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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 DR. RACQUEL S. BOVIER, c/o  
12 EPIPHANY ONEPOINTE  
13 TELETHERAPY & ASSOC., LLC,  
14 Plaintiff,

15 v.

16 BRIDGEPOINT  
17 EDUCATION/ASHFORD  
18 UNIVERSITY, BRIDGEPOINT  
19 UNIVERSITY GOVERNING BOARD  
20 OF REGENTS, DR. CRAIG MAXWELL,  
21 DR. ANTHONY "TONY" FARRELL,  
22 DR. DENISE MAXWELL, MR. JOHN  
23 GOODISON, DR. IRIS LAFFERTY, DR.  
24 TAMECCA FITZPATRICK, DR. JUDY  
25 DONOVAN, DR. JACKIE KYGER, MS.  
26 HEATHER MASON, DR. ALAN  
27 BELCHER, MR. ARMONDO  
28 DOMINGUEZ & ASSOC.,

Defendants.

Case No.: 3:17-cv-01052-GPC-JMA

**ORDER:**

**(1) DENYING PLAINTIFF'S  
REQUEST TO PROCEED IN  
FORMA PAUPERIS;**

**(2) DISMISSING IN PART  
PLAINTIFF'S COMPLAINT FOR  
FAILURE TO STATE A CLAIM  
PURSUANT TO 28 U.S.C. §  
1915(e)(2)(B)(ii);**

**(3) GRANTING PLAINTIFF LEAVE  
TO AMEND HER COMPLAINT  
WITHIN 21 DAYS OF ENTRY OF  
THIS ORDER;**

**AND**

**(4) DIRECTING PLAINTIFF TO  
PAY THE FILING FEE ON OR BY  
JUNE 28, 2017**

**[ECF No. 2.]**

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2 On May 23, 2017, Plaintiff Dr. Racquel S. Bovier (“Plaintiff”), proceeding *pro se*,  
3 filed a Complaint against Bridgepoint Education c/o Ashford University, Bridgepoint  
4 Education University, Dr. Craig Maxwell, Dr. Anthony “Tony” Farrell, Dr. Denise  
5 Maxwell, Mr. John Goodison, Dr. Iris Lafferty, Dr. Tamecca Fitzpatrick, Dr. Judy  
6 Donovan, Dr. Jackie Kyger, Dr. Alan Belcher, Ms. Heather Mason, and Mr. Armondo  
7 Dominguez & Associates (collectively, “Defendants”).<sup>1</sup> (Dkt. No. 1.)<sup>2</sup> Plaintiff  
8 concurrently filed a motion to proceed *in forma pauperis* (“IFP”). (Dkt. No. 2.) For the  
9 reasons set forth below, the Court **DENIES** Plaintiff’s motion to proceed *in forma*  
10 *pauperis*, **DISMISSES IN PART** Plaintiff’s Complaint for failure to state a claim  
11 pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), and **GRANTS** Plaintiff leave to amend her  
12 Complaint **within twenty-one (21) days of entry of this Order**. Plaintiff **must pay the**  
13 **filing fee on or by June 28, 2017** to proceed with her lawsuit.

## 14 DISCUSSION

### 15 I. Motion for Leave to Proceed *In Forma Pauperis*

16 All parties instituting any civil action, suit or proceeding in a district court of the  
17 United States, except an application for writ of habeas corpus, must pay a filing fee of  
18 \$400.<sup>3</sup> See 28 U.S.C. § 1914(a). The action may proceed despite a plaintiff’s failure to  
19 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.  
20 § 1915(a). See *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v.*  
21 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). The plaintiff must submit an affidavit  
22 demonstrating his inability to pay the filing fee, and the affidavit must include a complete  
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24 <sup>1</sup> Without any explanation or authority, Plaintiff requests that the Court seal the instant case. (Dkt. No. 1  
25 at 1.) The Court declines to do so.

26 <sup>2</sup> Plaintiff mistakenly conflates the United States District Court with the San Diego Superior Court.  
(Dkt. No. 1 at 1.)

27 <sup>3</sup> In addition to the \$350 statutory fee, civil litigants must pay an additional administrative fee of \$50.  
28 See 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule, § 14  
(eff. Dec. 1, 2016)). The additional \$50 administrative fee does not apply to persons granted leave to  
proceed IFP. *Id.*

1 statement of the plaintiff's assets. 28 U.S.C. § 1915(a)(1). The facts as to the affiant's  
2 poverty must be stated "with some particularity, definiteness, and certainty." *United*  
3 *States v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981). When a plaintiff moves to  
4 proceed IFP, the court first "grants or denies IFP status based on the plaintiff's financial  
5 resources alone and then independently determines whether to dismiss the complaint"  
6 pursuant to 28 U.S.C. § 1915(e)(2) ("§ 1915(e)(2)"). *Franklin v. Murphy*, 745 F.2d 1221,  
7 1226 n.5 (9th Cir. 1984). IFP status may be acquired and lost during the course of  
8 litigation. *Wilson v. Dir. of Div. of Adult Insts.*, No. CIV S-06-0791, 2009 WL 311150,  
9 at \*2 (E.D. Cal. Feb. 9, 2009) (internal citation omitted).

