

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

12 || SHARON BRIDgewater,

13 Plaintiff, No. C 09-3551 PJH

14 V. ORDER OF DISMISSAL

15 HAYES VALLEY LIMITED  
PARTNERSHIP, et al.,

## Defendants.

18 Plaintiff Sharon Bridgewater filed this action on August 3, 2009, against defendants  
19 Hayes Valley Limited Partnership (a/k/a Hayes Valley Apartments II L.P.) ("HVLP");  
20 McCormack Baron Ragan Management Services, Inc.; MBA Urban Development Co.; The  
21 Related Companies of California, Inc.; and Sunamerica Affordable Housing Partnership.  
22 Also on August 3, 2009, plaintiff filed a request for leave to proceed in forma pauperis  
23 ("IFP"). Because the court finds that the complaint fails to state a claim, the complaint is  
24 hereby dismissed pursuant to 28 U.S.C. § 1915(e).

## BACKGROUND

26 The following facts are taken from the allegations in the complaint and from the  
27 papers attached as exhibits to the complaint.

28 Plaintiff Sharon Bridgewater (“Bridgewater”) is a participant in the United States

1 Government's Housing and Urban Development (HUD) rental assistance program (known  
2 as "Section 8").<sup>1</sup> On January 5, 2005, Bridgewater entered into an agreement on January  
3 5, 2005, with defendant Hayes Valley Limited Partnership ("HVLP"), owner of Hayes Valley  
4 Apartments, for lease of an apartment located at 427 Page Street in San Francisco.

5 On April 12, 2006, HVLP served Bridgewater with a notice to pay rent or quit. The  
6 notice asserted that Bridgewater was delinquent in payment of the rent for the premises  
7 located at 427 Page Street, for the period September 2005 through March 2006.

8 On April 24, 2006, HVLP filed an unlawful detainer action against Bridgewater in the  
9 Superior Court of California, County of San Francisco, based on Bridgewater's alleged  
10 failure to pay rent as agreed.

11 On May 11, 2006, the parties entered into a stipulation for entry of judgment and  
12 dismissal. HVLP agreed that Bridgewater could remain in possession of the premises at  
13 427 Page Street if she paid a total of \$2,674.00, which included past rent, attorney's fees,  
14 and court costs, to be paid in installments with payment complete by November 5, 2007.  
15 Bridgewater alleges that she did not sign the stipulation, and that the person who did sign  
16 was a "household member" without authorization to sign for her.

17 On November 12, 2007, Bridgewater was served with another notice to pay rent or  
18 quit. On November 26, 2007, HVLP filed a declaration of non-compliance with the May 11,  
19 2006 stipulation for entry of judgment and dismissal, stating that Bridgewater had paid  
20 \$2,036.00 toward the total of \$2,674.00, but had failed to pay the remainder. HVLP  
21 requested judgment in the amount of \$638.00, possession of the property located at 427  
22 Page Street, and a writ of possession to be issued immediately.

23 On December 17, 2007, the Superior Court entered judgment against Bridgewater  
24 for \$638.00, and a judgment for possession of the premises at 427 Page Street. The  
25 Sheriff of the County of San Francisco executed a proof of service dated January 16, 2008,  
26 showing service of the writ of possession on Bridgewater, and placing HVLP in possession

27  
28 <sup>1</sup> This is a reference to Section 8 of the United States Housing Act of 1937, 42 U.S.C.  
§ 1437, et seq.

1 of the premises.

2 Bridgewater filed a request to vacate the judgment, and on January 22, 2008, the  
3 court issued an order vacating the judgment. On January 31, 2008, Bridgewater signed a  
4 lease for rental of premises at 1769 Oakdale in San Francisco.

5 On February 19, 2008, the parties signed a stipulation for entry of judgment,  
6 providing that HVLP was to receive possession of the premises at 427 Page Street on April  
7 3, 2008, and that a writ of possession would issue immediately if Bridgewater failed to  
8 restore possession to HVLP by vacating the premises by April 30, 2008. The parties  
9 further agreed that in exchange for Bridgewater moving out by April 30, 2008, HVLP would  
10 waive all past due rent, in the amount of \$2,124.74, and would also waive attorney's fees  
11 and costs. The stipulation provided further that "[t]his stipulation shall be dispositive of all  
12 issues raised in [HVLP's] Complaint and all affirmative defenses which could have been  
13 raised in [Bridgewater's] Answer."

