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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KAREN JIMENEZ,
Plaintiff,
v.
LABOR BOARD OAKLAND, et al.,
Defendants.

Case No.17-cv-03322-JSC

**ORDER REVIEWING COMPLAINT
UNDER 28 U.S.C. § 1915 AND
DISMISSING WITH LEAVE TO
AMEND**

United States District Court
Northern District of California

Plaintiff Karen Jimenez, representing herself, brings this civil action against several state and municipal entities related to issues she has encountered attempting to open an apprenticeship cosmetology program. (Dkt. No. 1.) Plaintiff’s complaint was accompanied by an Application to Proceed In Forma Pauperis which the Court previously granted. (Dkt. No. 4.) The Court now reviews the complaint pursuant to 28 U.S.C. § 1915, and for the reasons set forth below, the Court **DISMISSES** the complaint with leave to amend.¹

BACKGROUND

Plaintiff alleges numerous difficulties with her attempts to open a cosmetology apprenticeship program. According to her complaint and the 79-pages of documents attached thereto, Plaintiff appears to have proposed a plan to the state Labor Board and Martinez Adult School whereby she would step in for the defunct Marinello’s Beauty School and open her own chain for cosmetology schools. (Dkt. No. 1.) Although Plaintiff invested her life savings in the plan and believed she had done everything properly to have the Labor Board approve the plan, the Labor Board abruptly changed its mind and notified her that that it would not approve of the plan.

¹ Plaintiff has consented to the jurisdiction of a magistrate judge pursuant to 28 U.S.C. § 636(c). (Dkt. No. 6.)

1 (*Id.* at 12-16.²) Shortly thereafter, Plaintiff’s son, who had recently moved home to help her with
2 her cosmetology school endeavor, overdosed on prescription drugs. (*Id.* at 39.) Plaintiff attributes
3 her son’s death to the Labor Board’s refusal to approve her plan. (*Id.*) She filed complaints with
4 the California Attorney General and Contra Costa District Attorney’s Office detailing the
5 problems she had including her concern that the Labor Board had been bribed, but both agencies
6 rejected her complaints. (*Id.* at 59-70.) Plaintiff contends that the state of California is a “greed
7 machine” that is only seeking to increase its own wealth at the expense of cosmetology students
8 and employees as well as Plaintiff and her family. (*Id.* at 8-9.)

9 Plaintiff names the Labor Board Division of Apprenticeship Standards-Sacramento, the
10 Labor Board Division of Apprenticeship Standards-Oakland, the Martinez Adult School, the
11 California Attorney General, the State Board of Cosmetology, and the Contra Costa District
12 Attorney as Defendants in the action. (*Id.* at 2-3.) She lists the following bases for federal
13 question jurisdiction: felony murder, bribery, larceny, harassment, and fraud. (*Id.* at 4.) In her
14 civil cover sheet for cause of action she states “failure to administer my civil rights” and that “the
15 state of California acted in it [sic] own best interest.” (Dkt. No. 1-1.)

16 **LEGAL STANDARD**

17 Under 28 U.S.C. § 1915, the Court has a continuing duty to dismiss any case in which a
18 party is proceeding in forma pauperis if the Court determines that the action is (1) frivolous or
19 malicious; (2) fails to state a claim on which relief may be granted; or (3) seeks monetary relief
20 against a defendant who is immune from such relief. A complaint is frivolous for Section 1915
21 purposes where there is no subject matter jurisdiction. *See Castillo v. Marshall*, 207 F.3d 15, 15
22 (9th Cir. 1997) (citation omitted); *see also Pratt v. Sumner*, 807 F.2d 817, 819 (9th Cir. 1987)
23 (recognizing the general proposition that a complaint should be dismissed as frivolous on Section
24 1915 review where subject matter jurisdiction is lacking). Regarding dismissals for failure to state
25 a claim, Section 1915(e)(2) parallels the language of Federal Rules of Civil Procedure 12(b)(6).
26 *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000). The complaint therefore must allege

27 _____
28 ² Record citations are to material in the Electronic Case File (“ECF”); pinpoint citations are to the
ECF-generated page numbers at the top of the documents.

