

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 23 2016

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

KRISTA DANDRIDGE-BARNETT,

Plaintiff-Appellant,

v.

BARNES AND NOBLE, INC.,

Defendant-Appellee.

No. 15-55994

D.C. No. 5:14-cv-02254-JLS-KK

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Josephine L. Staton, District Judge, Presiding

Submitted November 16, 2016**

Before: LEAVY, BERZON, and MURGUIA, Circuit Judges.

Krista Dandridge-Barnett appeals pro se from the district court's judgment dismissing for failure to prosecute her action alleging federal and state law claims arising from an incident at a Barnes and Nobles store. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion. *Edwards v. Marin Park*,

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Inc., 356 F.3d 1058, 1063 (9th Cir. 2004). We affirm.

Because the records shows that Dandridge-Barnett stood on her complaint, the district court abused its discretion in converting the Fed. R. Civ. P. 12(b)(6) dismissal of Dandridge-Barnett's claims into a Fed. R. Civ. P. 41(b) sanction. *See id.* at 1064-65 (dismissal under Rule 41(b) is not appropriate where the plaintiff makes an affirmative choice not to amend the complaint).

Nevertheless, dismissal of Dandridge-Barnett's federal claims was proper because Dandridge-Barnett failed to allege facts sufficient to state any plausible claims. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *see also Lindsey v. SLT Los Angeles, LLC*, 447 F.3d 1138, 1144-45 (2005) (setting forth elements of a § 1981 racial discrimination claim); *Sever v. Alaska Pulp Corp.*, 978 F.2d 1529, 1536 (9th Cir. 1992) (setting forth elements of a § 1985(3) conspiracy claim); *Trerice v. Pedersen*, 769 F.2d 1398, 1403 (9th Cir. 1985) (a cause of action is not provided under 42 U.S.C. § 1986 absent a valid claim for relief under § 1985).

The district court did not abuse its discretion in declining to exercise supplemental jurisdiction over Dandridge-Barnett's state law claims after

dismissing her federal claims. *See* 28 U.S.C. § 1367(c)(3); *San Pedro Hotel Co., Inc. v. City of Los Angeles*, 159 F.3d 470, 478 (9th Cir. 1998) (standard of review).

AFFIRMED.