14 On December 17, 2008, Bridgewater filed suit in this judicial district against HVLP  
15 and other defendants, alleging violation of HUD regulations and also alleging state law  
16 claims. See Bridgewater v. Hayes Valley Limited Partnership, C-08-5622 MHP. On  
17 January 27, 2009, the court dismissed the federal claims pursuant to 28 U.S.C. § 1915, and  
18 dismissed the state law claims without prejudice to refiling them in state court.

19 Approximately seven months later, Bridgewater filed the present action. The  
20 complaint is 93 pages long, exclusive of a "Separate Statement of Undisputed Facts," plus  
21 17 exhibits. The complaint alleges 22 causes of action, including federal claims for  
22 violation of Bridgewater's Fifth and Fourteenth Amendment rights to due process, under 42  
23 U.S.C. § 1983; for violation of 42 U.S.C. § 1437 (Declaration of policy and public housing  
24 agency organization); 24 C.F.R. §§ 247.4 and § 966.53(c) (HUD regulations); for violation  
25 of § 504 of the Rehabilitation Act of 1974, 29 U.S.C. § 794; for violation of the Fair Housing  
26 Act, 42 U.S.C. § 3604; for violation of the Americans With Disabilities Act, 42 U.S.C.  
27 § 12182; and for violation of 18 U.S.C. §§ 241 and 242.

28 In addition, Bridgewater asserts numerous state law claims, including claims of

1 wrongful eviction; tortious interference with contract; common law forcible detainer;  
2 common law retaliatory eviction; tortious interference with right to quiet enjoyment of  
3 leasehold interest; extrinsic fraud on the court; intrinsic fraud; constructive fraud; intentional  
4 misrepresentation; conspiracy to commit extrinsic fraud on the court; intentional infliction of  
5 emotional distress; malicious prosecution; abuse of process; violation of the California  
6 Consumer Legal Remedies Act, Cal. Civil Code § 1780(b); conspiracy to commit intrinsic  
7 fraud; negligence; and negligent infliction of emotional distress.

8 Bridgewater seeks damages in the amount of \$1,401,872,000,000.00 (one trillion,  
9 four hundred one billion, eight hundred seventy-two million dollars), and also seeks  
10 injunctive relief.

11 On September 8, 2009, the court received a letter from Bridgewater, in which she  
12 stated that it was her intention to “file a shorter, amended complaint within the next two  
13 weeks.” As of the date of this order, no amended complaint has been filed.

## 14 DISCUSSION

### 15 A. Legal Standard

16 The court may authorize a plaintiff to file an action in federal court without  
17 prepayment of fees or security if the plaintiff submits an affidavit showing that he or she is  
18 unable to pay such fees or give security therefor. 28 U.S.C. § 1915(a). When a complaint  
19 is filed in forma pauperis, it must be dismissed prior to service of process if it is frivolous or  
20 malicious, fails to state a claim, or seeks monetary damages from defendants who are  
21 immune from suit. 28 U.S.C. § 1915(e)(2); see also Franklin v. Murphy, 745 F.2d 1221,  
22 1226-27 (9th Cir. 1984 ).

23 A complaint is frivolous for purposes of § 1915(e) if it lacks any arguable basis in fact  
24 or in law. Neitzke v. Williams, 490 U.S. 319, 328- 30 (1989). A complaint lacks an  
25 arguable basis in law only if controlling authority requires a finding that the facts alleged fail  
26 to establish an arguable legal claim. Guti v. INS, 908 F.2d 495, 496 (9th Cir. 1990).

27 When a complaint is dismissed under § 1915(e), the plaintiff should be given leave  
28 to amend the complaint with directions as to curing its deficiencies, unless it is clear from

1 the face of the complaint that the deficiencies could not be cured by amendment. Cato v.  
2 United States, 70 F.3d 1103, 1106 (9th Cir. 1995) (dismissal of complaint as frivolous).

3 B. Analysis

4 The court finds that the federal causes of action must be dismissed for failure to  
5 state a claim, and/or for lack of subject matter jurisdiction. Bridgewater's federal claims  
6 attack either the notices to quit or pay rent, issued by HVLP in 2006 and 2007; the filing of  
7 the unlawful detainer action by HVLP in April 2006; the eviction pursuant to the writ of  
8 possession executed in January 2008; or the stipulation for entry of judgment, filed in  
9 February 2008.

