purported state law claims.

21 **IV. Conclusion and Recommendation**

22 Plaintiff’s complaint fails to state a cognizable federal claim for relief. Despite being  
23 provided with the relevant pleading and legal standards, Plaintiff has been unable to cure the  
24 deficiencies in her claims, and thus, further leave to amend is not warranted. Lopez v. Smith, 203  
25 F.3d 1122, 1130 (9th Cir. 2000).

26 Accordingly, IT IS HEREBY RECOMMENDED that:

27 1. Plaintiff’s federal claims be dismissed for failure to state a claim upon which  
28 relief may be granted;

