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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 LISA ANDERSON,

12 Plaintiff,

13 v.

14 DOES 1-6;
15 MARK HELD, METROPOLITAN
16 TRANSIT SYSTEM – S.D.T.C.;
17 GREGORY WILLIAMS, TRANSDEV
18 SERVICE, INC.,

Defendants.

Case No.: 18cv2137-JAH (WVG)

**ORDER GRANTING DEFENDANT’S
MOTION TO DISMISS (Doc. No. 29)**

19
20 **INTRODUCTION**

21 Pending before the Court is Defendant Transdev Services, Inc.’s (“Defendant”) motion to dismiss Plaintiff Lisa Anderson’s (“Plaintiff”) First Amended Complaint (the “FAC”). Doc. No. 29. The motion is unopposed. After careful consideration of the pleadings, and for the reasons set forth below, Defendant’s Motion to Dismiss is **GRANTED.**

26 **BACKGROUND**

27 On September 14, 2018, pro se Plaintiff Lisa Anderson filed an action against
28 Defendants Does 1-6, Mark Held, Metropolitan Transit System-S.D.T.C., Gregory

1 Williams, and Transdev Service, Inc., alleging “deprivation of civil rights secured by the
2 First, First, and Fourteenth Amendment” and intentional infliction of emotional distress
3 (the “Complaint”). Doc. No. 1. Plaintiff claims that unidentified bus drivers mocked her,
4 made noises at her while she was on the street or on the bus, and used excessive force on
5 the Plaintiff. Id. at pg. 3. On January 2, 2019, Defendant filed a motion to dismiss the
6 Complaint pursuant to Rule 12(b)(1) and Rule 12(b)(6) of the Federal Rules of Civil
7 Procedure. Doc. No. 11. On March 4, 2019, this Court granted Defendant’s motion, with
8 leave to amend within thirty (30) days. Doc. No. 17.

9 Plaintiff filed the FAC on April 4, 2019. Doc. No. 18. Defendant filed a motion to
10 dismiss the FAC pursuant to Rule 12(b)(1) and Rule 12(b)(6) of the Federal Rules of Civil
11 Procedure on May 31, 2019. Doc. No. 29. Plaintiff has not responded to Defendant’s
12 motion.

13 **DISCUSSION**

14 **I. Legal Standard**

15 **A. Federal Rule of Civil Procedure 12(b)(1)**

16 Under 12(b)(1) of the Federal Rules of Civil Procedure, a defendant may seek to
17 dismiss a complaint for lack of jurisdiction over the subject matter. The federal court is
18 one of limited jurisdiction. See *Gould v. Mutual Life Ins. Co. v. New York*, 790 F.2d 769,
19 774 (9th Cir. 1986). As such, it cannot reach the merits of any dispute until it confirms its
20 own subject matter jurisdiction. See *Steel Co. v. Citizens for a Better Environ.*, 523 U.S.
21 83, 95 (1998). When considering a Rule 12(b)(1) motion to dismiss, the district court is
22 free to hear evidence regarding jurisdiction and to rule on that issue prior to trial, resolving
23 factual disputes where necessary. See *Augustine v. United States*, 704 F.2d 1074, 1077
24 (9th Cir. 1983). In such circumstances, “[n]o presumptive truthfulness attaches to
25 plaintiff’s allegations, and the existence of disputed facts will not preclude the trial court
26 from evaluating for itself the merits of jurisdictional claims.” Id. (quoting *Thornhill*
27 *Publishing Co. v. General Telephone & Electronic Corp.*, 594 F.2d 730, 733 (9th Cir.
28 1979)). Plaintiff, as the party seeking to invoke jurisdiction, has the burden of establishing

1 that jurisdiction exists. See *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377
2 (1994).

3 To effectively state a claim for a civil rights violation under Section 1983, the
4 claimant must allege: (1) that a right secured by the Constitution or laws of the United
5 States was violated, and (2) the alleged violation was committed by a person acting under
6 the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988). A person “acting under the
7 color of state law” in violation of Section 1983 requires a defendant to exercise power
8 “possessed by virtue of state law and made possible only because the wrongdoer is clothed
9 with the authority of state law.” *Id.* at 49.

10 “Ordinarily, a pro se complaint will be liberally construed and will be dismissed only
11 if it appears ‘beyond doubt that the plaintiff can prove no set of facts in support of his claim
12 which would entitle him to relief.’” *Pena v. Gardner*, 976 F.2d 469, 471 (9th Cir. 1992)
13 (internal quotes omitted). However, “[v]ague and conclusory allegations of official
14 participation in civil rights violations are not sufficient to withstand a motion to dismiss.”
15 *Ivey v. Board of Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

16 **B. Federal Rule of Civil Procedure 12(b)(6)**

17 A motion to dismiss under Rule 12(b)(6) tests the sufficiency of the complaint.
18 *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Dismissal is warranted under Rule
19 12(b)(6) where the complaint lacks a cognizable legal theory or fails to allege sufficient
20 facts to support a cognizable legal theory. *Li v. Kerry*, 710 F.3d 995, 999 (9th Cir. 2013).
21 “To survive a motion to dismiss, a complaint must contain sufficient factual matter,
22 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*,
23 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570
24 (2007)). A claim is facially plausible when the factual allegations permit “the court to draw
25 the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*,
26 556 U.S. at 678. In other words, “the non-conclusory ‘factual content,’ and reasonable
27 inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff
28 to relief.” *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (citing *Iqbal*, 556

1 U.S. at 678). “Determining whether a complaint states a plausible claim for relief will . . .
2 be a context-specific task that requires the reviewing court to draw on its judicial
3 experience and common sense.” *Iqbal*, 556 U.S. at 679.

