

1
2
3
4
5
6 **UNITED STATES DISTRICT COURT**
7 **NORTHERN DISTRICT OF CALIFORNIA**
8 **SAN FRANCISCO DIVISION**
9

10 MARC OLIN LEVY,

11 Plaintiff,

12 v.

13 CUMULUS MEDIA INC.,
14

15 Defendant.
16

Case No. 11-cv-06616 NC

**REFERRAL FOR
REASSIGNMENT WITH
RECOMMENDATION TO
DISMISS**

Re: Dkt. No. 3

17 Plaintiff Marc Olin Levy moves to proceed in forma pauperis (“IFP”) under 28
18 U.S.C. § 1915. Dkt. No. 3. As neither party has not consented to its jurisdiction under 28
19 U.S.C. § 636(c), this Court does not have authority to make a dispositive ruling in this
20 case. Accordingly, the Court orders that this case be REASSIGNED to a District Judge.
21 The Court RECOMMENDS that Plaintiff’s Complaint be dismissed in accordance with
22 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim upon which relief may be
23 granted.

24 **I. STANDARD OF REVIEW**

25 Any person seeking to commence a civil suit in federal district court must pay a
26 filing fee of \$350. 28 U.S.C. § 1914(a). A district court has the authority to waive this
27 fee for any person who shows in an affidavit that he or she is unable to pay it. 28 U.S.C.
28 § 1915(a)(1). A district court may dismiss the complaint of an IFP applicant at any time

Case No. 11-cv-06616 NC
REFERRAL FOR REASSIGNMENT
WITH RECOMMENDATION TO DISMISS

1 if it determines that the complaint fails to state a claim upon which relief may be granted.
2 28 U.S.C. § 1915(e)(2)(B)(ii). Dismissal under the IFP statute “does not prejudice the
3 filing of a paid complaint making the same allegations.” *Denton v. Hernandez*, 504 U.S.
4 25, 34 (1992).

5 General rules for pleading complaints are governed by the Federal Rules of Civil
6 Procedure. A pleading stating a claim for relief must include “a short and plain statement
7 of the claim showing the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). The purpose
8 of the complaint is to give the defendant fair notice of the claims against him and the
9 grounds upon which the complaint stands. *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506,
10 512 (2002). A complaint must state the elements of the plaintiff’s claim in a plain and
11 succinct manner. *Jones v. Cmty. Redevelopment Agency*, 733 F.2d 646, 649 (9th Cir.
12 1984). As the Supreme Court noted, “Rule 8 does not require detailed factual allegations,
13 but it demands more than an unadorned, the-defendant-unlawfully-harmed-me
14 accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1949 (2009) (internal
15 quotation marks and citations omitted). Though pro se pleadings are held to “less
16 stringent standards” than pleadings drafted by attorneys, conclusory and vague allegations
17 do not support a cause of action. *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir.
18 1982).

19 II. DISCUSSION

20 Levy has established that he is unable to pay the filing fee required to file a
21 complaint. *See* IFP Application, Dkt. No. 3. Levy’s Complaint, however, fails to state a
22 claim upon which relief may be granted. In his Complaint, Levy claims that a radio
23 announcer and employee of Defendant Cumulus Media Inc. made an “anti-semitic slur,”
24 which offended Levy. Complaint, Dkt. No. 1. Specifically, he alleges that the use of the
25 phrase “T-Brew,” referencing NFL football player Tim Tebow, in connection with
26 commentary on the Last Supper was an anti-semitic reference. *Id.* He claims the “racist,
27 anti-semitic statement” was personally offensive to him. *See id.*; *see also* Civil Cover
28 Sheet, Dkt. No. 1-1. Plaintiff seeks money damages for the alleged offensive statements.

1 Plaintiff asserts the basis for his claim is “federal hate crimes law.” Dkt. No. 1-1.
2 Plaintiff, however, fails to plead any statute or theory of common law that makes the
3 alleged act of “hate” actionable. Nor does the Complaint contain factual allegations from
4 which it could be inferred that defendant acted with a discriminatory purpose. *See Iqbal*,
5 129 S. Ct. at 1949 (respondent’s complaint failed to assert factual allegation sufficient to
6 plausibly suggest petitioners’ discriminatory state of mind). Even a liberal construction
7 of a complaint cannot supply essential elements of a claim that were not initially pled.
8 *Ivey*, 673 F.2d at 268. Because the Complaint is devoid of any factual allegations to
9 support Levy’s assertion that he was the victim of a hate crime or suffered racial or
10 religious discrimination, the Court recommends that Plaintiff’s Complaint be dismissed.

11
12 IT IS SO ORDERED.

13
14 DATED: January 17, 2012

15
16 
17 NATHANAEL M. COUSINS
United States Magistrate Judge