10 As an initial matter, a number of Bridgewater's claims are time-barred. Under  
11 federal law, the statute of limitations begins to run when the plaintiff first "know[s] or ha[s]  
12 reason to know of the injury that is the basis of [the] action." RK Ventures, Inc. v. City of  
13 Seattle, 307 F.3d 1045, 1058 (9th Cir. 2002). Here, the allegations in the complaint  
14 establish that Bridgewater became aware of the alleged injuries at the time of their  
15 occurrence.

16 Cases filed under 42 U.S.C. § 1983 must be filed within two years from that date.  
17 See Cal. Civ. Proc. Code § 335.1 (two-year statute of limitations for personal injury claims,  
18 as amended in 2003); Jones v. Blanas, 393 F.3d 918, 927 (9th Cir. 2004) (§ 1983 takes  
19 statute of limitations set forth under state law for personal injury claims). Thus, any § 1983  
20 claims based on events that occurred prior to August 3, 2007 are time-barred. This  
21 includes any claims based on the April 12, 2006 notice to quit or pay rent; the April 24,  
22 2006, filing of the unlawful detainer action; and the May 11, 2006, stipulation for entry of  
23 judgment and dismissal.

24 Cases filed under the ADA and the Rehabilitation Act must also be filed within two  
25 years of the date that the plaintiff became aware of the alleged injury. Courts in this circuit  
26 have applied the California personal injury statute of limitations to ADA and Rehabilitation  
27 Act section 504 claims. See, e.g., Pickern v. Holiday Quality Foods Inc., 293 F.3d 1133,  
28 1137 & n.2 (9th Cir. 2002) (assuming without deciding that personal injury statute applies to

1 ADA claim); Douglas v. California Dep't of Youth Authority, 271 F.3d 812, 823 & n. 11 (9th  
2 Cir. 2001), amended on other grounds, 271 F.3d 910 (9th Cir. 2001) (Rehabilitation Act  
3 claim). Thus, any ADA or Rehabilitation Act claim based on events that occurred prior to  
4 August 3, 2007 are also time-barred.

5 As for the claims based on events that occurred after August 3, 2007, which include  
6 the November 12, 2007 notice to pay rent or quit; the November 26, 2007 declaration of  
7 non-compliance with the May 11, 2006 stipulation for entry of judgment and dismissal; the  
8 December 17, 2007 entry of judgment; and the February 19, 2008 stipulation for entry of  
9 judgment, the court lacks subject matter jurisdiction over those claims.

10 With regard to the December 17, 2007 entry of judgment and the February 19, 2008  
11 stipulation for entry of judgment, this court is without jurisdiction to review those claims.

12 See Rooker v. Fidelity Trust Company, 263 U.S. 413 (1923); District of Columbia Court of  
13 Appeals v. Feldman, 460 U.S. 462, 482 (1983). Federal district courts lack subject matter  
14 jurisdiction to review such final state court adjudications or to exclude constitutional claims  
15 that are “inextricably intertwined with the state court's [decision] in a judicial proceeding.”  
16 Feldman, 460 U.S. at 483, n.16. This rule applies even if such “inextricably intertwined”  
17 claims were not raised in state court. Id. 483-487 & n.16; see also Olson Farms, Inc. v.  
18 Barbosa, 134 F.3d 933, 937 (9th Cir.1998) (Rooker-Feldman doctrine is jurisdictional).

19 A losing party in state court “is barred from seeking what in substance would be  
20 appellate review of the state judgment in a United States District Court, based on the losing  
21 party's claim that the state judgment itself violates the loser's federal rights.” Johnson v.  
22 DeGrandy, 512 U.S. 997, 1005-06 (1994). In addition, the February 19, 2008 stipulation of  
23 judgment and dismissal clearly contemplated a final resolution of the matter, including  
24 resolution of any affirmative defenses that Bridgewater could have brought in connection  
25 with the state court action.

26 The HUD regulations regarding termination of a Section 8 lease agreement provide  
27 that tenancy may be terminated for serious violation of the terms of the lease, “including but  
28 not limited to failure to pay rent;” that eviction notice is given by “a notice to vacate, or a

1 complaint or other initial pleading used under State or local law to commence an eviction  
2 action;" and that "[t]he owner may only evict the tenant from the unit by instituting a court  
3 action." 24 C.F.R. § 982.310(a), (e), (f). Thus, "termination proceedings under Section 8's  
4 existing housing program are left by Congress and HUD to state law" and "the landlord can  
5 institute unlawful detainer proceedings in state court." Gallman v. Pierce, 639 F.Supp. 472,  
6 478 (N.D. Cal. 1986).

