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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

PEGGY LOPEZ,  
  
  Plaintiff,  
  
                                v.  
  
LASSEN JACKSON COMMUNITY  
PARTNERS, et al.,  
  
  Defendants.

No. 2:17-CV-1451-KJM-DMC

FINDINGS AND RECOMMENDATIONS

Plaintiff, who is proceeding pro se, brings this civil action. Pending before the court are separate unopposed motions to dismiss filed by defendants Lassen Jackson Community Partners, Amand Kannan, MBS Property Management, Inc., The Beneficial Housing Foundation, and WNC Development Partners (Doc. 14) and defendant North American Risk Services (Doc. 15).<sup>1</sup>

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<sup>1</sup> Other named defendants – Vinyl Designs, Precision General Contracting Company, Inc., Mercury Insurance Group – appear not to have yet been served.

1 **I. PLANITIFF’S ALLEGATIONS**

2 This action proceeds on plaintiff’s original complaint (Doc. 1). Plaintiff names the  
3 following as defendants: (1) Lassen Jackson Community Partners; (2) Amand Kannan; (3) Vinyl  
4 Designs; (4) MBS Property Management, Inc., (5) Precision General Contracting Company, Inc.,  
5 (6) Mercury Insurance Group; (7) North American Risk Services; (8) The Beneficial Housing  
6 Foundation; and (8) WNC Development Partners. Plaintiff asserts the basis for this court’s  
7 jurisdiction is a federal question under the Fair Housing Act. See id. at 2. Plaintiff asserts the  
8 following factual allegations:

9 1. Plaintiff rented an apartment in Fall 2012 at the Lassen  
10 View Apartments in Red Bluff, California.

11 2. The Lassen View Apartments were designed for seniors  
and funded under a federal housing program.

12 3. In early 2015, all tenants at the Lassen View Apartments,  
13 including plaintiff, were informed the property had been sold to defendant  
14 Kannan and that a new property management company, defendant MBS  
Property Management, Inc., would be taking over management  
responsibilities.

15 4. Tenants were invited to attend a meeting with staff from  
16 MBS Property Management, Inc., as well as staff from defendant  
17 Precision General Contracting Company, Inc., which apparently had been  
contracted to remodel the apartments.

18 5. At this meeting, plaintiff asked whether grab bars currently  
installed in the bathrooms would be re-installed after the remodel.

19 6. Plaintiff did not want the carpet in her unit removed as part  
20 of the remodeling process.

21 7. As to grab bars, plaintiff was informed that she would have  
to request an accommodation to have them replaced as part of the  
22 remodel.

23 8. Plaintiff made the requested accommodation as part of “the  
mass application for occupancy with the new owner” and was never  
24 informed this request was insufficient to ensure replacement of the grab  
bars.

25 9. Plaintiff lived next door to a neighbor she considered  
26 hostile and “did not want to have to pack everything up in her apartment  
and still live next door to a hostile neighbor.”

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1                   10. Plaintiff spoke on the phone in early May 2015 with Mike  
2 Hawthorn, the manager with defendant MBS Property Management, Inc.,  
3 to ask if she could move into a different apartment sometime during the  
4 remodel but, according to plaintiff, never received an answer.

5                   11. Plaintiff informed Mr. Hawthorn she was “now dedicated  
6 to finding a new place to live.”

7                   12. Sometime in May 2015, defendant Kannan determined  
8 “that one grab bar was to be replaced in all of the apartments being  
9 remodeled.”

10                  13. New shower-tub enclosures were installed in all apartments  
11 with one grab bar at the entrance wall but without any grab bars along the  
12 back of the enclosure.

13                  14. Plaintiff complained about the lack of the second grab bar  
14 along the back of the enclosure.

15                  15. Plaintiff states the one grab bar along the entrance that was  
16 replaced was done so with loose screws.

17                  16. According to plaintiff, Mr. Hawthorn failed to show up for  
18 a meeting in June 2015 to “check the construction progress” in the  
19 apartment and to answer questions.