4 In reviewing a motion to dismiss under Rule 12(b)(6), a court must assume the truth
5 of all factual allegations and construe the factual allegations in the light most favorable to
6 the nonmoving party. *Cahil v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996).
7 However, legal conclusions need not be taken as true merely because they are “cast in the
8 form of factual allegations.” *Ileto v. Glock Inc.*, 349 F.3d 1191, 1200 (9th Cir. 2003). “Nor
9 does a complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual
10 enhancement.’” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 557). The court may
11 consider facts alleged in the complaint, documents attached to the complaint, documents
12 relied upon but not attached to the complaint when authenticity is not contested, and
13 matters of which the court takes judicial notice. *Lee v. City of Los Angeles*, 250 F.3d 668,
14 688-89 (9th Cir. 2001). If a court determines that a complaint fails to state a claim, the court
15 should grant leave to amend unless it determines that the pleading could not possibly be
16 cured by the allegation of other facts. *Doe v. United States*, 58 F.3d 494, 497 (9th Cir.
17 1995).

18 **II. Analysis**

19 Civil Local Rule 7.1(f)(3)(c) provides that “[i]f an opposing party fails to file the
20 papers in the manner required by Civil Local Rule 7.1e.2, that failure may constitute a
21 consent to the granting of a motion or other request for ruling by the court.” Moreover, the
22 Ninth Circuit has recognized that failure to follow a district court’s local rules is a proper
23 ground for dismissal. See *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (affirming a
24 district court’s dismissal of a pro se plaintiff’s complaint for failure to timely oppose a
25 motion to dismiss where she had notice of the motion and ample time to respond).

26 The hearing date for Defendant’s motion to dismiss was scheduled for July 8, 2019
27 at 2:30 p.m. Local Rule 7.1e.2 requires that an opposition must be filed and served no later
28 than fourteen (14) calendar days prior to the noticed hearing. Thus, Plaintiff’s opposition

1 was due by June 25, 2019. The Court has not received any opposition from Plaintiff, nor
2 has she requested additional time to file such an opposition. Accordingly, pursuant to Civil
3 Local Rule 7.1(f)(3)(c), the Court deems Plaintiff’s failure to oppose Defendant’s Motion
4 as consent to granting it.

5 The above conclusion makes consideration of Defendant’s motions unnecessary.
6 However, in the interest of justice, the Court will address Defendant’s 12(b)(1) and
7 12(b)(2) motions to dismiss.

8 Defendant argues that Plaintiff fails to invoke federal jurisdiction. Doc. No. 29 at
9 pg. 14. Defendant contends that Plaintiff’s alleged claims under the Constitution or federal
10 statutes appears to be immaterial and made solely for the purpose of obtaining jurisdiction.
11 Id. at pgs. 14-15. In addition, Defendant asserts that Plaintiff’s IIED claim is not
12 cognizable under Section 1983. Id. at pg. 15. Defendant also argues that even if IIED was
13 a recognizable claim under Section 1983, Plaintiff fails to fulfill the elements of an IIED
14 claim. Id.

15 The Court agrees with Defendant that Plaintiff fails to invoke federal jurisdiction.
16 In reviewing Plaintiff’s pleadings, the Court finds that Plaintiff fails to meet the burden of
17 establishing federal jurisdiction. See Kokkonen, 511 U.S. at 377. Plaintiff claims that the
18 transit drivers acted in “a malicious, willful, rude, violent, intimidated, threatening,
19 maligned, and insolent manner.” Doc. No. 18 at pg. 3. Here, the Court finds that Plaintiff
20 fails to properly plead that these actions violated her Constitutional and civil rights.
21 Therefore, the Court finds that it lacks subject matter jurisdiction because Plaintiff fails to
22 plead a federal question, and there is no complete diversity of citizenship between parties.

23 Defendant also moves to dismiss for failure to state a claim for which relief can be
24 granted. Id. at pgs. 9-13. Defendant argues Plaintiff’s “FAC fail to state any facts that
25 could conceivably support . . . any wrongdoing by [Defendant] . . . or any purported
26 [Defendant’s] employees.” Id. at pg. 13.

27 The Court agrees with Defendant that Plaintiff fails to state a claim for which relief
28 can be granted. See Doc. No. 29, pgs. 9-13. Plaintiff claims that Defendants would “hit

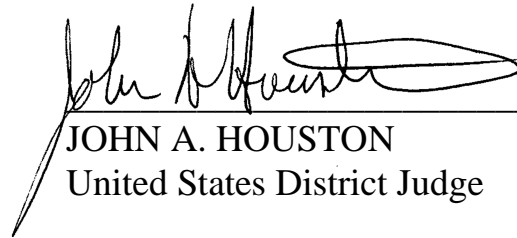
1 out a loud boom directly at plaintiff,” and that transit drivers yelled in a menacing manner
2 for her to “shut up or get off the bus.” Doc. No. 18 at pg. 3. The Court finds that Plaintiff
3 allegations are insufficient to support a cognizable legal theory. See Li, 710 F.3d at 999.
4 Even viewing Plaintiff’s allegations in light most favorable to her and under the most
5 liberal pleading standards provided to pro se plaintiffs, the FAC fails to suggest a claim
6 entitling her to relief. See Moss, 572 F.3d at 969.

7 **CONCLUSION**

8 Based on the foregoing reasons, the Court hereby **DISMISSES** Plaintiff’s FAC
9 (Doc. No. 18) **with prejudice**.

10 **IT IS SO ORDERED.**

11 DATED: September 23, 2019

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14 A handwritten signature in black ink, appearing to read "John A. Houston", is written over a horizontal line. The signature is cursive and somewhat stylized.
15 JOHN A. HOUSTON
16 United States District Judge
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