UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

DIANE C. MAJETT, Plaintiff,	:	
v.	:	C.A. No. 18-269WES
HOUSING AUTHORITIES OF RI, NY, NH & VT, MYSPACE ENTERTAINMENT: CULT 2006- PRESENT FRAUD APPLICANTS SERVICER AND SERVED IN MY NAME, ET. AL., and ME TOO CHASER GROUP, Defendants.	:	

REPORT AND RECOMMENDATION

PATRICIA A. SULLIVAN, United States Magistrate Judge

On May 15, 2018, Plaintiff Diane C. Majett filed *pro se* a document titled "Affidavit/ Federal Complaint," along with a motion for leave to proceed *in forma pauperis* ("IFP"). ECF Nos. 1, 2. The IFP motion was referred to me pursuant to 28 U.S.C. § 636(b)(1)(A). Soon after, on May 21, 2018, Plaintiff filed an amended complaint, captioned "Amended Complaint/ Application for Temporary Restraining Order." ECF No. 3.

Based on my review of the IFP motion, and assuming its representations to be true, I conclude that Plaintiff has satisfied the requirements of 28 U.S.C. § 1915(a)(2); accordingly, her IFP motion will be granted if the case survives screening. However, because of the IFP application, this case is subject to preliminary screening under 28 U.S.C. § 1915(e)(2)(B). Based on my review of the amended complaint, which is the operative pleading (ECF No. 3),[1] I find

[1] Because Plaintiff is *pro se*, I have employed a liberal construction of her filing. See Hughes v. Rowe, 449 U.S. 5, 9 (1980); Haines v. Kerner, 404 U.S. 519, 520-21 (1972); Instituto de Educacion Universal Corp. v. U.S. Dep't of Educ., 209 F.3d 18, 23 (1st Cir. 2000). Nevertheless, it fails to state a claim.

that it fails to state a claim upon which relief may be granted. Accordingly, unless Plaintiff files an amended complaint that cures the deficiencies, I recommend that the case be dismissed without prejudice. 20 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b)(1); see Denton v. Hernandez, 504 U.S. 25, 32-33 (1992).

I. Background

Much of Plaintiff's one-and-a-half-page amended complaint (plus exhibits) appears to be intended to assert a claim related to her eviction from "Huntington tower," which also was the basis for a complaint that this Court dismissed at screening in 2016. Majett v. Huntington Towers, et al., C.A. No. 16-95ML (dismissed June 17, 2016) ("Majett 2016"). Like Majett 2016, the current filing appears to allege that Huntington Tower management wrongfully evicted her because she had a cat (Buttercup) and because her "right to RI Title 4 was violated by the defendant because the Permit Program for Cats has a time for compliance . . . 102 days from the date to comply was not given therefore section 4-24-12 was able to be ignored when I was given a ten day notice by Huntington tower management hired by RI Housing." ECF No. 3 at 1. However, other than the clarification that Huntington Tower is managed by "RI Housing," the new complaint contains far less substance than the pleading found to be deficient in Majett 2016. In particular, it contains none of Majett 2016's references to discrimination, which, while too vague to survive screening, nevertheless were carefully analyzed by the Court in the 2016 report and recommendation, which provided Plaintiff with a roadmap of what more would be needed to state a viable claim.[2] Majett 2016, ECF No. 3. Further, the only defendant arguably linked to

[2] The Majett 2016 report and recommendation outlined the elements of potential claims under the Equal Protection Clause and 42 U.S.C. § 1983, the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq*., and the Fair Housing Amendments Act, 42 U.S.C. § 3601, *et seq*. Plaintiff was afforded an opportunity to amend her 2016 complaint to plead additional facts, if she was aware of any, so that her pleading would state a claim. She did not avail herself of that opportunity. The case was dismissed.

the eviction is "RI Housing," although the amended complaint also mentions "City Housing Authorities." Whichever Plaintiff may have intended, her amended complaint provides no information regarding what is the improper conduct of which the housing authority is accused. Plaintiff has also sued "Housing Authorities of . . . NY, NH, & VT," but provides no explanation of how or why these agencies (if they even exist) have anything to do with any potential claim.

Attached to the amended complaint are copies of numerous state statutes, suggesting that, if Plaintiff has a claim, it arises under state law. The amended complaint itself suggests that Plaintiff's concerns have already been the subject of state court litigation in which she did not prevail. Id. at 1-2 ("court complaint . . . resulted in an eviction sided with the defendant" and "ruling in favor of the defendant").

