

1 **DISCUSSION**

2 **A. Screening Standard**

3 Pursuant to 28 U.S.C. § 1915(e)(2), the court must conduct an initial review of the
4 complaint for sufficiency to state a claim. The court must dismiss a complaint or portion thereof
5 if the court determines that the action is legally “frivolous or malicious,” fails to state a claim
6 upon which relief may be granted, or seeks monetary relief from a defendant who is immune
7 from such relief. 28 U.S.C. § 1915(e)(2). If the court determines that the complaint fails to state
8 a claim, leave to amend may be granted to the extent that the deficiencies of the complaint can be
9 cured by amendment.

10 A complaint must contain “a short and plain statement of the claim showing that the
11 pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
12 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
13 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009) (citing
14 Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65 (2007)). Plaintiff
15 must set forth “sufficient factual matter, accepted as true, to ‘state a claim that is plausible on its
16 face.’” Ashcroft v. Iqbal, 129 S.Ct. at 1949 (quoting Twombly, 550 U.S. at 555). While factual
17 allegations are accepted as true, legal conclusion are not. Id. at 1949.

18 A complaint, or portion thereof, should only be dismissed for failure to state a claim upon
19 which relief may be granted if it appears beyond doubt that plaintiff can prove no set of facts in
20 support of the claim or claims that would entitle him to relief. See Hishon v. King & Spalding,
21 467 U.S. 69, 73 (1984), citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957); see also Palmer v.
22 Roosevelt Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a
23 complaint under this standard, the Court must accept as true the allegations of the complaint in
24 question, Hospital Bldg. Co. v. Trustees of Rex Hospital, 425 U.S. 738, 740 (1976), construe the
25 pro se pleadings liberally in the light most favorable to the Plaintiff, Resnick v. Hayes, 213 F.3d
26 443, 447 (9th Cir. 2000), and resolve all doubts in the Plaintiff’s favor, Jenkins v. McKeithen,
27 395 U.S. 411, 421 (1969).

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1 B. Plaintiff's Allegations

2 Plaintiff is a prisoner at Central California Woman's Facility. She alleges that on January
3 14, 2010, Defendant Sara Sandrick, a news anchor with KFSN, and John Doe, a cameraman at
4 the studio, singled Plaintiff and her daughter out for a televised interview. During the interview,
5 Plaintiff contends Defendants disclosed private information about Plaintiff's conviction thereby
6 placing Plaintiff and her daughter in danger. As a result, Plaintiff has been the subject of
7 numerous physical attacks by other inmates and personnel at the facility, and her daughter's
8 safety is in jeopardy. Plaintiff alleges a cause of action pursuant to 42 U.S.C. § 1983 based on
9 violations of the First, Fourth, Fifth, and Eighth Amendments of the United States Constitution,
10 and a state law claim for negligence. Plaintiff is seeking \$510,000.00 in monetary damages, and
11 other just relief.

12 C. Analysis

13 Based on the above facts, Plaintiff cannot establish that federal jurisdiction is proper.
14 Federal courts can adjudicate only those cases in which the United States Constitution and
15 Congress authorizes them to adjudicate which are essentially those cases involving diversity of
16 citizenship (in which the matter in controversy exceeds the sum or value of \$75,000 and is
17 between citizens of different states), or a federal question, or to which the United States is a
18 party. 28 U.S.C. §§ 1331 and 1332; See also, Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375
19 (1994); Finley v. United States, 490 U.S. 545, 109 S.Ct. 2003, 2008 (1989). As discussed below,
20 Plaintiff has failed to establish that federal jurisdiction exists. The United States is not a party in
21 this action and no federal question is presented. Similarly, the complaint does not allege that the
22 parties are citizens of different states.

23 1. *Federal Question*

24 Plaintiff's complaint alleges a violation of 42 U.S.C. § 1983 which would confer
25 jurisdiction based on a federal question. However, an examination of the facts reveals she is
26 unable to state a claim under this statute. The Civil Rights Act under which this action was filed
27 provides:

28 Every person who, under color of [state law] . . . subjects, or causes

1 to be subjected, any citizen of the United States . . . to the
2 deprivation of any rights, privileges, or immunities secured by the
3 Constitution . . . shall be liable to the party injured in an action at
4 law, suit in equity, or other proper proceeding for redress.
5 42 U.S.C. § 1983.

6 Here, Plaintiff alleges that a news anchor, a cameraman and a local news station were
7 acting under color of state law when they allegedly violated her constitutional rights. However,
8 none of these Defendants are employed by the state and therefore, they cannot act under color of
9 state law. Accordingly, Plaintiff is unable to state a cognizable federal claim under 42 U.S.C. §
10 1983.¹

11 *2. Diversity Jurisdiction*

12 Similarly, Plaintiff is unable to establish diversity jurisdiction. As previously noted,
13 diversity jurisdiction exists when a case is brought against citizens of different states and the
14 amount in controversy exceeds \$75,000.00. See, 28 U.S.C. § 1332. In this case, Plaintiff is a
15 citizen of California and the news station and all of its employees are also citizens of California.
16 Therefore, diversity jurisdiction does not exist.

17 **RECOMMENDATIONS**

18 For the reasons set forth above, the Court finds that Plaintiff would be unable to state a
19 cognizable claim even if leave to amend were given. Accordingly, it is recommended that
20 Plaintiff's complaint be DISMISSED WITHOUT LEAVE TO AMEND for lack of federal
21 jurisdiction.

22 These findings and recommendations will be submitted to the Honorable Lawrence J.
23 O'Neill pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30) days after
24 being served with these Findings and Recommendations, Plaintiff may file written objections
25 with the Court. The document should be captioned "Objections to Magistrate Judge's Findings
26 and Recommendations." Plaintiff is advised that failure to file objections within the specified

27 ¹ Plaintiff is advised that California's statute of limitations for personal injury actions governs claims
28 brought pursuant to 42 U.S.C. § 1983. Johnson v. State of California, 207 F.3d 650, 653 (9th Cir. 2000); Taylor v.
Regents of the Univ. of Cal., 993 F.2d 710, 711 (9th Cir. 1993); Abreu v. Ramirez, 284 F.Supp.2d 1250, 1257 (C.D.
Cal. 2003). The statute of limitations for personal injury actions in California is two years. Cal. Civ. Proc. §335.1.
Although this case is not dismissed based on the expiration of the statute of limitations, Plaintiff is advised that
because the alleged misconduct occurred on January 14, 2010, her claims may also be time barred.

1 time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153
2 (9th Cir. 1991).

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5 IT IS SO ORDERED.

6 **Dated: February 23, 2012**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE

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