10 Here, Plaintiff has supplied an affidavit in support of her application to proceed *in*  
11 *forma pauperis*. (Dkt. No. 2.) Plaintiff declares that her average monthly income amount  
12 during the past twelve months totaled to approximately \$6599. (*Id.* at 2.) Plaintiff  
13 estimates that her income amount expected next month totals to approximately \$1759.  
14 (*Id.*) She is presently employed by Grand Canyon University and receives \$1500 in gross  
15 monthly pay. (*Id.*) Plaintiff has \$2000 in a savings account and \$2100 in a checking  
16 account. As for assets, Plaintiff owns a \$219,000 home, a \$4000 BMW, a \$12,900  
17 Mercedes Benz, a \$29,000 Alfa Romeo, and a \$25,000 engagement ring. (*Id.* at 3.)  
18 Plaintiff declares that her monthly expenses total \$5404.52. (*Id.* at 5.)

19 In light of Plaintiff's monthly income, assets, and savings and checking accounts,  
20 the Court concludes that Plaintiff can afford the \$400 filing fee. Accordingly, the Court  
21 **DENIES** Plaintiff's request to proceed *in forma pauperis*.

## 22 **II. Sua Sponte Screening**

23 A complaint filed by any person proceeding IFP, pursuant to 28 U.S.C. § 1915(a),  
24 is additionally subject to mandatory *sua sponte* screening. the Court must review  
25 complaints filed by all persons proceeding IFP and must *sua sponte* dismiss any  
26 complaint, or any portion of a complaint, which is frivolous, malicious, fails to state a  
27 claim, or seeks damages from defendants who are immune. *See* 28 U.S.C. §  
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1 1915(e)(2)(B); *Lopez v. Smith*, 203 F.3d 1122, 1126–27 (9th Cir. 2000) (en banc) (§  
2 1915(e)(2)).

3 All complaints must contain “a short and plain statement of the claim showing that  
4 the pleader is entitled to relief.” FED. R. CIV. P. 8(a)(2). Detailed factual allegations are  
5 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by  
6 mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)  
7 (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). “Determining  
8 whether a complaint states a plausible claim for relief [is] . . . a context-specific task that  
9 requires the reviewing court to draw on its judicial experience and common sense.” *Id.*  
10 The “mere possibility of misconduct” falls short of meeting this plausibility standard.  
11 *Id.*; *see also Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009).

12 “When there are well-pleaded factual allegations, a court should assume their  
13 veracity, and then determine whether they plausibly give rise to an entitlement to relief.”  
14 *Iqbal*, 556 U.S. at 679; *see also Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000)  
15 (“[W]hen determining whether a complaint states a claim, a court must accept as true all  
16 allegations of material fact and must construe those facts in the light most favorable to  
17 the plaintiff.”); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (noting that  
18 § 1915(e)(2) “parallels the language of Federal Rule of Civil Procedure 12(b)(6).”).

19 However, while the court “ha[s] an obligation where the Plaintiff is pro se,  
20 particularly in civil rights cases, to construe the pleadings liberally and to afford the  
21 Plaintiff the benefit of any doubt,” *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir.  
22 2010) (citing *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985)), it may not  
23 “supply essential elements of claims that were not initially pled,” *Ivey v. Bd. of Regents of*  
24 *the University of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

25 Here, Plaintiff’s Complaint barely passes muster. Although unclear, Plaintiff  
26 appears to allege that between June and November 2016, Defendants breached various  
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1 employment agreements,<sup>4</sup> (Dkt. No. 1 at 5–6), “fail[ed] to acknowledge” Plaintiff’s  
2 disability accommodations, (*id.* at 5), and wrongfully terminated her in retaliation for her  
3 obtaining right to sue letters from the Equal Employment Opportunity Commission  
4 (“EEOC”) and the California Department of Fair Employment and Housing (“DFEH”),  
5 (*id.* at 1, 5, 10–11).