The balance of the amended complaint is even less comprehensible. It includes fragments of statements that, pieced together, seem to amount to allegations that technology vendors have accessed Plaintiff's "small business" "with a vengeance of invasion." ECF No. 3 at 1. Perhaps related to these allegations (although the amended complaint does not explain how), Plaintiff's caption names several defendants: "MySpace Entertainment cult 2006- present Fraud Applicants Servicer and Served in my name et. Al., Me too chaser group." It does not appear that any of these are persons or entities subject to suit. The body of the complaint does not identify who they are, why they are named or what they are alleged to have done.

II. Law and Analysis

The legal standard for dismissing a complaint for failure to state a claim pursuant to §§ 1915(e)(2) and 1915A is the same used when ruling on a Rule 12(b)(6) motion to dismiss. Hodge v. Murphy, 808 F. Supp. 2d 405, 408 (D.R.I. 2011). To survive a motion to dismiss, a complaint must contain sufficient factual allegations to "state a claim to relief that is plausible on

its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Iqbal, 556 U.S. at 678.

To the extent that the amended complaint is an attempt to reassert the matters pled in Majett 2016, it fails to state a plausible claim for the reasons laid out in the 2016 report and recommendation, which are incorporated by reference and will not be repeated here. Otherwise, it not only fails to clear the Iqbal/Twombly bar, but also does not meet the basic pleading requirements in Fed. R. Civ. P. 8(a)(2), which mandates that a complaint must contain a short and plain statement of the claim. Although it is short, the amended complaint lacks a comprehensible "plain statement of [any] claim" that could be the basis for a potentially viable lawsuit in federal court.

The amended complaint also fails to comply with Fed. R. Civ. P. 4, which requires that a complaint must name defendants who are persons or entities subject to suit and susceptible of service, as well as that all defendants named in the caption must be incorporated into the body of the pleading so that each can clearly tell what are the factual allegations against it. See Kilgore v. Providence Place Mall, No. CV 16-135S, 2016 WL 3092990, at *5 (D.R.I. Apr. 1, 2016), adopted, No. CV 16-135 S, 2016 WL 3093450 (D.R.I. June 1, 2016). Here, except for "RI Housing," the pleading's caption names defendants that do not seem to be persons or entities subject to suit; moreover, except for "RI Housing," none of the named defendants are mentioned in the body of the pleading. Redondo Waste Sys., Inc. v. Lopez-Freytes, 659 F.3d 136, 140 (1st Cir. 2011) (defendant named in case caption but not mentioned in body of complaint "fails the [Iqbal] plausibility test spectacularly"). And the amended complaint is devoid of any allegations from which "RI Housing" could ascertain of what it is accused. Accordingly, this pleading fails

to set forth with specificity the "who, what, when, where, and why" information necessary for a plausible claim. See Educadores Puertorriquenos en Accion v. Hernandez, 367 F.3d 61, 68 (1st Cir. 2004) ("complaint should at least set forth minimal facts as to who did what to whom, when, where, and why"). For all of these reasons, the pleading should be dismissed at screening.

III. Conclusion

Based on the foregoing, Plaintiff's IFP motion (ECF No. 2) is provisionally granted. However, because her pleading fails to state a claim against persons and entities subject to suit, I recommend that Plaintiff's "Amended Complaint/Application for Temporary Injunction" be dismissed pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(i) & (ii) and 1915A. I further recommend that Plaintiff be afforded leave to amend within thirty days of the Court's adoption of this report and recommendation to cure the deficits discussed above. See Brown v. Rhode Island, 511 F. App'x 4, 5, 7 (D.R.I. 2013). If she fails to do so or if she files a new complaint that is still deficient, I recommend that the case be dismissed.

Any objection to this report and recommendation must be specific and must be served and filed with the Clerk of the Court within fourteen (14) days after its service on the objecting party. See Fed. R. Civ. P. 72(b)(2); DRI LR Cv 72(d). Failure to file specific objections in a timely manner constitutes waiver of the right to review by the district judge and the right to appeal the Court's decision. See United States v. Lugo Guerrero, 524 F.3d 5, 14 (1st Cir. 2008); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Patricia A. Sullivan
PATRICIA A. SULLIVAN
United States Magistrate Judge
May 29, 2018