1 facts that plausibly establish the defendant’s liability. *See Bell Atl. Corp. v. Twombly*, 550 U.S.
2 544, 555-57 (2007). When the complaint has been filed by a pro se plaintiff, as is the case here,
3 courts must “construe the pleadings liberally . . . to afford the petitioner the benefit of any doubt.”
4 *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (citations omitted). Upon dismissal, pro se
5 plaintiffs proceeding in forma pauperis must be given leave to “amend their complaint unless it is
6 absolutely clear that the deficiencies of the complaint could not be cured by amendment.”
7 *Franklin v. Murphy*, 745 F.2d 1221, 1235 n.9 (9th Cir. 1984) (internal citations and quotation
8 marks omitted); *Lopez v. Smith*, 203 F.3d 1122, 1130-31 (9th Cir. 2000).

9 **DISCUSSION**

10 Plaintiff’s complaint describes a myriad of issues she encountered while attempting to
11 open a cosmetology apprenticeship program and her frustration when the California Attorney
12 General’s Office and the Contra Costa District Attorney’s Office declined to investigate her claims
13 regarding the Labor Board and Martinez Adult School. There are a number of issues with
14 Plaintiff’s Complaint.

15 As an initial matter, the legal basis for Plaintiff’s claims is unclear and beyond that it is
16 unclear which claims are brought against which Defendants. The Complaint appears to allege
17 causes of action for felony murder, bribery, larceny, harassment, and fraud; however, felony
18 murder and larceny are criminal, not civil, offenses. While fraud is a cognizable legal claim,
19 Plaintiff has not adequately pled the elements of a fraud claim. Under California law, the elements
20 of fraud are: (1) a false representation; (2) knowledge of falsity (or scienter); (3) intent to defraud,
21 i.e., to induce reliance; (4) justifiable reliance; and (5) resulting damage. *See Robinson Helicopter*
22 *Co. v. Dana Corp.*, 34 Cal. 4th 979 (Cal. 2004). While Plaintiff appears to allege fraudulent
23 activity with respect to the decision to deny her the opportunity to open her apprenticeship
24 program, Plaintiff has failed to plead “the who, what, when, where, and how of the misconduct
25 charged.” *Vess v. Ciba-Geigy Corp., USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) (internal citation
26 and quotation marks omitted). Plaintiff must plead enough facts to give defendants notice of the
27 time, place, and nature of the alleged fraud, together with an explanation of the statement and why
28 it was false or misleading. *See id.* at 1107.

Likewise, to the extent that Plaintiff seeks to state a claim for harassment, the nature of that

1 claim is unclear. Plaintiff is not suing her current or former employer; thus, there is no Title VII
2 claim. *See Ass’n of Mexican-Am. Educators v. State of California*, 231 F.3d 572, 580 (9th Cir.
3 2000) (“Although there must be some connection with an employment relationship for Title VII
4 protections to apply, that connection with employment need not necessarily be direct.”). To the
5 extent Plaintiff is attempting to bring a civil rights claim “allegations of harassment,
6 embarrassment, and defamation are not cognizable under section 1983.” *Rutledge v. Arizona Bd.*
7 *of Regents*, 660 F.2d 1345, 1353 (9th Cir. 1981), *aff’d sub nom. Kush v. Rutledge*, 460 U.S. 719
8 (1983); *see also Abram v. Rackley*, No. 16-2004, 2016 WL 6038172, at *2 (E.D. Cal. Oct. 14,
9 2016) (collecting cases re: the same).