20                  17. At this point, plaintiff believed retaliation was occurring.

21                  18. Plaintiff states that an “agent” with defendant Precision  
22 General Contracting Company, Inc., “came to find out what Peggy Lopez  
23 was complaining about” and plaintiff explained the dangerous nature of  
24 the improperly installed grab bar and the lack of a second grab bar at the  
25 back of the shower/tub enclosure.

26                  19. Upon returning from a visit with her daughter in North  
27 Dakota in July 2015, plaintiff noticed her desk had been damaged during  
28 the remodel.

19                  19. Plaintiff also learned that, despite being assured tenants’  
20 furniture would be stored in enclosed storage units during the flooring  
21 remodel, her furniture “had been set outside of her apartment and left there  
22 on one of the hottest days of the summer,” causing the glue on her desk to  
23 melt and causing the molding to come apart.

24                  20. On July 14, 2017, while pulling her suitcase from her trip  
25 to her apartment, plaintiff “turned the corner from the public sidewalk to  
26 the short sidewalk to her door and found herself flat on the ground across  
27 her sidewalk.”

28                  21. According to plaintiff, she fell due to bolts which were left  
behind after removal of a handrailing along the sidewalk.

                  22. Plaintiff states she met with representatives of defendants  
Mercury Insurance Group and North American Risk Services regarding  
the fall.

1                   23. Plaintiff claims she was informed by defendant North  
2 American Risk Services it was not the insurance carrier for defendant  
3 Vinyl Designs.

4                   24. On August 25, 2015, plaintiff received a notice from  
5 defendant MBS Property Management, Inc., informing her that a failure to  
6 provide required information “for recertification” would result in a 30-day  
7 notice to terminate.

8                   25. On August 26, 2015, plaintiff was blocked from her  
9 apartment, apparently due to landscaping work being done without any  
10 notice to tenants.

11                   26. On July 12, 2016, plaintiff was informed that she had been  
12 accepted as a tenant at another federally subsidized housing project.

13                   27. According to plaintiff:

14                               On August 16, 2016, Peggy Lopez had a telephone  
15 conversation with Diane Everhart, Resident Manager Lassen  
16 View Apartments. Diane states to Peggy that Peggy could  
17 move any time. Peggy explained that the new property she  
18 would be renting was federally subsidized. The manager at  
19 Peggy’s new property had informed Peggy that it was against  
20 the law for Peggy to pay rent at two federal properties. Peggy  
21 explained this understanding of the law limiting to rent  
22 payment on only one federally subsidized property. Diane  
23 stated that Diane could do something on the computer and it  
24 would show that Peggy was not a tenant, without refunding the  
25 paid rent to Peggy. Peggy felt threatened and thought that this  
26 was a fraud on the federal government and Peggy could be  
27 barred from renting federal subsidized housing in the future if  
28 Peggy went along with what seems a scheme to get Peggy  
barred from federal subsidized housing.

See id. at 4-11.

Plaintiff asserts these facts give rise to the following claims: (1) violation of the  
Fair Housing Act; (2) slander per se; (3) negligence; (4) premises liability; (5) false  
imprisonment; (6) oppression and elder abuse; (7) insurance fraud and bad faith; and (8) negligent  
infliction of emotional stress. See id. at 11-4. As to the Fair Housing Act claim, plaintiff states:

Violation of the Fair Housing Act, a violation of Peggy’s Civil  
Rights. The Fair Housing Act was developed to protect certain classes of  
citizens from discrimination in housing. Aman Kannan, Lassen Jackson  
Community Partners, MBS Property Management Inc., Vinyl Designs,  
Inc., Precision GCC, Inc., Beneficial Housing Foundation, and WNC  
Development Partners through harassment have attempted to force Peggy  
Lopez from living in peace until she could find safe affordable alternative  
housing. Peggy Lopez is a member of the class of citizens the Fair  
Housing Act was designed to protect. Each act of forcing Peggy to argue

