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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STEPHANIE MCGEE,
Plaintiff,
v.
DEPARTMENT OF CHILD SUPPORT
SERVICES STATE HEARING OFFICE, et
al.,
Defendants.

Case No. [16-cv-02626-MEJ](#)
**ORDER DISMISSING SECOND
AMENDED COMPLAINT WITH
PREJUDICE**
Re: Dkt. No. 9

INTRODUCTION

On May 16, 2016, Plaintiff Stephanie McGee (“Plaintiff”) filed a Complaint and an Application to Proceed In Forma Pauperis. Compl., Dkt. No. 1; Appl., Dkt. No. 3. The Court granted Plaintiff’s Application to Proceed In Forma Pauperis but pursuant to 28 U.S.C. § 1915(e)(2) dismissed Plaintiff’s Complaint on the ground that Plaintiff’s allegations were unclear at that point, and as such, the Court could not find she stated a claim for relief under Federal Rule of Civil Procedure 8 or that the Court has subject matter jurisdiction over this case. First Order, Dkt. No. 6. Additionally, the Court noted that, as it appeared Plaintiff was attempting to challenge a state court order, the “*Rooker-Feldman* doctrine” precluded such de facto appeals. *Id.* While the Court dismissed Plaintiff’s original Complaint, it also granted her leave to file an amended complaint. *Id.* Plaintiff filed her First Amended Complaint (“FAC”) on July 28, 2016. Dkt. No. 7. The Court screened the FAC and dismissed it on the ground that it did not allege a federal question, and to the extent the Court construed the allegations as attempting to state a claims pursuant to 42 U.S.C. § 1983, such claims were barred by the applicable statute of limitations. Second Order, Dkt. No. 8. The Court granted Plaintiff leave to amend (*id.*), which Plaintiff did on August 30, 2016 (Dkt. No. 9).

1 As Plaintiff continues to proceed in forma pauperis, the Court is under a continuing
2 obligation to screen Plaintiff's Amended Complaint under 28 U.S.C. § 1915(e)(2). Having done
3 so, the Court finds that it must now **DISMISS** Plaintiff's Second Amended Complaint ("SAC")
4 **WITHOUT LEAVE TO AMEND.**

5 **SUA SPONTE SCREENING UNDER 28 U.S.C. § 1915(E)(2)**

6 **A. Legal Standards**

7 Under 28 U.S.C. § 1915(e)(2)(B), the Court must dismiss the Complaint if it is frivolous,
8 fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant
9 who is immune from such relief. To make this determination, courts assess whether there is a
10 factual and legal basis for the asserted wrong, "however inartfully pleaded." *Franklin v. Murphy*,
11 745 F.2d 1221, 1227-28 (9th Cir. 1984) (quotation omitted). Pro se pleadings are liberally
12 construed. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam). Unless it is clear that no
13 amendment can cure the defects of a complaint, a pro se plaintiff proceeding in forma pauperis is
14 entitled to notice and an opportunity to amend before dismissal. *Noll v. Carlson*, 809 F.2d 1446,
15 1448 (9th Cir. 1987). Because a dismissal pursuant to § 1915(e)(2)(B) is not a dismissal on the
16 merits, but rather an exercise of the court's discretion under the IFP statute, the dismissal does not
17 prejudice the filing of a paid complaint making the same allegations. *Denton v. Hernandez*, 504
18 U.S. 25, 32 (1992).

19 Additionally, a federal court is a court of limited jurisdiction, and may adjudicate only
20 those cases authorized by the United States Constitution and by Congress. *Kokkonen v. Guardian*
21 *Life Ins. Co.*, 511 U.S. 375, 377 (1994). The basic federal jurisdiction statutes, 28 U.S.C. §§ 1331
22 & 1332, confer "federal question" and "diversity" jurisdiction, respectively. Federal question
23 jurisdiction requires that the complaint (1) arise under a federal law or the Constitution, (2) allege
24 a "case or controversy" within the meaning of Article III, § 2 of the Constitution, or (3) be
25 authorized by a federal statute that both regulates a specific subject matter and confers federal
26 jurisdiction. *Baker v. Carr*, 369 U.S. 186, 198 (1962). To invoke a federal court's jurisdiction, a
27 plaintiff must specifically allege facts demonstrating that court has subject matter jurisdiction.
28 Fed. R. Civ. P. 8(a)(1) (a pleading that states a claim for relief must contain "a short and plain

1 statement of the grounds for the court’s jurisdiction.”). A case presumably lies outside the
2 jurisdiction of the federal courts unless demonstrated otherwise. *Kokkonen*, 511 U.S. at 376-78.
3 Lack of subject matter jurisdiction may be raised at any time by any party or by the court. *See*
4 *Attorneys Tr. v. Videotape Comput. Prods., Inc.*, 93 F.3d 593, 594-95 (9th Cir. 1996).

