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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

MARY JANE AUSTIN,  
  
Plaintiff,  
  
v.  
  
UNITED STATES GOVERNMENT,  
STATE OF CALIFORNIA, COUNTY  
OF SAN DIEGO, CITY OF SAN  
DIEGO, and SAN DIEGO  
MRTRÓPLIPAN TRANSIT,  
  
Defendants.

CASE NO. 3:14-cv-2148-GPC-BGS

**ORDER:**  
  
**(1) SUA SPONTE DISMISSING  
WITHOUT PREJUDICE  
PLAINTIFF’S COMPLAINT FOR  
FAILURE TO STATE A CLAIM;**  
  
**(2) DENYING PLAINTIFF’S  
MOTION TO DIRECT SERVICE**  
  
**[ECF No. 16]**

**I. INTRODUCTION**

On September 10, 2014, Plaintiff Mary Jane Austin (“Plaintiff”), proceeding pro se, commenced this action against defendants United States Government, State of California, County of San Diego, City of San Diego, and San Diego Mrtroplipan Transit. (ECF No. 1) On October 20, 2014, this Court granted Plaintiff leave to proceed in forma pauperis (“IFP”) under 28 U.S.C. § 1915(a) and sua sponte dismissed Plaintiff’s complaint for failure to state a claim. (ECF No. 8.) On November 12, 2014, Plaintiff filed a motion for extension of time to file her amended complaint, (ECF No. 10), which the Court granted. (ECF No. 11.) On February 27, 2015, Plaintiff filed her

1 First Amended Complaint (“FAC”). (ECF No. 13.) Finding that Plaintiff’s FAC fails  
2 to state a claim, the Court sua sponte **DISMISSES WITHOUT PREJUDICE**  
3 Plaintiff’s FAC.

## 4 **II. FACTUAL ALLEGATIONS**

5 Based on the foregoing, Plaintiff alleges that defendants “the U.S. Government  
6 personnel, State of California, County of San Diego, City of San Diego, and The San  
7 Diego Metropolitan Transit” conspired to violate her civil rights through “threats,  
8 physical harm and falsifying documents.” (ECF No. 13, at 1–2.)<sup>1</sup> It appears that  
9 Plaintiff is attempted to allege causes of action: (1) violation of 42 U.S.C. § 1985  
10 (based on Plaintiff’s citation to *Carpenters v. Scott*, 463 U.S. 825 (1983)); (2) violation  
11 of 42 U.S.C. § 1983; (3) violation of the Civil Rights Act of 1964; and (4) violation of  
12 the Americans with Disabilities Act of 1990; and (5) claims under the Federal Tort  
13 Claims Act. (*Id.* at 2–3.)

14 Plaintiff alleges that “U.S. Governmental personnel, State of California, Cuntly  
15 of San Diego, City of San Diego, and The San Diego Metropolitan Transit did carry out  
16 this threat against plaintiff” “to violate her Constitution Rights [sic] with threats,  
17 physical harm and falsifying documents.” (*Id.* at 1–2.) Plaintiff further alleges that  
18 “[t]he defendant continue [sic] to commit crimes against plaintiff” and that “Plaintiff  
19 and her family had a contract placed on their lives, evicted, poison, medical evidence  
20 wrote [sic], and medical records given to police.” (*Id.* at 2.) Plaintiff also alleges that  
21 “San Diego State University continues to discriminate and harass plaintiff.” (*Id.* at 3.)  
22 Plaintiff also alleges that the “state hearing judge did conspire to hindering with  
23 obstructing, due course of justice in the State [sic].” (*Id.* at 4.)

## 24 **III. LEGAL STANDARD**

25 A complaint filed by any person proceeding IFP pursuant to § 1915(a) is subject  
26 to mandatory sua sponte review and dismissal by the Court if it is “frivolous, or

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28 <sup>1</sup> Pursuant to Plaintiff’s reference to the Fourteenth Amendment and *Carpenters*  
*v. Scott*, 463 U.S. 825 (1983), (*see* ECF No. 13, at 1–2), the Court construes Plaintiff’s  
FAC as a cause of action for violation of 42 U.S.C. § 1985(3).

1 malicious; fails to state a claim upon which relief may be granted; or seeks monetary  
2 relief against a defendant immune from such relief.” 28 U.S.C. § 1915(e)(2)(B);  
3 *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001) (“[T]he provisions of 28 U.S.C.  
4 § 1915(e)(2)(B) are not limited to prisoners.”).

5 The requirements under 28 U.S.C. § 1915(e)(2)(B)(ii) are analogous to those  
6 under Federal Rule of Civil Procedure 12(b)(6). While a plaintiff need not give  
7 “detailed factual allegations,” a plaintiff must plead sufficient facts that, if true, “raise  
8 a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,  
9 545 (2007). To state a claim upon which relief may be granted “a complaint must  
10 contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is  
11 plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*,  
12 550 U.S. at 547). A claim is facially plausible when the factual allegations permit “the  
13 court to draw the reasonable inference that the defendant is liable for the misconduct  
14 alleged.” *Id.* In other words, “the non-conclusory ‘factual content,’ and reasonable  
15 inferences from that content, must be plausibly suggestive of a claim entitling the  
16 plaintiff to relief.” *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009).  
17 “Determining whether a complaint states a plausible claim for relief will . . . be a  
18 context-specific task that requires the reviewing court to draw on its judicial experience  
19 and common sense.” *Iqbal*, 556 U.S. at 679.