1 to keep the grab bars in her shower/bath enclosure (keep her apartment  
2 safe), threatening to evict Peggy, asking Peggy to break the law by paying  
3 rent at two separate federal subsidized housing units, not noticing Peggy  
4 of the landscaping work that would force her to either be locked into her  
5 apartment or barred from entering her apartment, causing Peggy emotional  
6 stress, making her home feel unsafe, failing to completely repair the  
7 damage to Peggy's property, inviting Peggy to commit fraud on the  
8 federal government, alone is not an indication of discrimination. Gathered  
9 all together the combined events are to push Peggy Lopez out of federally  
10 subsidized housing. Peggy Lopez is a senior citizen and handicapped. . . .

11 Id. at 11-12.

## 12 **II. STANDARDS FOR MOTION TO DISMISS**

13 In considering a motion to dismiss, the court must accept all allegations of material  
14 fact in the complaint as true. See Erickson v. Pardus, 551 U.S. 89, 93-94 (2007). The court must  
15 also construe the alleged facts in the light most favorable to the plaintiff. See Scheuer v. Rhodes,  
16 416 U.S. 232, 236 (1974); see also Hosp. Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740  
17 (1976); Barnett v. Centoni, 31 F.3d 813, 816 (9th Cir. 1994) (per curiam). All ambiguities or  
18 doubts must also be resolved in the plaintiff's favor. See Jenkins v. McKeithen, 395 U.S. 411,  
19 421 (1969). However, legally conclusory statements, not supported by actual factual allegations,  
20 need not be accepted. See Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949-50 (2009). In addition, pro se  
21 pleadings are held to a less stringent standard than those drafted by lawyers. See Haines v.  
22 Kerner, 404 U.S. 519, 520 (1972).

23 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement  
24 of the claim showing that the pleader is entitled to relief" in order to "give the defendant fair  
25 notice of what the . . . claim is and the grounds upon which it rests." Bell Atl. Corp v. Twombly,  
26 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). However, in order  
27 to survive dismissal for failure to state a claim under Rule 12(b)(6), a complaint must contain  
28 more than "a formulaic recitation of the elements of a cause of action;" it must contain factual  
allegations sufficient "to raise a right to relief above the speculative level." Id. at 555-56. The  
complaint must contain "enough facts to state a claim to relief that is plausible on its face." Id. at  
570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the

1 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”  
2 Iqbal, 129 S. Ct. at 1949. “The plausibility standard is not akin to a ‘probability requirement,’ but  
3 it asks for more than a sheer possibility that a defendant has acted unlawfully.” Id. (quoting  
4 Twombly, 550 U.S. at 556). “Where a complaint pleads facts that are ‘merely consistent with’ a  
5 defendant’s liability, it ‘stops short of the line between possibility and plausibility for entitlement  
6 to relief.” Id. (quoting Twombly, 550 U.S. at 557).

7 In deciding a Rule 12(b)(6) motion, the court generally may not consider materials  
8 outside the complaint and pleadings. See Cooper v. Pickett, 137 F.3d 616, 622 (9th Cir. 1998);  
9 Branch v. Tunnell, 14 F.3d 449, 453 (9th Cir. 1994). The court may, however, consider: (1)  
10 documents whose contents are alleged in or attached to the complaint and whose authenticity no  
11 party questions, see Branch, 14 F.3d at 454; (2) documents whose authenticity is not in question,  
12 and upon which the complaint necessarily relies, but which are not attached to the complaint, see  
13 Lee v. City of Los Angeles, 250 F.3d 668, 688 (9th Cir. 2001); and (3) documents and materials  
14 of which the court may take judicial notice, see Barron v. Reich, 13 F.3d 1370, 1377 (9th Cir.  
15 1994).

16 Finally, leave to amend must be granted “[u]nless it is absolutely clear that no  
17 amendment can cure the defects.” Lucas v. Dep’t of Corr., 66 F.3d 245, 248 (9th Cir. 1995) (per  
18 curiam); see also Lopez v. Smith, 203 F.3d 1122, 1126 (9th Cir. 2000) (en banc).

