TABLE OF APPENDIX CONTENT

APPENDIX A (Appeals MANDATE).

APPENDIX B (Appeals DISMISSED and DENIED Motion for Reconsideration to appear in forma *pauperi*)

APPENDIX C (Appeals DENIED Request for Opinion as to why concluded case is frivolous; DENIED; Reconsideration for Dismissing case and Denied Petition for Rehearing en banc. Also, DENIED Motion to extend time to file Opening Brief; Motion to appoint a pro bono attorney in petitioner's case; and Motion to appear in forma *pauperi*. DISMISSED case).

APPENDIX D (Central District Court. Final Judgment)

APPENDIX E (Central District Court. Orders)

APPENDIX F (Central District Court, Report & Recommendation)

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARILU F. TOUMA	)	
	)	No. 18-55996
Plaintiff, Appellant,	)	D.C. No. 8:17-cv-
	)	01132-VBF-KS
v.	)	U. S. District Court) for Central Court,
THE GENERAL COUNSEL OF THE REGENTS, AKA The Regents; et al,	)	California, Santa Ana.
	)	
Defendants – Appellees.	)	**MANDATE**

On May 1, 2019, the court of appeals entered its mandate that the judgment of the court entered on January 18, 2019 constitute the formal mandate of the Court.

FILED MAY 1, 2019

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARILU F. TOUMA	)	
	)	No. 18-55996
Plaintiff, Appellant,	)	D.C. No. 8:17-cv-
	)	01132-VBF-KS
v.	)	U. S. District Court)
	)	for Central Court,
THE GENERAL COUNSEL	)	California,
OF THE REGENTS, AKA	)	Santa Ana.
The Regents; et al,	)	
	)	
Defendants – Appellees.	)	**ORDER**

Filed order (STEPHEN S. TROTT, RICHARD C. TALLMAN and CONSUELO M. CALLAHAN) We treat Touma's filings (Docket Entry Nos. [31], [32], [33], [34], [35] & [36]) as a combined motion for reconsideration and reconsideration en banc. Touma's motion for reconsideration is denied and Touma's motion for reconsideration en banc is denied on behalf of the

court. See 9th Cir. R. 27-10; 9th Cir. Gen. Ord. 6.11. Touma's request for an opinion (Docket Entry No. [37]) is denied. No further filings will be entertained in this closed case. [11273444] (OC)

FILED APRIL 23, 2019

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARILU F. TOUMA	)	
	)	No. 18-55996
Plaintiff, Appellant,	)	D.C. No. 8:17-cv-01132-VBF-KS
v.	)	Central District of
THE GENERAL COUNSEL OF THE REGENTS, AKA The Regents; et al.,	)	California, Santa Ana
Defendants – Appellees.	)	**ORDER**

Before: STEPHEN S. TROTT, RICHARD C. TALLMAN and CONSUELO M. CALLAHAN, Circuit Judges:

The district court certified that this appeal is frivolous and has denied appellant leave to proceed in forma pauperis on appeal. See 28 U.S.C. § 1915(a). On August 24, 2018, we ordered appellant to explain in writing why this appeal should not be dismissed as frivolous.

APPENDIX C

See 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record and response to the court's order to show cause, we also conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry Nos. 22 & 23) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

All other pending motions and requests are denied as moot. DISMISSED. [11159182] (RT)

DISMISSED.

FILED JANUARY 18, 2019.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

MARILU F. TOUMA, Plaintiffs, v. The General Counsel of the Regents, Dr. Veena Ranganath, Dr. Roy Altman, Dr. Emily Huang, Dr. David Feinberg, City of Los Angeles, Los Angeles County, Melissa Ginsburg, Mike Unknown Last Name, Nicholas Baca, Michael Weingrow,Barner Goodwin, Bristol-Myers Squibb, and Does 1-10, Defendants,	)	**SA CV 17 01132-VBF-KS** **FINAL JUDGMENT**

Final Judgment is hereby entered in favor of all defendants and against plaintiff Marilu F. Touma.

IT IS SO ADJUDGED.

Dated: July 6, 2018

Valerie Baker Fairbank-stamp /s/
Honorable Valerie Baker Fairbank
Senior United States District Judge

APPENDIX D

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

MARILU F. TOUMA, Plaintiffs, v. The General Counsel of the Regents, Dr. Veena Ranganath, Dr. Roy Altman, Dr. Emily Huang, Dr. David Feinberg, City of Los Angeles, Los Angeles County, Melissa Ginsburg, Mike Unknown Last Name, Nicholas Baca, Michael Weingrow, Barner Goodwin, Bristol-Myers Squibb, and Does 1-10, Defendants,	) **Case No. SA CV 17 01132-VBF-KS**) **ORDER**) Overruling Petitioner's Objections; Adopting the Report & Recommendation; Dismissing Second Amendment Complaint; Dismissing the Action With Prejudice; Directing Entry of Final Judgment; Terminating and Closing Action (JS-6)

This is a civil-rights action brought by a non-incarcerated party proceeding pro se. This Court has reviewed the Second Amendment Complaint. The Magistrate Judge's April 5 2018 Report & Recommendation ("R&R"), plaintiff's Touma's April 26, 2018 objections, and the applicable law. "As required by Fed. R. Civ. P. 72 (b)(3),

EXHIBIT E

the Court has engaged in the novo review of the portions of the R&R to which petitioner has specifically objected and finds no defect of law, fact, or logic in the ..." R&R." *Rael* v. *Foulk*, 2015 WL4111295, *1 (C.D. Cal. July 7, 2015), *COA denied,* No. 15-56205 (9th Cir. Feb. 18, 2016).

"The Court finds discussion of [the] objections to be unnecessary on this record. The Magistrate Act 'merely requires the district judge to make a de novo determination of those portions of the report or specified proposed finding or recommendation to which objection is made.'" It does not require the district judge to provide a written explanation of the reasons for rejecting objections. See Mackenzie v. Calif. Attorney General, 2016 WL 5339566, *1(C.D. Cal. Sept. 21, 2016) (quoting *US* v *Bayer AG, 639* F. App'x 164, 168-69 (4th Cir. 2016) (per curiam) ("The district court complied with this requirement. Accordingly, we find no procedural error in the district court's decision not to

address specifically Walterspiel's objections.")). "This is particularly true where, as here, the objections are plainly unavailing." Smith v. Calif. Jud. Council, 2016 WL 6069179, *2 (C.D. Cal. Oct. 17, 2016). Accordingly, the Court will accept the Magistrate Judge's factual findings and legal conclusions and implement her recommendations.

