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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANDRE PATTERSON,

Plaintiff,

No. C 11-06137 JSW

v.

RACHIALLE FRANKLIN,

Defendant.

**ORDER DENYING
APPLICATION TO PROCEED *IN
FORMA PAUPERIS* AND
DISMISSING CASE**

The Court has received Plaintiff's complaint and application to proceed *in forma pauperis*, both filed in this Court on December 5, 2011. 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). The *in forma pauperis* statute also provides that the Court shall dismiss the case if at any time the Court determines that the allegation of poverty is untrue, or that the action (1) is frivolous or malicious; (2) fails to state a claim on which relief may be granted; or (3) seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

Plaintiff has failed to set forth "a short and plain statement of the claim showing that the pleader is entitled to relief" as required by Rule 8 of the Federal Rules of Civil Procedure. Plaintiff's complaint fails to state a claim upon which relief can be granted because he fails to allege that Defendant was acting on behalf of the federal or state government. *See Public Utilities Comm'n of Dist. of Columbia v. Pollak*, 343 U.S. 451, 461 (1952) (holding that the First and Fifth Amendments "apply to and restrict only the Federal Government and not private

1 persons.”); *see also West v. Adkins*, 487 U.S. 42, 48-49 (1988) (holding that a claim for relief
2 under 42 U.S.C. § 1983 requires a showing of constitutional violations committed by persons
3 acting under color of state law).

4 Accordingly, the Court HEREBY DISMISSES the complaint with leave to amend and
5 DENIES the application to proceed *in forma pauperis*. If Plaintiff wishes to pursue this action,
6 he must file an amended complaint and a renewed application to proceed *in forma pauperis* by
7 **January 3, 2012**. Failure to file a cognizable legal claim by this date shall result in dismissal of
8 this action with prejudice. The Court advises Plaintiff that a Handbook for Pro Se Litigants,
9 which contains helpful information about proceeding without an attorney, is available through
10 the Court’s website or in the Clerk’s office. The Court also advises Plaintiff that additional
11 assistance may be available by making an appointment with the Legal Help Center, which is
12 located at 450 Golden Gate Avenue, 15th Floor, Room 2796, San Francisco, California, 94102.

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14 **IT IS SO ORDERED.**

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16 Dated: December 15, 2011

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19 JEFFREY WHITE
20 UNITED STATES DISTRICT JUDGE
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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
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5 ANDRE PATTERSON,
6 Plaintiff,

Case Number: CV11-06137 JSW

CERTIFICATE OF SERVICE

7 v.


8 RACHIALLE FRANKLIN et al,
9 Defendant.
10 _____/

11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.
12 District Court, Northern District of California.

13 That on December 15, 2011, I SERVED a true and correct copy(ies) of the attached, by
14 placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter
15 listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an
16 inter-office delivery receptacle located in the Clerk's office.

17 Andre Patterson
18 1419 Striped Bass, #F
19 San Francisco, CA 94130

Dated: December 15, 2011


Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk