

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LIUDMYLA IEGOROVA,
Plaintiff,
v.
TARAS KRISTYUK, et al.,
Defendants.

No. 2:15-cv-00742-TLN-AC

FINDINGS & RECOMMENDATIONS

Plaintiff, proceeding in this action pro se and in forma pauperis, has filed a first amended complaint (“FAC”), ECF No. 4, after her original pleading was dismissed for lack of subject matter jurisdiction, ECF No. 3. The federal in forma pauperis statute authorizes federal courts to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227–28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at 327. A complaint, or portion thereof, should only be dismissed for failure to state a claim upon which relief may be granted if it appears beyond doubt that plaintiff can prove no set

1 of facts in support of the claim or claims that would entitle him to relief. Hishon v. King &
2 Spalding, 467 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer v.
3 Roosevelt Lake Log Owners Ass’n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a
4 complaint under this standard, the court must accept as true the allegations of the complaint in
5 question, Hosp. Bldg. Co. v. Rex Hosp. Trs., 425 U.S. 738, 740 (1976), construe the pleading in
6 the light most favorable to the plaintiff, and resolve all doubts in the plaintiff’s favor, Jenkins v.
7 McKeithen, 395 U.S. 411, 421 (1969).

8 The court finds that plaintiff’s FAC fails to state a claim on which relief can be granted.
9 According to the title page of plaintiff’s FAC, she seeks to bring claims concerning the violation
10 of her constitutional rights against defendants. ECF No. 4 at 1. The court, therefore, construes
11 plaintiff’s FAC as asserting § 1983 claims against defendants. “To state a claim under § 1983, a
12 plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of
13 the United States was violated, and (2) that the alleged violation was committed by a person
14 acting under the color of State law.” Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th
15 Cir. 2006) (citing West v. Atkins, 487 U.S. 42, 48 (1988)). Section 1983 “shields citizens from
16 unlawful government actions, but does not affect conduct by private entities.” Apao v. Bank of
17 N.Y., 324 F.3d 1091, 1093 (9th Cir. 2003), cert. denied, 540 U.S. 948 (2003); Sutton v.
18 Providence St. Joseph Med. Ctr., 192 F.3d 826, 835 (9th Cir. 1999) (“[T]he party charged with a
19 constitutional deprivation under § 1983 must be a person who may fairly be said to be a
20 [governmental] actor.”). Section “1983 excludes from its reach merely private conduct, no
21 matter how discriminatory or wrong.” Sutton, 192 F.3d at 835 (citing American Mfrs. Mut. Ins.
22 Co. v. Sullivan, 526 U.S. 40, 50 (1999)). Defendants are private actors. Plaintiff does not allege
23 otherwise, nor does she allege that they acted under color of state law.¹ Accordingly, the court
24 will dismiss plaintiff’s § 1983 claims.

25 The court also finds that plaintiff’s FAC does not comply with Federal Rule 8. Plaintiff’s
26

27 ¹ Plaintiff does allege that the federal government can be held liable for the actions of immigrants
28 simply by virtue of their immigration status. ECF No. 4 at 2–3. This is not the case, and
regardless would not affect whether defendants’ actions were performed under color of state law.


1 FAC does not contain a short and plain statement showing she is entitled to relief. See Fed. R.
2 Civ. P. 8(a). Nor is plaintiff’s FAC simple, concise, or direct. See Bell Atlantic Corp. v.
3 Twombly, 550 U.S. 544, 555 (2007). Rather, plaintiff’s FAC consists of long, rambling and
4 incoherent allegations with no clear connection to any claim. Plaintiff’s FAC does describe an
5 assault by an individual named “Anatoliy” that took place at Mist. ECF No. 4 at 34. However,
6 plaintiff does not explain why defendant Mist should be held liable for that assault, or how
7 defendant Kristyuk was involved, if at all. The court finds that such allegations do not meet
8 Federal Rule 8’s pleading standards.

9 The court previously granted plaintiff leave to amend with instructions on how to amend
10 her complaint in compliance with Rule 8. Nonetheless, plaintiff’s FAC still consists almost
11 entirely of rambling and nonsensical allegations. As plaintiff has had ample opportunity to
12 correct the deficiencies in her complaint, and she continues to make the same conclusory and
13 incoherent allegations against private defendants that are not liable for violations of § 1983, the
14 court finds that any further attempt to amend would be futile.

15 Accordingly, THE COURT HEREBY RECOMMENDS that plaintiff’s FAC, ECF No. 4,
16 be dismissed without leave to amend.

17 These findings and recommendations are submitted to the United States District Judge
18 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
19 after being served with these findings and recommendations, plaintiff may file written objections
20 with the court. Id.; see also Local Rule 304(b). Such a document should be captioned
21 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections
22 within the specified time may waive the right to appeal the District Court’s order. Turner v.
23 Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156–57 (9th Cir.
24 1991).

25 DATED: July 12, 2015

26 
27 ALLISON CLAIRE
28 UNITED STATES MAGISTRATE JUDGE