ORDER

Plaintiff's Touma's objections **[Doc # 33] is OVERULED.** The Report & Recommendation **[Doc # 22] is ADOPTED.** The Second Amended Complaint [Doc # 29] **is DISMISSED** without leave to amend.

Final Judgment consistent with this order will be entered separately as required by Fed. R. Civ. P. 58(a). See *Jayne* v. *Sherman*, 706 F. 3d 994, 1009 (9th Cir. 2013).

This action is DISMISSED with prejudice.

This case SHALL BE TERMINATED and closed (JS-6)

Dated: July 6, 2018

Valerie Baker Fairbank-stamp /s/
Honorable Valerie Baker Fairbank
Senior United States District Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARILU F. TOUMA Plaintiff, v. GENERAL COUNSEL OF THE REGENTS, et al, Defendants,	) NO. SA CV 17-1132- VBF-KS))) **REPORT AND**) **RECOMMENDATION OF**) **UNITED STATES**) **MAGISTRATE JUDGE**))	

This Report and Recommendation is submitted to the Honorable Valerie Baker Fairbank, United States District Judge, pursuant to 28 U.S.C. 636 and General Order 05-07 of the United States District Court for the Central District of California.

INTRODUCTION

On June 30, 2017, Marilu F. Touma ("Plaintiff"), a California resident proceeding *pro se* and in forma *pauperis,* filed a civil rights complaint ("the Complaint") (Dkt. No 1) and a request to proceed in forma pauperis (Dkt. No 3). On July 7, 2017, the Court granted Plaintiff's request to proceed in *forma pauperis* (Dkt. No 9) and on July 24, 2017,

the Court dismissed the Complaint with leave to amend and ordered Plaintiff to filed, within 30 days, a First Amended Complaint (Dkt. No 13). On November 27, 2017, after numerous extensions of time (see Dkt. Nos 15, 18, 21), Plaintiff filed a First Amended Complaint (the "FAC") (Dkt. No 23). On December 13, 2017, the Court dismissed the FAC with leave to amend. (Dkt. No 24).

Plaintiff attempted to file her SAC on January 16, 2018, but the Court rejected the pleading because the filing was late and she did not submit the SAC as one document. (Dkt. No 25). On January 17, 2018, Plaintiff filed a Declaration in Support of her SAC, asking the Court to "allow Plaintiff's Second Amended Complaint" in two separate documents. (Dkt. No 26 at 1). On January 25, 2018, the Court issued an Order denying Plaintiff's request that the Court accept her incorrectly filed SAC. (Dkt. No 27). Then, on January 29, 2018, Plaintiff filed Objections to the Court's Order rejecting the SAC. (Dkt. No 28). On February 2, 2018, Plaintiff properly filed a complete SAC in one document (Dkt. No 29), and on February 6, 2018, the Court Ordered that the SAC be filed and processed with a filing date of February 2, 2018. (Dkt. No 30).

Plaintiff sues the following entities and individuals for alleged civil rights violations arising from medical treatment that she received at the Ronald Reagan UCLA Medical Center (the "Medical Center"): the City of Los Angeles; Los Angeles County; San Bernandino County; The State of California; UCLA Hospital and University of California Board of Regents (the "UC Board of Regents"); Dr. Veena Ranganath, a rheumatoid arthritis specialist affiliated with the Medical Center; Dr. Roy Altman, a rheumatoid arthritis specialist affiliated with the Medical Center; Melissa Ginsburg, a nurse affiliated with the Medical Center; Mike a nurse affiliated with the Medical Center; Nicholas Baca, a hospital clerk affiliated with the Medical Center; Emily Huang, a physician affiliated with the Medical Center; Michael Weingrow, a licensed physician employed at the Medical Center; David T. Feinberg, a medical administrator at the Medical Center; Barner Goodwin, a director of security at the Medical Center; Bristol-Meyers Squibb; and Does 1 through 10, who are described as "UCLA employees/county/state/federal governmental agencies/employees who/whom are (were) aware/have (had)some knowledge of the alleged violations." (SAC at 5-18,) 1

Plaintiff alleges violation of 42 U.S.C, 1981, 1983, 1985;45 C.F.R. 46; the Americans with Disability Act; and the Rehabilitation Act based on alleged racial discrimination, denial of medical services, and retaliation. (SAC at 1-2; 26, 47, 67.)

STANDARD OF REVIEW

In Civil actions where the plaintiff is proceeding in forma *pauperis* ("IFT"), Congress requires district courts to dismiss the complaint "at any time" if the court determines that the complaint, or any portion thereof: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be

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1 In the "parties" section of the SAC, Plaintiff also names Barner Goodwin and Daniel T. Feinberg as defendants but she does not mention them in any of the Causes of Action outlines in the SAC. She does not name these individuals in the caption of the SAC or allege any facts anywhere in the SAC indicating their involvement in any alleged misconduct. Accordingly, Plaintiff fails to state any claim against those individuals. To the extent the facts alleged in the other section of the SAC allude to claims against these individuals, those claims are dismissed pursuant to the Rule 12 (b) (6) of the Federal Rules of Civil Procedures for failure to state a claim. *(See discussion infra.)*

2 Even when a plaintiff is not proceeding IFP, Rule 12(b)(c) permits a trial court to dismiss a claim *sua sponte* and without notice "where the claimant cannot possibly win relief." Omar v. Sea-Land Serv., Inc. 813 F.2d 986, 991 (9th Cir. 1987); see also *Sparling v. Hoffman Constr. Co.*, 864 F.2d 635, 638 (9th Cir. 1988) (same); *Baker v. Director, U.S. Parole Comm'n*, 916 F.2d 725,726 (D.C. Cir. 1990) *(per curiam)* (adopting Ninth Circuit's position in *Omar* in noting that in that circumstances a *sua sponte* dismissal "is practical and fully consistent with plaintiff's rights and the efficient use of judicial resources"). The court's authority in this regard includes *sua sponte* dismissal of claims against defendants who have not been served and defendants who have not yet answered or appeared. *See Abagnin v. AMVAC Chemical Corp.*, 545 F.3d 733, 742-743 (9th Cir. 2008); *See also Reunion, Inc. v. F.A.A.*, 719 F. Supp. 2d 700, 701 n.1 (S.D. Miss. 2010) ("[T]he fact that [certain] defendants have not appeared and filed a motion to dismiss is no bar to the court's consideration of dismissal of the claims against them for failure to state a claim upon which relief can be granted, given that a court may dismiss any complaint *sua sponte* for failure to stay a claim for which relief can be granted pursuant Rule12(b)(6).")

granted; or (3) seeks monetary relief from a defendant who is immune from such relief. 2 28 U.S.C. 1915 (e)(2).

