

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JS-6

Adam Hendrix,

CASE NUMBER

2:21-cv-09730 SVW (PVCx)

v.

PLAINTIFF(S)

Leonardo Garcia,

ORDER RE REQUEST TO PROCEED  
IN FORMA PAUPERIS

DEFENDANT(S)

IT IS ORDERED that the Request to Proceed *In Forma Pauperis* is hereby GRANTED.

\_\_\_\_\_  
Date

\_\_\_\_\_  
United States Magistrate Judge

IT IS RECOMMENDED that the Request to Proceed *In Forma Pauperis* be DENIED for the following reason(s):

- Inadequate showing of indigency
- Legally and/or factually patently frivolous
- Other: See Attachment

- District Court lacks jurisdiction
- Immunity as to State of Illinois

Comments:

12/28/2021

Date

/s/ Pedro V. Castillo

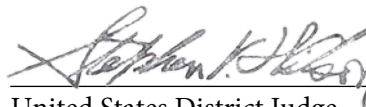
United States Magistrate Judge

IT IS ORDERED that the Request to Proceed *In Forma Pauperis* is hereby:

- GRANTED
- DENIED (see comments above). IT IS FURTHER ORDERED that:
  - Plaintiff SHALL PAY THE FILING FEES IN FULL within 30 days or this case will be dismissed.
  - This case is hereby DISMISSED immediately.
  - This case is hereby REMANDED to state court.

December 29, 2021

Date



United States District Judge  
STEPHEN V. WILSON

Attachment to Form CV 73  
*Adam Hendrix v. Leonardo Garcia, et al.*  
CV 21-9730 SVW (PVC)

Plaintiff Adam Hendrix, a California resident proceeding *pro se*, has filed the instant civil rights action ostensibly pursuant to 42 U.S.C. § 1983. The Complaint sues Leonardo Garcia, who Plaintiff claims was his romantic partner from May 2019 until Garcia returned to his home state of Illinois in June 2019, which prompted Plaintiff to follow him. Plaintiff also appears to sue the state of Illinois, which Plaintiff claims wrongfully issued a restraining order against him in September or October of 2019 that prohibited him from coming within at least 2,000 feet of Garcia. Plaintiff vaguely asserts that Defendants somehow violated his rights to free speech and due process.

With the Complaint, Plaintiff also filed a Request to Proceed In Forma Pauperis (“IFP Request”). (Dkt. No. 3). Because Plaintiff is seeking to proceed IFP, the Court has screened his pleading pursuant to 28 U.S.C. § 1915(e)(2) to determine whether the action is frivolous or malicious; fails to state a claim on which relief may be granted; or seeks monetary relief against a defendant who is immune from such relief. *See, e.g., Shirley v. Univ. of Idaho*, 800 F.3d 1193, 1194 (9th Cir. 2015) (citing 28 U.S.C. § 1915(e)(2) and noting that a “district court shall screen and dismiss an action filed by a plaintiff proceeding in forma pauperis”); *Calhoun v. Stahl*, 254 F.3d 845 (9th Cir. 2001) (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners.”). In screening a complaint under 28 U.S.C. § 1915(e)(2), the Court applies the standards set by Federal Rule of Civil Procedure 12(b)(6). *Rosati v. Igbinoso*, 791 F.3d 1037, 1039 (9th Cir. 2015).

The Complaint suffers from multiple incurable defects. To state a federal civil rights claim, Plaintiff must allege that each defendant, while acting under color of state law, deprived him of a right guaranteed under the Constitution or a federal statute. *See West v. Atkins*, 487 U.S. 42, 48 (1988). The “color of law” requirement excludes from the reach of § 1983 all “merely private conduct, no matter how discriminatory or wrongful.” *American Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999) (internal quotation marks omitted). A private party may be liable in a § 1983 action only “when he is a willful participant in joint action with the State or its agents.” *Kirtley v. Rainey*, 326 F.3d 1088, 1092 (9th Cir. 2003). Here, Garcia, whom Plaintiff states he met at a homeless shelter in San Francisco, is purely a private party. Even if the Complaint explained why Plaintiff believes Garcia violated his constitutional rights, which it does not, because Plaintiff may not raise any claim pursuant to § 1983 against an individual who is not acting on behalf of a state or local government entity, any § 1983 claim against Garcia necessarily fails.

The Complaint also appears to sue the state of Illinois. However, pursuant to the Eleventh Amendment, a state and its officials sued in their official capacity are immune

from claims for money damages under § 1983. *See Howlett v. Rose*, 496 U.S. 356, 365 (1990). Furthermore, because Plaintiff's claims against the state of Illinois arise solely from the issuance of a restraining order in a court proceeding, even if Plaintiff attempted to amend the claim to name a different defendant, absolute judicial immunity would apply. *See Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986) ("Judges and those performing judge-like functions are absolutely immune from damage liability for acts performed in their official capacities."). Accordingly, the Complaint fails to state a claim against the state of Illinois.

Additionally, it would appear that any claim arising from events that occurred between May 2019, when Plaintiff met Garcia, and October 2019, when the complained-of restraining order issued, would be untimely. "The applicable statute of limitations for actions brought pursuant to 42 U.S.C. § 1983 is the forum state's statute of limitations for personal injury actions." *Carpinteria Valley Farms, Ltd. v. County of Santa Barbara*, 344 F.3d 822, 828 (9th Cir. 2003). Effective January 1, 2003, the statute of limitations for personal injury actions in California is two years. Cal. Code Civ. Proc. § 335.1. Plaintiff did not bring his Complaint until December 2021, more than two years after the restraining order issued and any claim arising from its issuance accrued. Therefore, the Complaint appears to be untimely.

Finally, regardless of the substance or timeliness of Plaintiff's claims, venue is patently improper in the Central District. The general federal venue statute provides that a civil action not based on diversity of citizenship may be brought in: (1) a judicial district where any defendant resides, if all defendants reside in the same State; (2) a judicial district in which a substantial part of events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or (3) a judicial district in which any defendant may be found, if there is no judicial district in which the action may otherwise be brought. 28 U.S.C. § 1391(b). Here, Plaintiff claims to have met Garcia in San Francisco (Northern District), Plaintiff currently resides in Stockton (Eastern District), Garcia resides in Illinois, and all of the seemingly relevant actions occurred in Illinois. The Central District has absolutely no connection to Plaintiff's claims.

Amendment of the Complaint would be futile because these pleading deficiencies cannot be cured. Accordingly, Plaintiff's request to proceed IFP is properly denied.