5 **B. Allegations in the SAC**

6 Plaintiff alleges she began receiving public assistance for her son through the County of
7 Alameda (the “County”) in 1995. SAC ¶ 5. In 1996, the Alameda County District Attorney sent
8 Plaintiff a letter enclosing a copy of a Judgment and Order requiring Alvin Florida Jr. to pay the
9 Treasurer of Alameda County for the support of his son, Stephan Florida. *Id.*, Ex. B at 3. The
10 letter further informed Plaintiff that an account had been established for enforcement of the order.
11 *Id.*, Ex. B at 2. Plaintiff alleges she is owed \$347,000 in child support arrears, but has not
12 “received a cent” of the monies collected by the State in her name. *Id.* ¶ 8.

13 On August 18, 2015, the County sent Plaintiff another letter. *Id.*, Ex. C. Plaintiff
14 characterizes the August 18, 2015 letter as an admission by the State of California (“Defendant”)
15 that “an error had been made” when it paid a \$48,000 judgment in Plaintiff’s favor to the wrong
16 person. *Id.* ¶ 9. The County’s August 18 letter does not state an error had been made in the
17 payment of the \$48,000—it corrects the County’s prior description of a 2005 Stipulation & Order
18 (the “2005 Stipulation”) in an earlier letter:

19 In our [A]ugust 5, 2015 letter we erroneously stated . . . that [by]
20 “Stipulation & Order After Hearing filed 10/7/2005,[”] it was
21 determined that you owed arrears of \$48,000 to Herman Blade and
any other amount claimed by our office was set aside.

22 We intended to say that by Stipulation & Order After Hearing filed
23 10/7/2005, it was determined that arrears of \$48,000 was owed to
24 you. We were ordered by the court to set aside those arrears,
dismiss and close this case and make no further efforts to collect on
those arrears.

25 *Id.*, Ex. C.

26 Plaintiff further alleges she requested a hearing when the County declined to take action,
27 and that her request was denied. *Id.* ¶ 10. Plaintiff filed a writ of mandate on December 30, 2015.
28 *Id.* ¶ 11. “[T]he State Attorney for CDCSS filed a demurrer”; she alleges this demurrer discloses

1 for the first time that her name had been replaced on her child support account; her son Stephan
2 was listed as the “non-custodial parent”; his father Alvin was listed as the “child”; and “[t]he State
3 pretended that Herman Blade” was Plaintiff. *Id.* ¶ 12. The document Plaintiff attaches in support
4 of these allegations appears to be two pages from a demurrer filed in an unidentified action. *Id.*,
5 Ex. D. The Statement of Facts and Procedural History reads:

6 Since 1995, petitioner has not had custody of her son, Alvin Florida,
7 Jr., but instead the child’s maternal stepfather, Herman Blade, did....
8 On December 6, 1995, the Alameda County Superior Court . . .
9 ordered the father of the child, Stephan Florida, to pay child support
10 for Alvin to the Treasurer of Alameda County. . . In a Stipulation
11 and Order After Hearing, dated October 7, 2005, although the Court
12 had ordered defendant Stephan Florida to pay child support each
13 month to the guardian, Herman Blade, and arrears in the amount of
14 \$48,000, and ordered Florida to pay any outstanding funds in two
15 installments, the Alameda County Superior Court ordered the
16 Alameda DCSS to dismiss and close the child support case and not
17 make any further attempts to collect arrears from defendant Stephan
18 Florida. . . Stephanie McGee is nowhere mentioned in either of
19 these orders, and was not a party to them.

20 *Id.*, Ex. D. Plaintiff does not identify the proceedings in which this document was filed, nor does
21 she attach the exhibits it references. The Court accordingly cannot determine whether the
22 misidentification of father and son was made by the author of the demurrer or appears in the
23 exhibits. Plaintiff alleges her request for a jury trial was denied on May 15, 2016, and a judgment
24 rendered. *Id.* ¶ 15.