In determining whether a complaint should be dismissed at screening, the Court applies the standard of Federal Rule of Civil Procedure Rule12(b)(6): "[a] complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Rosati v. Igbinoso*, 791 F.3d 1037, 1039 (9th Cir. 2015). Thus, the plaintiff's factual allegations must be sufficient for the court to "draw the reasonable inference that the defendant is liable for the misconduct alleged." *Cook v. Brewer*, 637 F.3d 1002, 1004 (9th Cir. 2011) (citation and internal quotation marks omitted); see also *Bell Atlantic Corp. v. Twonbly*, 550 U.S. 544, 555 (2007) ("Factual allegations must be enough to raise a right to relief above the speculative level.").

When a plaintiff appears pro se in a civil right case, the court must construe the pleadings liberally and afford the plaintiff the benefit of any doubt. *Akhtar v. Mesa*, 698 F.3d 1202,1212 (9th Cir. 2012); see also *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) ("A document filed *pro se* is to be liberally construed, and a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." (citations and internal quotation marks omitted). In giving liberal

interpretation to a *pro se* complaint, however, the court may not supply essential elements of a claim that were not initially pled. *Byrd v. Maricopa County Sheriff's Dep's*, 629 F.3d 1135, 1140 (9th Cir. 2011), and the court need not accept as true "allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences," *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

If the court finds that a *pro se* complaint fails to state a claim, the court must give the *pro se* litigant leave to amend the complaint unless "it is absolutely clear that the deficiencies of the complaint could not be cured by amendment." Akhtar, 698 F.3d at 1212 (internal quotation marks omitted); Lira v. Herrera, 427 F.3d at 1164, 1176 (9th Cir. 2005). However, if amendment of the pleading would be futile, leave to amend may be denied. *See Gonzales v. Planned Parenthood of Los Angeles,* 759 F.3d 1112, 1116 (9th Cir. 2014). "The district court's discretion in denying amendment is "particularly broad" when it has previously given leave to amend." *Id.*

I. ALLEGATIONS OF THE SAC

A. Defendants Altman and Ranganath

Plaintiff alleges that she is a "Hispanic disable [sic] woman" and English is her second language (SAC at 19.)

She was diagnosed with rheumatoid arthritis in approximately 2010. (*Id* at 20.) In August 2012, she sought treatment for rheumatoid arthritis with Defendant Altman, a rheumatoid arthritis specialist at the Medical Center. (I*d* at 27.) Plaintiff informed him that she received state disability and Defendant Altman allegedly told Plaintiff that "she could not afford the expensive medications." (*Id* at 30.) He suggested that Plaintiff instead join a study led by Defendant Ranganath, but failed to disclose the "criteria/Exclusion/side effects/Disadvantages of any crucial information about the study; ONLY the advantages." (*Id* at 34.)

Approximately one week later, Plaintiff contacted Altman because she was experiencing pain. (*Id* at 36-37.) Altman again suggested that Plaintiff join the study conducted by Ranganath. (I*d* at 38.) According to Plaintiff, Altman did not provide her with any information about her medical conditions, refuse her service, and did not make a "quality interpreter" available to ensure that she understood the nature of her medical conditions or the study. (I*d* at 42-44.) Plaintiff alleges she "felt forced to be in Ranganath' [sic] study." (I*d* at 39.)

Plaintiff first met with Dr. Ranganath on November 9, 2012. (I*d* at 48) Plaintiff experienced "several symptoms."

Including pain, headaches, swelling, and "other physical and emotional symptoms." (*Id.*) She discussed her medical history with Ranganath and expressed a desire to become pregnant in the future. (*Id* at 49.) Plaintiff alleges that, during the appointment, Ranganath disclosed "only the advantages" of the study and did not disclose enough information for Plaintiff to properly evaluate whether she should participate, including that "the Free Medication ORENCIA was expired." (*Id* at 50.) Plaintiff alleges that, after ordering several lab test and "other exams," Ranganath only diagnosed Plaintiff with rheumatoid arthritis, but concealed other medical conditions from her. (*Id* at 52-53.) Plaintiff alleges that because Ranganath failed to disclose "vital information" about the study, Plaintiff "did not have ALL/Right information she needed to evaluate her situation and willingly decided if the study was a good option for her and her medical needs." (*Id* at 51 (emphasis in original).) In addition, Plaintiff asserts that Dr. Ranganath never provided her with information on the study in Spanish, Plaintiff's native tongue, or provided her with a "qualified interpreter to make sure Plaintiff understood everything about the study and her medical conditions." (*Id* at 55.)

On or about March 2013, Plaintiff says she learned that the ORENCIA medication that Dr. Ranganath had been giving her was expired. (I*d* at 56.) Plaintiff began to experience "losing her [sic], itching, stomach pain among other side effects that she communicated to Ranganath." (I*d* at 59.) Plaintiff complained to Ranganth who assured her "the medication was ok." And altered Plaintiff's doses of medications. (I*d* at 57-60.) Ranganath invited Plaintiff to share her experience with representatives from Orencia, but she alleges, Ranganath never told Plaintiff about the time and place of the conference. (I*d* at 61.) Further, "Plaintiff believe she was the ONLY one receiving ORENCIA medication that was expired in Ranganath' study." (I*d* at 63(error in original).)

Plaintiff alleges that Ranganath discriminated against her, denied her medical treatment for all of her medical conditions, concealed her medical conditions, provided her with a low/poor quality of medical services, and worsened her medical conditions by giving her expired and incorrect doses of medications. (I*d* at 47.) Plaintiff also alleges that Ranganath did not abide by the "Experimental Research Subject's Bill of Rights" that was part of the consent form Plaintiff signed because of Plaintiff's protected status as a disabled woman. (*Id.*)

Plaintiff further alleges that, since Drs. Altman and Ranganath last saw Plaintiff, she was diagnosed with "Rheumatoid Arthritis, Lupus (Borderline) Fibromyalgia, S'Joergen Syndrome, Thyroiditis, Chrone Disease, Ulcers among other diseases and conditions." (I*d* at 120 (error in original).) Plaintiff "was forced to undergo several medical procedures and tool several prescription drug medications that had several side effects since she saw medical care from Altman and he put her in Ranganath' study." (I*d* at 121 (error in original).)