20 In reviewing a complaint for whether it fails to state a claim on which relief may  
21 be granted, the court must assume the truth of all factual allegations and must construe  
22 all inferences from them in the light most favorable to the nonmoving party. *Thompson*  
23 *v. Davis*, 295 F.3d 890, 895 (9th Cir. 2002); *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d  
24 336, 337–38 (9th Cir. 1996). Legal conclusions, however, need not be taken as true  
25 merely because they are cast in the form of factual allegations. *Ileto v. Glock, Inc.*, 349  
26 F.3d 1191, 1200 (9th Cir. 2003); *W. Mining Council v. Watt*, 643 F.2d 618, 624 (9th  
27 Cir. 1981).

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### III. DISCUSSION

The Court will address each of the alleged factual bases in turn.

First, Plaintiff alleges that the U.S. government is liable under the FTCA because the IRS “with healed [sic]” her “earn [sic] check,” did not call her when she applied for a job, and “commit[s] criminal acts on people.” (ECF No. 13, at 4.) However, Plaintiff’s complaint does not allege that she was entitled to a check from the IRS nor does it allege what “criminal acts” the IRS committed. (*Id.*) Additionally, failure to call a job applicant is not tortious conduct that the U.S. would be subject to liability for under the FTCA. *See* 28 U.S.C. § 1346(b)(1). Accordingly, the Court finds that the allegations regarding the IRS fail to state a claim upon which relief can be granted.

Second, Plaintiff alleges that “defendants did Conspire by force of intimidation, threat to deprive the plaintiff of necessary medical equipments need to attend a court of the United States from testifying [sic].” (ECF No. 13, at 4.) Again, Plaintiff’s complaint does not specifically allege who actually deprived Plaintiff of medical equipment nor does it allege that she was somehow entitled to medical equipment from that defendant. Accordingly, the Court finds that the allegations regarding the alleged conspiracy fail to state a claim upon which relief can be granted.

Third, Plaintiff alleges that she was “injured by an action.” (ECF No. 13, at 4.) Yet Plaintiff fails to adequately allege what this “action” is and also fails to allege how that “action” is a cognizable cause of action under the Civil Rights Act of 1964 or the Americans with Disabilities Act of 1990. Accordingly, the Court finds that the allegations regarding an “action” under the ADA and CRA fail to state a claim upon which relief can be granted.

Fourth, Plaintiff alleges that an “accident was caused by the city bus her legs began to swell [sic].” (ECF No. 13, at 5.) However, Plaintiff fails to show how this amounts to a violation of 42 U.S.C. § 1983 which requires a deprivation of constitutional rights and Plaintiff does not show how an automobile accident amounts to a constitutional violation. Accordingly, the Court finds that the allegations regarding

1 the automobile accident fail to state a claim upon which relief can be granted.

2 Fifth, Plaintiff alleges that a representative from the United States Department  
3 of Justice “allowed government employees to give people money she know who was  
4 violating.” (ECF No. 13, at 6.) Here Plaintiff has failed to allege how this alleged  
5 transfer of money is a viable cause of action. Accordingly, the Court finds that the  
6 allegations regarding the DoJ and HUD fail to state a claim upon which relief can be  
7 granted.

8 Sixth, Plaintiff alleges that the “State of California has allowed state judges to  
9 deny me justice in the medical” and that there is “documentation which would prove  
10 people working for the state were lying.” (ECF No. 13, at 6.) She also alleges that the  
11 HUD gave the City of San Diego money to build “racial housing” and “not to let people  
12 move in new housing in San Diego on Broadway Street who made under \$17,00 per  
13 year [sic].” (*Id.*) Again, Plaintiff has failed to allege how these actions represent a  
14 viable cause of action. Accordingly, the Court finds that the allegations regarding the  
15 State of California and HUD fail to state a claim upon which relief can be granted.

16 As all of Plaintiff’s alleged factual bases have failed to state a claim upon which  
17 relief can be granted, the Court DISMISSES without prejudice Plaintiff’s FAC, (ECF  
18 No. 13). Additionally, as the IFP statute requires a sua sponte screening that Plaintiff’s  
19 complaint has not yet passed, it is not yet appropriate to direct service. Accordingly,  
20 the Court DENIES without prejudice Plaintiff’s motion to direct service, (ECF No. 16).

#### 21 IV. CONCLUSION AND ORDER

22 Based on the foregoing, **IT IS HEREBY ORDERED** that:


- 23 1. Plaintiff’s FAC, (ECF No. 13), is sua sponte **DISMISSED without**  
24 **prejudice;**
- 25 2. The Court **GRANTS** Plaintiff **thirty (30) days** from the date this Order  
26 is stamped “Filed” to file an amended complaint that addresses the  
27 pleading deficiencies noted above. Plaintiff’s amended complaint must be  
28 complete in itself without reference to the superseded pleading in

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accordance with Civil Local Rule 15.1. Defendants not named and all claims not re-alleged in the amended complaint will be deemed to have been waived. *See King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987); and

3. Plaintiff's Motion to Direct Service, (ECF No. 16), is **DENIED without prejudice.**

DATED: August 25, 2015

  
HON. GONZALO P. CURIEL  
United States District Judge