25 Based on these facts, Plaintiff asserts two claims pursuant to 42 U.S.C. § 1983 (“Section
26 1983”)¹; a “Bradley Amendment” claim; a Truth in Lending Act (“TILA”) claim; and common
27 law claims for breach of contract and concealment. *See generally* SAC. Plaintiff’s factual
28 allegations relate to conduct by the County, but she has only named the State of California and the

1 In the Introduction to the SAC, Plaintiff alleges her Section 1983 claim is based on the violation
2 of her “rights secured by the Fifth and Fourteenth Amendment and Title IV-D of the Civil Rights
3 Act.” SAC ¶ 2. Her first claim for violation of Section 1983, however, is only premised on
4 Constitutional violations. *See id.* ¶¶ 18-23. Plaintiff asserts a separate claim for violation of Title
5 IV-D of the Social Security Act, 42 U.S.C. §§ 651, et seq. (“Title IV-D”), and includes language
6 in that claim confirming she is seeking to enforce rights conferred by Title IV-D through Section
7 1983. *Id.* ¶¶ 24-26. The Court thus construes Plaintiff’s Title IV-D claim as a Section 1983 claim
8 for violation of Title IV-D.

1 Department of Child Support Services State Hearing Office as Defendants.

2 **C. Analysis and Screening**

3 The Court first screens the two new federal claims Plaintiff asserts in the SAC, then the
4 Section 1983 claim, and finally, Plaintiff’s common law claims.

5 1. Bradley Amendment & TILA Claims

6 In her Original Complaint, Plaintiff asserted claims under the Bradley Amendment and
7 TILA. Compl. at 4. In dismissing that Complaint with leave to amend, the Court wrote: “Nor has
8 Plaintiff alleged sufficient facts to demonstrate federal question jurisdiction. While Plaintiff
9 alleges various federal laws were violated, she does not clearly explain how or when Defendant
10 violated these federal laws or how the alleged violations harmed her. Her conclusory statements
11 that there are violations of federal law and the United States Constitution do not create a sufficient
12 basis to establish subject matter jurisdiction.” First Order at 4. Plaintiff did not include Bradley
13 Amendment or TILA claims in the FAC. *See* Dkt. No. 7. In the SAC, Plaintiff now reasserts the
14 same conclusory allegations that Defendants violated the Bradley Amendment (42 U.S.C. §
15 666(a)(9)(c)) and TILA. SAC at pp. 10-11. The Court once more concludes these claims must be
16 dismissed, but this time with prejudice, because, as explained below Plaintiff still has not shown
17 she is able to state plausible facts supporting a claim against Defendants under these statutes.
18 Accordingly, neither of these statutes gives the Court subject matter jurisdiction over this case.

19 a. *Bradley Amendment*

20 As another Court explained when dismissing an earlier complaint filed by Plaintiff:

21 Section 666 generally requires that each state must have in effect
22 certain laws intended to improve the effectiveness of the child
23 support system. Section 666(a)(9)(c) states that with respect to
24 procedures requiring support payments, an order of support may not
25 be subject to retroactive modification by the state or any other state
26 except through petitions for modification. Plaintiff does not assert
27 that California has not implemented the procedure required under
28 section 666(a)(9)(c), but she challenges actions taken by Defendant
in her specific child support case. This section does not provide the
Court with jurisdiction to review the handling of Plaintiff’s specific
state court custody matters and/or payments of child support.

27 *McGee v. Cal. Dep’t of Child Support Svcs.*, Case No. 12-cv-3764, Dkt. No. 10 (N.D. Cal., filed
28 Nov. 5, 2012) (“*McGee I*”); *see also id.*, Dkt. No. 13 (dismissing FAC on same ground: “Section

1 666 does not provide the Court with jurisdiction to review the handling of Plaintiff’s specific state
2 court custody matters and/or payments of child support.”) Plaintiff’s Bradley Amendment claim
3 in this case suffers from the same problems the *McGee I* Court identified; the Court thus adopts
4 the same reasoning here and concludes Plaintiff has failed to state a claim under the Bradley
5 Amendment.

6 *b. TILA*

7 Plaintiff argues Defendants violated TILA “by not entitling my c/s judgment full faith and
8 credit in the state of Calif. and in any of the states that full faith is a ‘constitutional principle.’”
9 SAC ¶ 30. The purpose of TILA is “to assure a meaningful disclosure of credit terms so that the
10 consumer will be able to compare more readily the various credit terms available to him and avoid
11 the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit
12 billing and credit card practices.” 15 U.S.C. § 1601. It is unclear how Plaintiff alleges Defendants
13 offered her credit or violated TILA. Once again, Plaintiff’s conclusory statements that Defendants
14 violated a federal statute do not suffice to state a claim. *See* First Order at 4. Moreover, the Court
15 finds this claim is frivolous as there is no arguable basis in either law or fact that Defendants
16 violated TILA in connection with the underlying child support proceedings.