Plaintiff alleges that, in 2015, she learned for the first time that the Ranganath study was for persons diagnosed with rheumatoid arthritis only and the study criteria specifically excluded persons with pregnancy, lupus, or taking daily prednisone and that "expired (one year or older) injection (ORENCIA) does not have any effectiveness/strength in a person's body." (I*d* at 122.) Plaintiff alleges that she took prednisome for her lupus and inflammation and "believes she was the ONLY participant and EXPIRED ORENCIA because she is Hispanic and a disable woman." (*Id.* (emphasis in original).)

B. Defendants UC Board of Regents, Ginsburg, Mike, Baca, Weingrow and Huang

On June 23, 2013, Plaintiff went to the UCLA emergency room with multiple symptoms, including chest pain, shortness of breath, numbness in her face, headache, and stomach pain. (SAC at 68.) During the registration process, she encountered Ginsburg (nurse), Mike (nurse), and Baca (hospital clerk), (Id at 72) Nurse Ginsburg asked Plaintiff for her "Medical ID" and asked Plaintiff to describe her symptoms. (Id at 73-74.) While Plaintiff described her symptoms to nurse Ginsburg, Baca asked Plaintiff for her Medical ID and California identification. (Id at 75.)

Plaintiff alleges that nurse Mike then abruptly pulled Plaintiff's arm, and Baca searched her purse without her consent. (Id at 76-77.) She alleges that "Ginsburg, Mike and Baca's deliberate created a very hostile/ oppressive/mocking environment for plaintiff because she is Hispanic woman; whose English is her second language and speaks with a heavy accent." (Id at 78 (error in original).) When Plaintiff asked for their names, Ginsburg, Mike, and Baca allegedly responded by making mocking facial expressions and refusing to provide their names. (Id at 79.) Baca eventually wrote his name on a piece of paper and handed it to Plaintiff. (*Id.*)

Mike allegedly make several demeaning remarks in Spanish regarding Plaintiff's race, including, "We need a

housekeeper to clean the beds." (I*d* at 80.) According to Plaintiff, Ginsburg "kept calling Plaintiff by different Hispanic names: 'Rosa' and 'Maria' and yelled at Plaintiff when she tried to correct her (I*d* at 81.) Plaintiff claims that these actions caused her to suffer "denial of proper registration" and "aggravation of Plaintiff's physical and emotional conditions" (I*d* at 82.) Plaintiff also alleges that "Ginsburg; Mike and Baca [sic] racial bias/false accusations resulted in Plaintiff been harassed by several UCLA employees." (I*d* at 84.) Those UCLA employees include Emily Huang, a medical resident who examined Plaintiff with a male who was taking notes. (I*d* at 85 Huang allegedly said to Plaintiff, "I heard you had a rough time when you came in." *(Id.)* After Plaintiff explained her medical symptoms to Huang, Plaintiff "never saw Huang and/or the young men again." (I*d*.)

Plaintiff alleges that Weingrow, the physician in charge of the Emergency Room ("ER"), denied Plaintiff medical care because of her issues with Defendants Ginsburg, Mike, and Baca. (I*d* at 86.) Weingrow allegedly stood away from Plaintiff's bed and did not show concern for her symptoms. (I*d*.) Plaintiff asserts that after tis single visit, she never saw Weingrow again. (I*d*.)

Plaintiff alleges that when she was released from the hospital, she was not adequately informed of her medical conditions because the release form indicated that Plaintiff was tearful and anxious, but did not address any of her underlying medical symptoms. (*Id* at 90.) According to Plaintiff, the UC Board of Regents, "through the acts/omissions of their employees did not stabilized Plaintiff's medical conditions." (*Id* at 91 (error in original).)

Plaintiff further alleges that in 2015, she learned that ER employees Ginsburg, Mike, and Baca made accusations about Plaintiff. (*Id* at 123.) Specifically, Plaintiff claims that Ginsburg told UCLA ER personnel that Plaintiff had struck her in the ER; Mike allegedly told ER personnel that Plaintiff did not want or like to touched; and Baca supposedly "spread rumors about Plaintiff that she was difficult." (*Id.*)

C. The UC Board of Regents

The SAC asserts a litany of allegations against the UC Board of Regents related to Plaintiff's care at the Medical Center. Plaintiff alleges that "the UC Board of Regents is [sic] responsible for the racist/prejudice behavior she had to endure" by Altman, Ranganath, Ginsburg, Mike, Baca, Weingrow, and Huang; "for the unprofessional/ unethical medical acts/omissions she had to endure"; 'for

Plaintiff's permanent damages" as a result of the "racist/prejudice medical and non-medical acts/omissions of Altman, Ranganath, Ginsburg, Mike, Baca, Weingrow and Huang"; "for not taking and properly investigating Plaintiff's claims of racial discrimination; Breach of privacy; threat calls and Concealment of Medical Records; "for not making its employees...Accountable for their discriminatory actions and their false accusations against Plaintiff' [sic] persona and character"; "for not complying with Local, State, and Federal Laws that Prohibits any type of discrimination in a Public Hospital and for violation of Federal Law under ADA that protects individual with Disabilities"; for Altman and Ranganath not complying with the Experimental Research Subject's Bill of Rights;" and "for Plaintiff's breach of Privacy" because "[s]everal Regents employees" allegedly viewed Plaintiff's personal and medical information "without a need for treatment, diagnosed [sic] or other lawful use." (*Id* at 93.)

Plaintiff claims that she tried to file a race discrimination claim with Defendant "Goodwin, UCLA Security," over the phone, but he did not take her claim. (*Id* at 94.) She also filed a claim with UCLA nursing department, but says that her complaint was ignored. (*Id* at 96.) Plaintiff alleges that in July 2013, she began receiving

threatening phone calls and messages that only ceased when she received a summons to appear in court where she was sued for $85,000 by unnamed party and later filed for bankruptcy because she did not have that amount of money. (Id at 97.)

Plaintiff does not explain how the summons and bankruptcy are related to her claims regarding her medical care, but she alleges that she "was afraid the Regents' employees were retrieving her personal information to retaliate against her for complaint she was making." (Id at 98.) She alleges that she notified UCLA Patient affairs of her concerns, but the "Regents did not investigate" and she was "advised to file a complaint with Los Angeles Public Health." (Id at 99.)

In 2015. Plaintiff says she "received a letter from the Regents stating its computers were hacked in 2013-2014 (est.). Plaintiff's personal information was compromised." (Id at 124.)