### 20 III. DISCUSSION

#### 21 A. Defendants Lassen Jackson Community Partners, Amand Kannan, MBS 22 Property Management, Inc., The Beneficial Housing Foundation, and WNC 23 Development Partners

24 In their unopposed motion to dismiss, defendants Lassen Jackson Community  
25 Partners, Amand Kannan, MBS Property Management, Inc., The Beneficial Housing Foundation,  
26 and WNC Development Partners argue that plaintiff has not stated a plausible claim for relief  
27 under the Fair Housing Act (FHA). Regarding plaintiff’s assertion of a claim under the FHA,

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1 defendants contend:

2 Plaintiff's claim of federal jurisdiction appears to be based entirely  
3 on the federal Fair Housing Act ("FHA") (42 U.S.C. §§ 3601, et seq.) As a  
4 preliminary matter, it is not entirely clear what provisions of the FHA  
5 were allegedly violated. The "Basis for Federal Jurisdiction" section of the  
6 complaint lists six different sections or subsections of the FHA. (ECF No.  
7 1, at 2.) The remainder of the complaint does not state which of those  
8 sections were allegedly violated, or how. The complaint's vagueness alone  
9 provides a standalone basis to dismiss the action for failure to state a claim  
10 upon which relief may be granted. *E.g., Prime Healthcare Sevs. – Shasta, LLC v. United Healthcare Sevs.*, 2017 U.S. Dist. LEXIS 162863, at \*8-9  
11 (E.D. Cal. Sept. 29, 2017) (*See* Declaration of Adam C. Young in Support  
12 of Motion to Dismiss, Exh. A.).

13 Further, the complaint does not state a plausible claim for relief  
14 under the FHA. 42 U.S.C. § 3604(b), the anti-discrimination provision of  
15 the FHA, makes it unlawful to "discriminate against any person in the  
16 terms, conditions, or privileges of sale or rental of a dwelling, or in the  
17 provision of services or facilities in connection therewith, because of race,  
18 color, religion, sex, familial status, or national origin." 42 U.S.C. §  
19 3604(f)(2) extends the same protections from discrimination on the basis  
20 of physical handicap. A prima facie claim of discrimination under the  
21 FHA requires the plaintiff to prove that "a protected group has been  
22 subjected to explicitly differential -- i.e. discriminatory -- treatment."  
23 *Community House, Inc. v. City of Boise*, 468 F.3d 1118, 1125 (9th Cir.  
24 2006).

25 42 U.S.C. § 3617, the anti-retaliation provision of the FHA, makes  
26 it unlawful to "coerce, intimidate, threaten or interfere with any person in  
27 the exercise or enjoyment of, or on account of his having exercised or  
28 enjoyed, or on account of his having aided or encouraged any other person  
in the exercise or enjoyment of any right granted or protected by" the  
substantive anti-discrimination provisions of the FHA. In order to make  
out a prima facie case for retaliation under the FHA, a plaintiff must show  
that "(1) [s]he engaged in a protected activity; (2) the defendant subjected  
[her] to an adverse action; and (3) a causal link exists between the  
protected activity and the adverse action." *Walker v. City of Lakewood*,  
272 F.3d 1114, 1128 (9th Cir. 2001).

Plaintiff's complaint does not make out a plausible claim that she  
was discriminated against on the basis of any protected class, or that she  
was subjected to retaliation on the basis of reporting any such  
discrimination. Plaintiff alleges that she is a senior citizen who is also  
disabled. However, she does not state any facts which might support a  
plausible inference that she was treated differently from other tenants on  
the basis of either classification. In fact, Plaintiff does not allege that she  
was dissimilarly situated from any other tenants in her complex. The  
complaint alleges that the Lassen View Apartments were designed for  
seniors and funded under USDARD. (ECF No. 1, at 4.) That being the  
case, her complaints about any of the conduct referenced in the complaint  
also cannot plausibly form the basis for a retaliation charge under FEHA.  
Accordingly, her claim (or claims) under FEHA must be dismissed.