10 Further, although Plaintiff’s civil cover sheet suggests a claim based on denial of her civil
11 rights, she has not pled allegations supporting such a claim. To state a claim under § 1983, a
12 complaint “must both (1) allege the deprivation of a right secured by the federal Constitution or
13 statutory law, and (2) allege that the deprivation was committed by a person acting under color of
14 state law.” *Anderson v. Warner*, 451 F.3d 1063, 1067 (9th Cir. 2006). To adequately plead these
15 elements, the complaint must identify what constitutional or other federal right each defendant
16 violated, providing sufficient facts to plausible support each purported violation. *See, e.g.,*
17 *Drawsand v. F.F. Props., L.L.P.*, 866 F. Supp. 2d 1110, 1121 (“Aside from passing references to
18 due process and equal protection, the Complaint fails to allege how [plaintiffs’] constitutional
19 rights were violated and fails to identify each Defendant’s role therein.”); *Walsh v. Am. Med.*
20 *Response*, No. 2:13-cv-2077 MCE KJN (PS), 2014 WL 2109946, at *7 (E.D. Cal. May 20, 2014)
21 (“Before any claims may be found to be cognizable, plaintiffs must separate each specific claim
22 they wish to pursue, identify which defendants relate to each particular claim, and identify the
23 Constitutional right implicated by each claim.”). Plaintiff’s conclusory allegation regarding denial
24 of her civil rights is insufficient to state a claim under Section 1983.

25 Finally, to the extent that Plaintiff brings claims against the California Attorney General or
26 state agencies such claims may be barred by the Eleventh Amendment.³ The Eleventh

26 ³ The Court assumes that Plaintiff’s claim against the Labor Board Division of Apprenticeship
27 Standards is actually a claim against either the California Labor & Workforce Development
28 Agency or the Division of Apprenticeship Standards within the California Department of
Industrial Relations. Likewise, the Court assumes Plaintiff’s claim against the State Board of
Cosmetology is actually a claim against the California Board of Barbering and Cosmetology.

1 Amendment bars suits against States and state agencies in federal courts where the State has not
2 waived its immunity. *Carmen v. San Francisco Unified Sch. Dist.*, 982 F. Supp. 1396, 1402 (N.D.
3 Cal. 1997) aff'd, 237 F. 3d 1026 (9th Cir. 2001) (internal citations omitted). The State of
4 California has not waived its immunity from Section 1983 lawsuits. *Dittman v. California*, 191
5 F.3d 1020, 1025-26 (9th Cir. 1999). The Eleventh Amendment bars suits against state agencies, as
6 well as those where the state itself is named as a defendant. *See P.R. Aqueduct & Sewer Auth. v.*
7 *Metcalf & Eddy, Inc.*, 506 U.S. 139, 144 (1993). In addition, a plaintiff's suit "against state
8 officials in their official capacities" is treated "as a suit against the state of California." *Holley v.*
9 *California Dep't Of Corr.*, 599 F.3d 1108, 1111 (9th Cir. 2010). "[A] suit "against state officials
10 that is in fact a suit against a State is barred regardless of whether it seeks damages or injunctive
11 relief." *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 102 (1984). The Eleventh
12 Amendment "does not, however, bar actions for prospective declaratory or injunctive relief against
13 state officers in their official capacities for their alleged violations of federal law." *Coal. to Defend*
14 *Affirmative Action v. Brown*, 674 F.3d 1128, 1134 (9th Cir. 2012) (citing *Ex Parte Young*, 209
15 U.S. 123, 155-56 (1908)).

16 Accordingly, Plaintiff's complaint fails to state a claim upon which relief can be granted
17 and appears to seek monetary relief from Defendants who may be immune from such relief. It is
18 therefore subject to dismissal under Sections 1915(b)(1), (2).

19 CONCLUSION

20 For the reasons stated above, Plaintiff's Complaint is DISMISSED with leave to amend. If
21 Plaintiff elects to amend her complaint, she must clearly identify which claims are brought as to
22 which Defendants and must provide the legal and factual basis for her claims. If Plaintiff elects to
23 amend her complaint she must do so **by August 25, 2017**.

24 As Plaintiff is proceeding pro se, the Court directs her attention to the Handbook for Pro Se
25 Litigants, which is available along with further information for the parties on the Court's website
26 located at <http://cand.uscourts.gov/proselitigants>. Plaintiff may also contact the Legal Help
27 Center, 450 Golden Gate Avenue, 15th Floor, Room 2796, Telephone No. (415)-782-8982, for
28 free assistance regarding her claims.

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IT IS SO ORDERED.

Dated: July 25, 2017



JACQUELINE SCOTT CORLEY
United States Magistrate Judge