D. County of Los Angeles Public health, Los Angeles County

Plaintiff also sues County of Los Angeles Public Health ("LAPH") and Los Angeles County. In June of 2013, Plaintiff filed a claim against the UC Board of Regents with LAPH. (Id at 101.) Plaintiff alleges that in January of

2014, LAPH substantiated Plaintiff's claims regarding her inadequate treatment, but they failed to investigate her claims of threats and racial discrimination. (*Id* at 103.) In February 2014, LAPH referred Plaintiff to the United States Department of Health and Human Services, Office of Civil Rights, and they allegedly advised her to take legal action. (*Id* at 104-105.) Plaintiff says she hired an attorney but terminated his services in November 2014 for unspecified reasons. (*Id* at 106-107.)

In September 2015, Plaintiff filed a second claim with LAPH alleging mistreatment, breach of privacy, and "Tampér/missing [sic] medical records" against the UC Board of Regents. (*Id* at 109.) This claim was then sent to a California Department of Public Health ("CDPH") District Office in San Bernardino. (*Id* at 110.) On September 23, 2015, CDPH sent Plaintiff a letter signed by Michael Floyd for Coleen Reeves. However, Plaintiff alleges that when she "tried to talk to them; the receptionist told her that they do not work there." (*Id* at 111.) Plaintiff claims that she "left several messages for Cleveland; with no success" and that Thomas McComrey, who is not named in this action, called Plaintiff at her home and on her cellular phone "to the point that he was harassing Plaintiff and her family." (*Id* at 112.)

Plaintiff "started to have problems at all the medical clinics/facilities where she was receiving medical care" and "was told several male investigators from LAPH and/or CDPH and/or DHCS were following her to all her medical appointments." (*Id* at 112-114.) Plaintiff does not identify a source of the information. In October of 2016, Plaintiff requested that the LAPH inspect and copy all of her medical records. (*Id* at 115.) After several conversations with LAPH employees, in January 2017, she received two letters stating that there we no records under her name. (*Id* at 117.)

E. Bristol-Myers Squibb

The SAC purports to assert claims against Bristol-Myers Squibb, a private pharmaceutical company, for failing "to abide by the Federal Laws that protect Human Subjects in Research "based on information that Plaintiff allegedly learned in January 2018. (*Id* at 17-125 (capitals in original).)

F. City of Los Angeles

In her final claim, Plaintiff asserts that "the City of Los Angeles is responsible for the discriminatory and non-discriminatory actions/omissions of the Regents" and in

particular "[f]or the failure of the Regents to abide by Federal, State, and Local Municipal codes that prohibit any kind of discrimination in Public setting that provides services in the City of Los Angeles; including Public Hospitals" and "for failure to abide and comply with Title II of the Americans with Disabilities Act." (Id at 127. (capitalization and errors in original.) Plaintiff sums up her claims stating, "she was denied several times medical services at the Regents; instead; she was mistreated/ discriminated/humiliated because Plaintiff is a disable woman and belongs to a protective class." (Id at 128 (errors in original).)

G. Damages

Plaintiff alleges that as a result of the "intentional deprivation of her civil rights by all Defendants' she has suffered psychological and physical damages, loss of reputation; loss of "normal/social life"; loss of "opportunity to become Pregnant/treatment"; loss of "opportunity for normal treatment/care for her rheumatoid arthritis at the Regents"; deterioration of her medical conditions; she does "not trust the medical establishment"; loss of personal privacy; and she has been "forced to file complaints/involved in several lawsuits." (Id at 129.) Plaintiff further alleges

that she is entitled to equitable tolling if any of her claim are time barred. (I*d* at 130-136.)

II. RELIEF SOUGHT

The SAC purports to assert thirty-nine (39) separate causes of action against Defendants. (I*d* at 140-428.) Plaintiff seeks the following relief: compensatory and punitive damages against Altman, Ranganath, Ginsburg, Mike, Baca, Huang, and Weingrow for violating Plaintiff's rights under 42 U.S.C. 1981 (SAC at pp. 25-33.); compensatory and punitive damages against Mike, Baca, Huang, Weingrow, and Ginsburg for violating Plaintiff's rights under the First Amendment and 42 U.S.C. 1983 (*id.* at pp. 33-37); compensatory and punitive damages against Mike, Baca, Huang and Weingrow, for violating Plaintiff's rights under the First Amendment and 42 U.S.C. 1985 (*id.* at pp. 37-42); compensatory and punitive damages against Los Angeles County, Altman, Ranganath, Ginsburg, Mike, Baca, Huang, Weingrow, and Ginsburg for violating her rights under the ADA (*id.* at pp. 42-51;56-58); compensatory and punitive damages against Altman, Ranganath, Ginsburg, Baca, Huang and Weingrow, for violations of the Rehabilitation Act (*id.* at pp. 51-56); and

compensatory and punitive damages against Altman, Ranganath, and the UC Board of Regents for violating 45 C.F.R. & 46 (*id.* at pp. 25-61). Plaintiff asks that the amount of damages be determined at trail. *(Id.)*

Plaintiff also seeks injunctive relief: (1) "To stop the Harassment/Mistreatment/conspiracy/Defamation against Plaintiff persona in the Medical Establishment and in the Governmental Agencies"; (2) 'To stop denying Medical Services/Treatment to Plaintiff"; (3) Restoration of Reputation that was damage [sic] Stigma-Plus Hearing Request and for such other relief to which plaintiff is entitled at law or in equity." (*id.* at 61 (errors in original).)

DISCUSSION

I. Plaintiff Fails To State A Claim For Damages Against The State of California, The University of California Los Angeles, and The UC Board of Regents.

The Eleventh Amendment to the U.S. Constitution bars suits against states and state agencies as well as suits against state officials in their official capacity for money damages. *Will v. Mich. Dept's of State Police*, 491 U.S. 58, 71 (1989). Further, section 1983 does not abrogate Eleventh

Amendment immunity for states. *Will,* 491 U.S. at 70; *Hale v. State of Arizona*, 967 F.2d 1356 (9th Cir.)., *cert. denied*, 510 U.S. 946 (1993). Thus, state agencies and instrumentalities, including the University of California Los Angeles ("UCLA") and the UC Board of Regents are not "persons" amenable to suit under section 1983. *Jackson v. Hayakawa*, 682 F.2d 1344, 1350 (9th Cir. 1982) ("the University of California and the Board of Regents are considered to be instrumentalities of the state for purposes of the Eleventh Amendment") (citing, *inter alia, Hamilton v. Regents*, 293 U.S. 245, 257 (1934)). Consequently, to the extent that Plaintiff brings claims for damages against the State of California or any of its agencies or instrumentalities, including UCLA and the UC Board of Regents, those claims must be dismissed with prejudice.