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1           As defendants note, plaintiff alleges the Lassen View Apartments is a federally  
2 subsidized housing project for seniors. Plaintiff further alleges that she is a senior citizen. It is  
3 reasonable to infer from this alleged fact all of the other tenants at the Lassen View Apartments  
4 are also seniors. Plaintiff specifically alleges that she is a senior citizen. According to  
5 defendants, plaintiff cannot sustain a discrimination claim under the FHA based on her status as a  
6 senior citizen because all tenants at the Lassen View Apartments are senior citizens and,  
7 therefore, plaintiff cannot establish she was treated differently than any other tenant on the basis  
8 of her age. Though there are no facts alleged in the complaint to indicate all tenants are also  
9 handicapped, as plaintiff alleges she is, defendants make the same argument as to discrimination  
10 based on that status.

11           At the outset, the court finds defendants' reliance on Community House, Inc. v.  
12 City of Boise, 468 F.3d 1118 (9th Cir. 2006) is misplaced. In Community House, plaintiffs  
13 challenged a men-only policy at a homeless shelter. See id. In reversing the district court's  
14 denial of a preliminary injunction in favor of female plaintiffs, the Ninth Circuit held the policy of  
15 not allowing women was facially discriminatory. See id. The court so held even though all of the  
16 allowed residents of Community House were the same gender and, therefore, none were being  
17 treated differently on account of gender. Thus, the relevant inquiry is whether plaintiff is being  
18 treated differently than other member of the community in general, not whether she is being  
19 treated differently than other residents of the Lassen View Apartments.

20           The court nonetheless agrees with defendants' overall argument plaintiff fails to  
21 state a discrimination claim under the FHA because her claims are vague. According to plaintiff,  
22 defendants' conduct violated sections 804(f)(1)(B), 804(f)(2), 804(f)(3)(A), 804(f)(3)(B),  
23 813(a)(1)(A), and 818 of the FHA. See Doc. 1, p. 2. Plaintiff does not, however, explain which  
24 alleged conduct by which named defendant violated which provision such that defendants can be  
25 said to be on fair notice as to both the legal and factual nature of any specific claimed violation as  
26 to any particular defendant. See Bell Atl. Corp., 550 U.S. at 555. Plaintiff's complaint should be  
27 dismissed with leave to amend her FHA claims.

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1           **B.    Defendant North American Risk Services**

2           Defendant North American Risk Services argues in its separate unopposed motion  
3 to dismiss plaintiff fails to state any viable claims against it under state law. Because, for the  
4 reasons discussed above, plaintiff does not currently plead a viable federal claim such as would  
5 confer subject matter jurisdiction on this court, the court could decline to exercise supplemental  
6 jurisdiction over plaintiff's state law claims, which are the subject of defendant North American  
7 Risk Services' motion. It is possible, however, plaintiff will be able to amend her complaint to  
8 state claims under the FHA upon which relief can be granted, in which case plaintiff's state law  
9 claims would properly be the court incident to a cognizable federal claim. The undersigned,  
10 therefore, recommends the District Judge deny defendant's motion without prejudice to renewal  
11 upon the filing of a first amended complaint.

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#### IV. CONCLUSION

Based on the foregoing, the undersigned recommends that:

1. The unopposed motion to dismiss by defendants Lassen Jackson Community Partners, Amand Kannan, MBS Property Management, Inc., The Beneficial Housing Foundation, and WNC Development Partners (Doc. 14) be granted;

2. The unopposed motion to dismiss by defendant North American Risk Services (Doc. 15) be denied without prejudice to renewal upon the filing of a first amended complaint; and

3. Plaintiff's complaint be dismissed with leave to amend.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after being served with these findings and recommendations, any party may file written objections with the court. Responses to objections shall be filed within 14 days after service of objections. Failure to file objections within the specified time may waive the right to appeal. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: February 11, 2019



DENNIS M. COTA  
UNITED STATES MAGISTRATE JUDGE