6 Out of an abundance of caution, the Court declines to dismiss Plaintiff’s contract  
7 claims, given Plaintiff’s allegations regarding employment agreements that Defendants  
8 breached.<sup>5</sup> (*See, e.g.*, Dkt. No. 1 at 5–6, 9–11.) However, as currently pled, Plaintiff’s  
9 retaliation claims fail under either Title I of the Americans with Disabilities Act (“ADA”) or  
10 Title VII. “To establish a prima facie case of retaliation under the ADA, an employee  
11 must show that: (1) he or she engaged in a protected activity; (2) suffered an adverse  
12 employment action; and (3) there was a causal link between the two.” *Pardi v. Kaiser*  
13 *Found. Hosps.*, 389 F.3d 840, 849 (9th Cir. 2004). Similarly, under Title VII, “[t]o make  
14 out a prima facie case of retaliation, [plaintiff] must establish that [s]he undertook a  
15 protected activity under Title VII, h[er] employer subjected h[er] to an adverse  
16 employment action, and there is a causal link between those two events.” *Vasquez v. Cty.*  
17 *of Los Angeles*, 349 F.3d 634, 646 (9th Cir. 2003), *as amended* (Jan. 2, 2004). Here,  
18 Plaintiff has not shown that she engaged in a protected activity that caused the adverse  
19 employment action. While she states that Defendants’ wrongful conduct occurred  
20 between June 21, 2016 and November 30, 2016, Plaintiff’s right to sue letter from the  
21 EEOC is dated March 22, 2017, (Dkt. No. 1 at 15), and Plaintiff’s DFEH written notice  
22 indicates that Plaintiff filed a complaint with both the DFEH and EEOC on March 2,  
23 2017, (*id.* at 16). Given that Plaintiff filed a complaint with the DFEH and EEOC and  
24 received right to sue letters *after* the alleged wrongful conduct occurred, Plaintiff has not  
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26 <sup>4</sup> Plaintiff brings the instant contract claims under specific subsections of the Uniform Commercial Code  
27 (“U.C.C.”). (Dkt. No. 1 at 6.) The U.C.C. is not a source of federal law, as contract claims are governed  
28 by state law.

<sup>5</sup> Diversity jurisdiction appears to be proper at this juncture, given that the amount in controversy  
exceeds \$75,000, and that complete diversity seems to exist.

1 alleged that her engagement in protected activity caused any adverse employment  
2 actions.

3 Finally, while Plaintiff obtained a right to sue letter from the EEOC, Plaintiff has  
4 not alleged facts underlying a failure to accommodate claim under the ADA. Plaintiff  
5 makes passing reference to Defendants' "failure to acknowledge the Disability  
6 Accommodations" despite awareness of her disabilities, (Dkt. No. 1 at 5), and includes a  
7 medical form stating that Plaintiff has generalized anxiety disorder, (*id.* at 30). "To  
8 establish a prima facie case for failure to accommodate under the ADA, [plaintiff] must  
9 show that '(1) [s]he is disabled within the meaning of the ADA; (2) [s]he is a qualified  
10 individual able to perform the essential functions of the job with reasonable  
11 accommodation; and (3) [s]he suffered an adverse employment action because of [her]  
12 disability.'" *Samper v. Providence St. Vincent Med. Ctr.*, 675 F.3d 1233, 1237 (9th Cir.  
13 2012) (quoting *Allen v. Pac. Bell*, 348 F.3d 1113, 1114 (9th Cir.2003)). Beyond  
14 conclusory allegations that Defendants failed to accommodate her disability under the  
15 ADA, Plaintiff has not alleged sufficient factual allegations, such as what reasonable  
16 accommodations she was entitled to, or how Defendants failed to provide such  
17 reasonable accommodations.

18 Accordingly, the Court **DISMISSES IN PART** Plaintiff's Complaint.  
19 Specifically, the Court dismisses Plaintiff's retaliation claims, whether they are brought  
20 under Title VII or the ADA, and dismisses Plaintiff's failure to accommodate claim under  
21 the ADA. If Plaintiff elects to file an Amended Complaint, she should supply well-  
22 pleaded factual allegations to state prima facie retaliation and failure to accommodate  
23 claims.

## 24 CONCLUSION

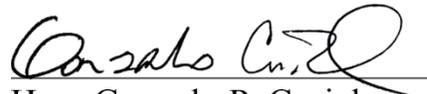
25 For the foregoing reasons, the Court **DENIES** Plaintiff's motion to proceed *in*  
26 *forma pauperis*. Plaintiff **must pay the filing fee on or by June 28, 2017** to proceed  
27 with her lawsuit. The Court **DISMISSES IN PART** Plaintiff's Complaint and  
28 **GRANTS** Plaintiff leave to amend her Complaint **within twenty-one (21) days of entry**

1 **of this Order.** Plaintiff may file an Amended Complaint which cures all of the  
2 deficiencies of pleading described in this Order. If Plaintiff elects to file an Amended  
3 Complaint, it must be complete by itself without reference to the original pleading. *See*  
4 *S.D. CAL. CIV. LR 15.1; Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d  
5 1542, 1546 (9th Cir. 1989) (“[A]n amended pleading supersedes the original.”); *Lacey v.*  
6 *Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (noting that claims dismissed with  
7 leave to amend which are not re-alleged in an amended pleading may be “considered  
8 waived if not repled.”).

9 Plaintiff is directed to take note that failure to pay the requisite filing fee by the  
10 Court’s deadline may result in dismissal of her lawsuit for failure to prosecute. *See Fed.*  
11 *R. Civ. P. 4(m).*

12 **IT IS SO ORDERED.**

13 Dated: June 7, 2017

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15 Hon. Gonzalo P. Curiel  
16 United States District Judge  
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