II. Plaintiff Fails985. To State A Claim Under 42 U.S.C. 1981, 1983, and 1985.

A. Plaintiff Fail to State a Claim Under Section 1981.

Section 1981 forbids racial discrimination in the making of both public and private contracts. *St. Francis College v. Al-Khazraji*, 481 U.S. 604 (1987). To state a claim under section 1981, a plaintiff must show that "(1) [she] is a member of a protected class, 92) [she] attempted to contract for certain services, and (3) [she] was denied the right to contract for those services." *Lindsey v. SLT L.A., LLC.* 447 F.3d. 1138, 1145, (9th Cir. 2006). The plaintiff must also show that she "was deprived of services while similarly situated persons outside the protected class were not." *Id.* Here, Plaintiff has failed to allege sufficient facts to suggest that Defendants, including, UCLA, the UC Board of Regents, the City of Los Angeles, County of Los Angeles or any of their employees, violated any rights protected by Section 1981, which forbids discrimination on the basis of race in the making of public or private contracts.

To the contrary, with respect to her medical treatment, the allegations plainly indicate that she was able to obtain medical services, but was unhappy with the medical services that she received. Despite Plaintiff's conclusory assertions that she was treated a certain way because she is a "Hispanic woman and disabled," the allegation in the SAC do not raise a plausible inference of any constitutional deprivation. Moreover, while Plaintiff repeatedly recites that she was a member of a protective class, nowhere in the SAC does she alleges that any similarly situated persons were provided medical services that were denied to Plaintiff.

Plaintiff also does not plead sufficient facts to state a claim for a constitutional violation against the City of Los Angeles or the County of Los Angeles. Throughout the SAC, Plaintiff alleges that she was treated by physicians and staff at the Medical Center and she alleges that these

medical personnel are employees of "the Regents." (*See*, e.g. SAC at 6-14) Her allegations pertaining to the City of Los Angeles and County of Los Angeles concern complaints that she allegedly filed with City of Los Angeles and Los Angeles County public agencies about her care at the Medical Center. Plaintiff specifically alleges that the County of Los Angeles Public Health (LAPH) "discriminated Plaintiff by only investigating part of her claim, but did not investigate the Racial discrimination part and the threats she was receiving in her cell phone." (Id. At 100 (errors in original).) But there are no facts in the SAC that raise a plausible inference of discrimination against Plaintiff by any city or county personnel at LAPH or elsewhere. Plaintiff's allegations that the city and county are liable for discrimination because Plaintiff was dissatisfied with LAPH's failure to investigate all of her complaints about the Medical center are wholly conclusory and do not state a claim for any constitutional violation against either the

City of Los Angeles or Los Angeles County. See Twombly, 550 U.S. at 557 (bare assertions without facts will not suffice to state a claim).

Finally, Plaintiff's allegation that the City of Los Angeles "is responsible for the discriminatory and non-discriminatory actions/omissions of the Regents" is similarly, conclusory and fails to state a claim upon which relief may be granted. As noted above, the UC Board of Regens is a state entity, immune from suit for monetary damages under the Eleventh Amendment. Because this is Plaintiff's third opportunity to articulate a claim under Section 1981, an additional opportunity for amendment would be futile, and her Section 1981 claim should be dismissed with prejudice.

B. Plaintiff Fails to State a Claim Under Section 1985.

Section 1985 prohibits conspiracies to interfere with certain civil rights and affords a civil remedy to persons who, as a result of such conspiracy, have been deprived of

the equal enjoyment of rights secured by the law to all. 42 U.S.C. 1985 (3); *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971). To state a claim under section 1985, a plaintiff must allege facts to support the allegation that (1) defendants conspired together; (2) for the purpose of depriving a person or class of persons of the equal protection of the law; and one or more conspirators, (3) acted in furtherance of the conspiracy; that (4) deprived a person of exercising any right or privilege of a citizen of the United States, *Id.* At 102-03; *Karim-Panahi v. Los Angeles Police Department*, 839 F.2d. 621,626 (9th Cir. 1988). A mere allegation of conspiracy without factual specificity insufficient. *Id.*; also *Twonbly*, 550 U.S. at 557 ("a conclusory allegation of agreement at some unidentified point does not supply facts adequate to show illegality").

Plaintiff asserts that Ginsburg, Mike, Baca, Huang, and Weingrow violated her rights under 42 U.S.C. 1985 by intentionally engaging in a conspiracy to deprive Plaintiff of

medical treatment. (SAC at pp. 37-41). But the Sac provides no specific facts that support a plausible inference of any agreement among these defendants. Nor does Plaintiff allege facts sufficient to demonstrate an *intent* to deprive her of such rights. Both of these elements are essential to stating a claim under section 1985. *Griffin*, 403 U.S. at 102. Instead, Plaintiff asks the Court to assume that a conspiracy occurred because she was unhappy with the medical services that she received from hospital staff. Even though the Court liberally construes pro se pleadings, the Court cannot supply essential elements of a claim that are not pled. *See Byrd v. Maricopa County Sheriff's Dept't*, 629 F.3d at 1140.

Indeed, as to her interactions with Huang, Plaintiff states that beyond the brief interchange in the ER when Plaintiff explained her symptoms, Plaintiff never saw Huang again and there are no facts in the SAC to raise a plausible inference that Huang had any interactions after

that point with Mike, Baca, Ginsburg or Weingrow about Plaintiff's care. (See SAC at 85.) The SAC's allegations regarding the quality of service that Plaintiff received from defendants at the Medical Center are insufficient to state a claim for conspiracy under Section 1985.

Because this is Plaintiff's third unsuccessful attempt to articulate a section 1985 claim, no likelihood exist that she will be able to cure the deficiencies with amendment. Accordingly, Plaintiff's section 1985 claims should be dismissed with prejudice.

C. Plaintiff Fails To State A Claim Under 42 U.S.C. 1983.

In order to state a claim under Section 1983, a plaintiff must allege that (1) the defendants were acting under color of state law at the time the complained of acts were committed; and (2) the defendants' conduct deprived plaintiff of rights, privileges, or immunities secured by the Constitution or laws of the United States. *West v. Atkins*, 487 U.S, 42, 48 (1988). Here, Plaintiff asserts that

Defendants violated her rights under the First amendment. (*See* SAC at pp. 33-36.)

Plaintiff appears to assert that the individual defendants are "state actors" because they are employees of the UC Board of Regents. (*See*, e.g., SAC at 7-14) Further, while Plaintiff alleges that the actions of the Medical Center ER personnel were discriminatory based on her race and disability; Plaintiff fails to allege sufficient facts that raise a plausible inference that she was deprived of any Constitutional rights. Indeed, the SAC indicates that Plaintiff was seen in the ER, was admitted for treatment, and later released. Although Plaintiff was dissatisfied with the medical assessment(s) that she received, that fact, without more, does not demonstrate a colorable constitutional deprivation.