7 In unlawful detainer actions under California law, tenants generally may assert legal  
8 or equitable defenses that "directly relate to the issue of possession and which, if  
9 established would result in the tenant's retention of the premises." Green v. Superior Court  
10 of San Francisco, 10 Cal. 3d 616, 633 (1974).

11 Among such defenses are claims of discriminatory and retaliatory evictions, as well  
12 as violations of the Fair Housing Act, all of which are claims Bridgewater has raised in the  
13 present action. See generally id. at 633 (in unlawful detainer action under California law,  
14 tenants may assert legal or equitable defenses that "directly relate to the tenant's retention  
15 of the premises"); Minelian v. Manzella, 215 Cal. App. 3d 457, 465 (1989) (defendant in  
16 unlawful detainer action can raise any affirmative defenses or cross-claims that are relevant  
17 to the right of immediate possession); see also Wasatch Property Management v. Degrade,  
18 35 Cal. 4th 1111, 1117 (2005) (tenant may defend against unlawful detainer action by  
19 asserting that the lessor has not provided proper notice of termination, as required by  
20 statute); Schweiger v. Superior Court, 3 Cal. 3d 507, 517 (1970) (retaliatory eviction  
21 defense permitted in unlawful detainer action); Abstract Investment Co. v. Hutchinson, 204  
22 Cal. App. 2d 242, 247-48 (1962) (tenant properly raised constitutional discrimination claims  
23 as affirmative defenses in unlawful detainer action).

24 Thus, the claims related to the November 12, 2007 notice to pay rent or quit, and the  
25 November 26, 2007 declaration of non-compliance with the May 11, 2006 stipulation for  
26 entry of judgment and dismissal are barred, as those claims could have been raised as  
27 defenses to the unlawful detainer action. Similarly, as strict compliance with notice  
28 conditions is a prerequisite for invoking unlawful detainer hearings, see Saberi v. Bakhtiari,

1 169 Cal. App. 3d 509, 516 (1985); Kwok v. Bergren, 130 Cal. App. 3d 596, 599-600 (1982),  
2 allegations related to a lack of notice requirements or lack of compliance with HUD  
3 regulations and California law could have been raised as defenses at the unlawful detainer  
4 hearing, to the extent that such claims are actionable.<sup>2</sup>

5 Finally, plaintiff cannot state a claim under 18 U.S.C. §§ 241 or 242, as those  
6 statutes, which provide a basis for criminal prosecution, do not provide a private right of  
7 action and cannot form the basis for a civil suit. Aldabe v. Aldabe, 616 F.2d 1089, 1092  
8 (9th Cir. 1980); see also Polk County v. Dodson, 454 U.S. 312, 320-21 & n.9 (1981).

## CONCLUSION

10 In accordance with the foregoing, the court finds that the federal claims must be  
11 dismissed, and that amendment will not cure the deficiencies in those claims. Thus, the  
12 dismissal of the federal claims is with prejudice. The court declines to exercise jurisdiction  
13 over the state law claims, see 28 U.S.C. § 1337(c); Ove v. Gwinn, 264 F.3d 817, 826 (9th  
14 Cir. 2001), and those claims are dismissed without prejudice to refiling in state court.  
15 Accordingly, the action is dismissed.

16 The request for leave to proceed IFP is GRANTED, and no filing fee is due.  
17

18 **IT IS SO ORDERED.**

19 Dated: November 20, 2009



20 PHYLLIS J. HAMILTON  
21 United States District Judge  
22  
23  
24  
25  
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27

28 <sup>2</sup> The court notes, however, that 42 U.S.C. § 1437, which is entitled "Declaration of  
policy and public housing agency organization," provides no private right of action.

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

SHARON BRIDGEWATER,

Case Number: CV09-03551 PJH

Plaintiff,

**CERTIFICATE OF SERVICE**

v.

HAYES VALLEY LIMITED et al,

Defendant.

/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on November 23, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Sharon Bridgewater  
111 Preda Street  
No. 7  
San Leandro, CA 94577

Dated: November 23, 2009

  
Richard W. Wiking, Clerk  
By: Nichole Heuerman, Deputy Clerk