

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHARON BRIDGEWATER,

Plaintiff,

v.

HAYES VALLEY LIMITED
PARTNERSHIP, et al.,

Defendants.

No. C 09-3551 PJH

ORDER OF DISMISSAL

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

BACKGROUND

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

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").¹ 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 ¹ 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

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

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

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

DISCUSSION

A. Legal Standard

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

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

When a complaint is dismissed under § 1915(e), the plaintiff should be given leave 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. Degrate,
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.²

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).

9 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. § 1367(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

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 28 ² 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,
Plaintiff,

Case Number: CV09-03551 PJH

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. Wieking, Clerk
By: Nichole Heuerman, Deputy Clerk