The same is true with respect to Plaintiff's allegation that she later discovered she may have been ill-suited for the Ranganath rheumatoid arthritis study using

ORENCIA. While Plaintiffs allegations may be sound in tort as a medical malpractice claim against Dr. Altman's or Dr. Ranganath's conduct, there are no fact alleged here that support a Constitutional civil rights claim against these doctors or nay other individual defendants. Finally, Plaintiff alleges that the conduct of Ginsburg, Mike, and Baca caused Plaintiff to be harassed by several unnamed UCLA employees. (*See* SAC at 84.) But Plaintiff does not ever identify any of the "several UCLA employees" or provide any fact about how these persons allegedly harassed her. Thus, Plaintiff's allegations about being harassed by other UCAL employees are conclusory and wholly lacking in sufficient facts to state a claim. Indeed, all of Plaintiff's allegations of constitutional violations stemming from her medical treatment at the Medical Center are conclusory. She fails to plausibly allege a causal nexus between each Defendant's action, or inaction, and any alleged constitutional violations.

Accordingly, even taking as true the allegation that the named individual defendants are all "state actors," Plaintiff's section 1983 claims must be dismissed against Altman, Ranganath, Ginsburg, Mike, Baca, Weingrow, and Huang. Further, as discussed in greater detail below, Plaintiff's Section 1983 claims must also be dismissed because they are barred by the statute of limitation.

i. Plaintiff Fails to State a First Amendment Retaliation Claim

To state a First Amendment retaliation claim under Section 1983, a plaintiff must allege: "(1)[she] engaged in constitutionally protected activity; (2) as a result, [she was] subjected to adverse action by the defendant that would chill a person of ordinary firmness from continuing to engage in the protective activity; and (3) there was a substantial causal relationship between the constitutionally protected activity and the adverse action." Mulligan v. Nichols, 835 F.3d 983, 988 (9th Cir. 2016) (quoting Blair v. Bethel Sch. Dist., 608 F.3d 540,543 ((9th Cir. 2010).)

Plaintiff alleges First Amendment retaliation claim against Defendants Ginsburg, Mike and Baca, whom she claims "created false accusations against Plaintiff and discriminatory/oppressive/abusive environment" to deter her from filing a complaint against them. *(Id.* at 189-194 (Ginsburg); 196-200 (Mike); 204-207 (Baca).) She also brings retaliation claims against Defendants Weingrow and Huang for treating her unfairly because she is "Hispanic woman with several disabilities." *(Id.* at 210-219.)

Plaintiff identifies her right to file complaints about her medical care as the protected speech that forms the basis of her First Amendment retaliation claims. (*See*, e.g. SAC at 190.) But Plaintiff fails to plead facts that establish a plausible inference that, *as a result* of Plaintiff's constitutionally protected activity, any Defendants took any adverse actions against Plaintiff. *See Mulligan*, 835 F.3d. at 988. For instance, Plaintiff asserts that at some point

during her time at the Medical Center ER, the following happened: Defendant Ginsburg asked Plaintiff for her "Medical ID." *(Id.* at 73.) Defendants Mike then abruptly pulled Plaintiff's arm. *(Id.* at 76.) Baca them, without Plaintiff's consent, searched her purse. *(Id.* at 77.) Plaintiff asked for the names of Defendants Ginsburg, Mike and Baca, but they responded by making mocking facial expression and refusing to provide their names. *(Id.* at 79.) These actions caused Plaintiff to suffer "denial of proper registration" and led several other employees to further embarrass Plaintiff by asking intrusive questions and ignoring her complaints. *(Id.* at 84-91.) Later in the SAC, Plaintiff alleges that she started receiving "threatening" phone calls from unknown persons that only ceased when she received a summons to appear in court. *(Id.* at 97.) Nothing in the SAC suggest that any of the individual defendants had any involvement in either making the

phone calls to plaintiff or initiating the purported lawsuit that led to Plaintiff filing bankruptcy.

The factual allegations do not support the inference that Defendants took any adverse action against Plaintiff *because* Plaintiff engaged in protected activity. Again, Plaintiff's dissatisfaction with the service provided at the hospital does not equate to a constitutional violation. Furthermore, Plaintiff was not denied "proper registration." As she concedes throughout the SAC, hospital staff did process her registration and both a resident and the physician in charge of the ER examined her. Thus, Plaintiff also has not established that Defendants Huang or Ginsburg refused her medical care because she threated to file a complaint. Further, the SAC admits that Huang and Weingrow both met with Plaintiff and discussed her medical conditions *(see* SAC at 85-86.) and the hospital's discharge paperwork included a summary of Plaintiff's complaint *(Id.* at 90). Neither Plaintiff's disagreement with

Defendants' medical assessments nor her dissatisfaction with their bedside manner amounts to retaliation based on protected speech. In the absence of sufficient facts to support a plausible inference that Plaintiff suffered some adverse action as a result of a constitutionally protected activity, Plaintiff's First Amendment retaliation claims against Defendants must be dismissed.

Plaintiff has now had three opportunities to articulate a section 1983 claim. At this juncture, no likelihood exist that she will be able to cure these deficiencies with amendment. Accordingly, Plaintiff's section 1983 claims should be dismissed with prejudice.

III. Plaintiff Fails To Establish That Her Claims Under Sections 1981, 1983, And 1985 Are Timely.

In the others dismissing the FAC and the Complaint with leave to amend, the Court indicated that the pleadings appeared to be untimely because the events at issue Occurred in 2012-2013—more than four years before Plaintiff filed the Complaint and FAC. (*See* Dkt. No. 24 at

22-24; *see also* Dkt. No. 13 at 6.) The statute of limitations for claims under sections 1981,1983, and 1985 is two years. (*id.*) (citing, *inner alia*, *Taylor v. Regents of Univ. of Cal.*, 993 F.2d 710, 711-12 (9th Cir. 1993) (the "statute of limitations for personal injury actions govern claims brought pursuant to 42 U.S.C. 1981, 1983, and 1985") and CAL. CIV. PRO CODE 335.1 (stature of limitations for personal injury actions is two years)). Thus, even if the Court generously assumes that none of Plaintiff's Section 1981, 1983, and 1985 claims accrued until 2013, the statute of limitations nevertheless expired in 2015, and Plaintiff waited in additional two years – until June 2017 – to file the Complaint.

