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United States District Court  
Northern District of California

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**FELITA SAMPLE,**

**Plaintiff,**

**vs.**

**DEANNA CRESPO,**

**Defendant.**

**Case No.: 11-CV-06129 YGR**

**ORDER DENYING APPLICATION TO PROCEED  
IN FORMA PAUPERIS AND DISMISSING  
COMPLAINT WITH LEAVE TO AMEND**

The Court has received Plaintiff’s complaint and application to proceed *in forma pauperis*, both filed in this Court on December 5, 2011. The Court may authorize a plaintiff to file an action in federal court without prepayment of fees or security if the plaintiff submits an affidavit showing that he or she is unable to pay such fees or give security therefor. 28 U.S.C. § 1915(a). The *in forma pauperis* statute also provides that the Court shall dismiss the case if at any time the Court determines that the allegation of poverty is untrue, or that the action (1) is frivolous or malicious; (2) fails to state a claim on which relief may be granted; or (3) seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

Plaintiff has failed to set forth “a short and plain statement of the claim showing that the pleader is entitled to relief” as required by Rule 8 of the Federal Rules of Civil Procedure. Plaintiff’s complaint fails to state a claim upon which relief can be granted because Plaintiff fails to allege that Defendant was acting on behalf of the federal or state government. *See Public Utilities Comm’n of Dist. of Columbia v. Pollak*, 343 U.S. 451, 461 (1952) (the First and Fifth Amendments “apply to and restrict only the Federal Government and not private persons.”); *see also West v. Adkins*, 487 U.S. 42,

1 48-49 (1988) (a claim under 42 U.S.C. § 1983 requires constitutional violations committed by persons  
2 acting under color of state law).

3 Accordingly, the **ORDERS** as follows:

4 1) Plaintiff's complaint is **DISMISSED WITH LEAVE TO AMEND**.  
5 2) Plaintiff's Application to Proceed *in forma pauperis* is **DENIED WITHOUT PREJUDICE**.  
6 3) The Case Management Conference set for August 6, 2012 is **VACATED**.  
7 4) If Plaintiff wishes to pursue this action, Plaintiff must file an amended complaint and a  
8 renewed application to proceed *in forma pauperis* by **September 4, 2012**.

9 5) The Court sets this matter on its compliance calendar to determine whether Plaintiff  
10 files an Amended Complaint. The date set is **Friday, September 14, 2012 at 9:01 a.m.** If Plaintiff  
11 files an Amended Complaint, the Court will vacate the conference and no appearance will be  
12 necessary. If Plaintiff fails to amend, the case will be dismissed under Rule 41(b) for failure to  
13 prosecute. *Toyota Landscape Co., Inc. v. Building Material & Dump Truck Drivers Local 420, 726*  
14 *F.2d 525, 528 (9th Cir. 1984)*.

15 The Court advises Plaintiff that a Handbook for Pro Se Litigants, which contains helpful  
16 information about proceeding without an attorney, is available in the Clerk's office or through the  
17 Court's website, <http://cand.uscourts.gov>. The Court also advises Plaintiff that additional assistance  
18 may be available by making an appointment with the Legal Help Center. There is no fee for this  
19 service. To make an appointment, Plaintiff may visit the San Francisco Courthouse, located at 450  
20 Golden Gate Avenue, 15th Floor, Room 2796, San Francisco, California, 94102, or call 415/782-9000  
21 (ext. 8657). Please visit the Court's website or call the phone number listed above for current office  
22 hours, forms and policies.

23 6) This Order Terminates Docket Number 3.

24 **IT IS SO ORDERED.**

25 **Date: August 2, 2012**

  
YVONNE GONZALEZ ROGERS

UNITED STATES DISTRICT COURT JUDGE