17 2. Section 1983 Claims

18 In its Order dismissing the FAC, the Court held any Section 1983² claim Plaintiff might
19 have pleaded was time-barred. *See* Second Order at 4-7. The Court nonetheless granted Plaintiff
20 leave to amend in the event she could show a basis for delayed accrual or could clarify the nature
21 of her Section 1983 claim. *Id.* at 6-7. In the SAC, Plaintiff premises her Section 1983 claims on
22 the violation of two distinct rights. First, she alleges her requests for a “State Hearing” and jury
23 trial were denied, and her case dismissed, depriving Plaintiff of her property without due process
24 of law in violation of her Fifth and Fourteenth Amendment rights. SAC ¶¶ 18-23. Second, she

26 ² Section 1983 “provides a cause of action for the ‘deprivation of any rights, privileges, or
27 immunities secured by the Constitution and laws’ of the United States. . . . [It] is not itself a source
28 of substantive rights, but merely provides a method for vindicating federal rights conferred
elsewhere.” *Drawsand v. F.F. Props., LLP*, 866 F. Supp. 2d 1110, 1120 (N.D. Cal. 2011)
(citations omitted).

1 alleges Defendants’ action breached several of their duties under Title IV-D. *Id.* ¶¶ 24-26.³ As
2 discussed below, the Court concludes Plaintiff’s Section 1983 claims must be dismissed without
3 leave to amend.

4 a. *Denial of State Hearing/Dismissal of Action*

5 To the extent Plaintiff bases her Section 1983 claim on the denial of a “State Hearing” in
6 August 2015, Plaintiff fails to simply, directly, and concisely state the connections between each
7 of the Defendants, the alleged violations, and the alleged harm caused to Plaintiff. *Ashcroft v.*
8 *Iqbal*, 556 U.S. 662, 663 (2009) (“[A] complaint must contain a ‘short and plain statement of the
9 claim showing that the pleader is entitled to relief.’” (quoting Fed. R. Civ. P. 8(a)(2))). The SAC
10 does not provide a clear description of what hearing Plaintiff requested in what forum or of who
11 denied her request for a hearing (e.g., one of the Defendants, an agency, a judge); fails to provide
12 facts sufficient to show Plaintiff was entitled to such a hearing (e.g., based on something other
13 than her mischaracterization of the August 2015 letter); fails to establish Plaintiff followed the
14 proper requirements for requesting such a hearing; and fails to describe how each Defendant
15 harmed Plaintiff. To the extent it attempts to state a Section 1983 claim based on the denial of a
16 “State Hearing,” the SAC fails to meet the basic requirements of Rule 8(a).

17 To the extent the Section 1983 claim challenges a California State Court’s order sustaining
18 the demurrer she attaches to her SAC and dismissing her action (SAC ¶¶ 15-17 & Ex. D), that
19 claim is barred by the *Rooker-Feldman* doctrine. *See* First Order at 4 (“[T]he Court cautions
20 Plaintiff that this Court does not have the power to review errors allegedly committed by state
21 courts.” (citing *Cooper v. Ramos*, 704 F.3d 772, 777 (9th Cir. 2012); *Rooker v. Fidelity Tr. Co.*,
22 263 U.S. 413 (1923); *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462 (1983))).

23
24
25 _____
26 ³ For purposes of this Order only, the Court assumes that the Title IV-D provisions Plaintiff
27 identifies are enforceable through Section 1983. *But see Consumer Advocates Rights Enf’t Soc’y,*
28 *Inc. (Cares, Inc.) v. State of Cal.*, 2005 WL 3454140, at *3 (N.D. Cal. Dec. 16, 2005) (“Title IV-D
does not provide plaintiffs with enforceable personal rights. Even if the laws have the effect of
benefitting them, their failure to qualify as ‘intended beneficiaries’ of the provisions precludes
them from maintaining a Section 1983 private right of action against defendants”).