In the SAC, Plaintiff addresses the statute of limitation problem by asserting that she is entitled to equitable tolling because: (1) Plaintiff is disable; (2) Plaintiff takes strong medications' (3) an unidentified

person has been threatening Plaintiff; (4) the UC Board of Regents sued Plaintiff in 2013; (5) Plaintiff filed for bankruptcy; (6) Plaintiff had to assist her mother after an accident; (7) Plaintiff had to assist her father after an accident; (8) Plaintiff released her attorney from the case in November of 2014; (9) Plaintiff filed a lawsuit against the UC Board of Regents, which led the LAPD to harass her; (10) UCLA retaliated against her for filing a lawsuit against the UC Board of Regents; (11) Plaintiff is longer receiving medical treatment; (12) People have trespassed at Plaintiff's apartment; (13) Plaintiff has experienced problems with her computer, cellphone printer, mail, library card, and debit card; (14) People have been spaying on her and following her; and (15) people have been conspiring against her because of her repeated suits. (SAC at 136.)

Federal courts apply the forum states' equitable tolling rules when they are not inconsistent with federal

law. *Azer v. Connell,* 306 F.3d 930, 936 (9th Cir. 2002); *Fink v. Shedler,* 192 F.3d 911, 914 (9th Cir. 1999). Plaintiff has the burden of pleading facts that would give rise to equitable tolling, *Hinton v. Pac. Enters.*, 5F.3d 391, 395 (9th Cir. 1993); by demonstrating that she meets the following three conditions: (1) the defendant must have had timely notice of the claim; (2) the defendant must not be prejudiced by being required to defend the otherwise barred claim; and (3) the plaintiff's conduct must have been reasonable and in good faith. *Fink*, 192 F.3d at 916; *McDonald v. Antelope Valley* Comm. College Dist., 45 Cal. 4th 88, 102 (2008).

Plaintiff has not satisfied her burned here. Her asserted list of obstacles and tragedies that she encountered on unspecified dates in the four or more years between the dater her claim accrued and the date she filed the Complaint do not demonstrate that Defendants had timely notice of her Section 1981, 1983, and 1985 claims and that Plaintiff acted reasonably and in good faith to being her claims in a timely manner. Accordingly, even if Plaintiff successfully stated a claim under Section 1981,1983, and 1985, those claims are barred by the statute of limitations and must be dismissed.

IV. Plaintiff Fails to State Any Other Federal Statutory Claim.

Plaintiff, in wholly conclusory manner, attempts to assert additional federal statutory claims against Defendants. For instance, Plaintiff asserts that Defendants violated the America with Disabilities Act and Section 504 of the Rehabilitation Act, by deliberately discriminating against her based on her disability and her race (*See. e.g.* at pp. 41-56 (Counts 18-35).) However, Plaintiff has not identified any actions or omissions by any Defendant from which the Court could plausibly infer that a Defendant failed to accommodate Plaintiff's disability or disabilities or otherwise discriminated against her because of any disability or disabilities. Accordingly, Plaintiff's claims under the America with Disabilities Act and the Rehabilitation Act must be dismissed.

Finally, Plaintiff asserts claims against Defendants Altman, Ranganath, and UC Board of Regents, under 45 C.F.R 46, a federal policy regarding human subjects that applies to Federal Agencies and Offices. This set of regulations does not create a cause of action for a private party against private actors or a state organization. Instead, they apply solely to "research that is conducted or supported by a federal department or agency." 45 C.F.R. 46.101. Moreover, the Ninth Circuit has specifically held that "agency regulations cannot independently create rights

enforceable through 1983." *Save Our Valley v. Sound Transit,* 335 F.3d 932, 939 (9th Cir. 2003). Accordingly, these claims also must be dismissed with prejudice.

V. Plaintiff Fails to State Any Claim Against Bristol-Myers Squibb.

Plaintiff identifies Bristol-Myers Squibb, a private pharmaceutical company, as a defendant in this civil rights action. (SAC at. 17.) Specifically, Plaintiff alleges "Bristol-Myers Squibb" failed to abide by the Federal Laws that protect Human Subjects in Research." (*Id.* at 125.) Plaintiff further alleges that "Bristol-Myers Squibb was providing ORENCIA medication that was EXPIRED to Ranganath' study at the Regents and that critical information was not disclosed to Plaintiff and/or the other subjects in the study; putting Plaintiff and the other subjects' health at risk." *(Id.* at 126 (error and capitalization in original).) Taking these allegations as true for purposes of screening and liberally construing the *pro se* pleading. Plaintiff's allegations fail to state a claim for a violation of a federal civil right by Bristol-Myers Squibb.

First, Plaintiff fails to indicate what specific federal law she believes Bristol-Myers Squibb has violated in purportedly supplying the expired ORENCIA medication. Second, as noted above, 45 C.F.R. 46 does not provide a

private right of action against private actors or a state entity. As a private company, Bristol-Myers Squibb cannot be a "person acting under color of state law" for purpose of a section 1983 claim or any other constitutional violation, and there are no facts or allegations demonstrating that this defendant can be held liable under sections 1981 or 1985 either. *See Coto Settlement v. Eisenber*, 593 F.3d 1031, 1034 (9th Cir. 2010) (at pleading stage factual allegations must be sufficient to support a claim for relief that is plausible on its face) (quoting *Ashcroft v. Iqbal*, 556, U.S. 662, 697 (2009)).

Because the SAC contains no facts supporting any federal civil rights action against Bristol-Myers Squibb, Plaintiff's claims against this defendant must be dismissed with prejudice.

CONCLUSION

In light of Plaintiff's failure to state a single federal claim upon which relief can be granted, despite receiving a third opportunity to do so, and her accompanying failure to demonstrate that her constitutional claims are timely, despite being expressly instructed to do so, the Court finds that an additional opportunity for amendment would be futile, and the SAC must be dismissed in its entirety which prejudice.

RECOMMENDATION

For all of the foregoing reasons, IT IS RECOMMENDED that the District Judge issue an Order: (1) accepting the Report and Recommendation; and (2) directing that Judgment be entered dismissing this action with prejudice for failure to state a claim.

DATED: April 5, 2018.

Karen L. Stevenson (stamp /s/)

Karen L. Stevenson
United States Magistrate Judge

NOTICE

Reports and Recommendations are not appealable to the Court of Appeals, but may be subject to the right of any party to file objections as provided in the Local Rules Governing the Duties of Magistrate Judges and review by the District Judge whose initials appears in the docket number. No notice of appeal pursuant to the Federal Rules of Appellate Procedure should be files until entry of the judgment of the District Court.