1 *b. Title IV-D*

2 The Court already found that a Section 1983 claim based on violations of Title IV-D, the
 3 waiving of arrears, the closure of the child custody proceedings, or the payment of child support
 4 funds to someone other than Plaintiff accrued no later than October 2005 with the entry of the
 5 Stipulation & Order After Hearing (the “2005 Stipulation”). *See* Second Order at 5-7. The statute
 6 of limitations for a Section 1983 claim is 2 years. *See id.* at 5. Plaintiff’s Section 1983 claim thus
 7 expired in 2007. In the SAC, Plaintiff argues delayed accrual applies because an August 18, 2015
 8 letter revealed for the first time that Defendants had mistakenly paid a \$48,000 judgment owed to
 9 Plaintiff to the wrong person. SAC ¶ 9. Plaintiff’s characterization of the August 18, 2015 letter
 10 is not supported by the document. The letter does describe the 2005 Stipulation in which “it was
 11 determined that arrears of \$48,000 was owed to” Plaintiff. *Id.*, Ex. C. But rather than revealing
 12 Defendants paid the arrears to the wrong person, the letter merely corrects the description of the
 13 2005 Stipulation the County had included in an August 5, 2015 letter to Plaintiff. *Id.* The August
 14 18, 2015 letter thus does not present a basis for delayed accrual.⁴

15 Nor does the excerpt of the demurrer Plaintiff attaches to the SAC (Ex. D) provide a
 16 ground for delayed accrual. At most, the Court can infer the author of the demurrer filed in the
 17 unidentified state court action mistakenly identified the participants in the child support
 18 proceedings; Plaintiff fails to allege facts sufficient to show the mistake was made by Defendants
 19 in the child support proceedings, that the mistake harmed Plaintiff, or that Plaintiff was unaware of
 20 the mistake during the child support proceedings. Plaintiff has not alleged any facts showing
 21 delayed accrual applies.

22
 23 ⁴ Moreover, the factual allegations in the SAC are premised on the same facts Plaintiff described
 24 in a March 2009 Complaint filed in another action before this Court. *See McGee v. Cty. of*
 25 *Alameda*, Case No. 09-cv-1377 (N.D. Cal. filed on March 30, 2009), Compl. at 2, Dkt. No. 1
 26 (“Child support collections have been distributed and disbursed incorrectly. . . . Alameda county
 27 child support agency’s decision to close a child support Case. . . . The waiving of child support
 28 arrears”), at 4 (“Child Support services closed my child support case and WAIVED all the arrears
 owed to the mother. Herman Blade was never awarded guardianship of our son . . .”).
 Plaintiff’s March 2009 Complaint establishes she was fully aware of the factual basis for the
 claims she asserts in this action no later than March 2009—7 years before she filed the original
 complaint in this case.

1 For the reasons stated in its Second Order, the Court reaffirms (1) Plaintiff has not
2 demonstrated delayed accrual applies, and (2) Plaintiff is not entitled to relief under the continuing
3 violations doctrine. *See* Second Order at 4-7.

4 3. State Law Claims

5 Plaintiff is a citizen of California suing the State of California and a California State
6 agency. SAC ¶ 1. Because all parties are citizens of the same state, Plaintiff cannot invoke
7 diversity jurisdiction. *See* 28 U.S.C. § 1332. Finding it lacks jurisdiction to hear some of
8 Plaintiff's federal claims, and that the remainder of her federal claims are barred by the statute of
9 limitations, the Court declines to exercise supplemental jurisdiction over Plaintiff's common law
10 claims for breach of contract and concealment. The Court will not further analyze these claims to
11 determine whether they are sufficiently pleaded.

12 **CONCLUSION**

13 Based on the analysis above, the Court finds Plaintiff's Section 1983 claims are either
14 barred by the statute of limitations or by the *Rooker-Feldman* Doctrine; Plaintiff's TILA claim
15 against Defendants is frivolous; and the Bradley Amendment does not provide a basis for federal
16 subject-matter jurisdiction in this case. Plaintiff twice has been granted leave to amend her
17 complaint. Because it is now "absolutely clear that the deficiencies of the complaint could not be
18 cured by amendment" (*Franklin v. Murphy*, 745 F.2d 1221, 1235 n.9 (9th Cir. 1984)), the Court
19 now **DISMISSES** the federal claims **WITHOUT LEAVE TO AMEND**. The Court also declines
20 to exercise supplemental jurisdiction over Plaintiff's state law claims, and dismisses those without
21 prejudice to refile them in state court.

22 The Clerk of Court shall close the file in this matter.

23 **IT IS SO ORDERED.**

24 Dated: September 23, 2016

25 
26 _____
27 MARIA-ELENA JAMES
28 United States Magistrate Judge