

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

KIMBERLY KEYS, WF5311,  
Plaintiff,  
v.  
LESTER McDAUGHERTY,  
Defendant(s).

Case No. [17-cv-06467-CRB](#) (PR)

**ORDER OF DISMISSAL**

Plaintiff Kimberly Keys, a prisoner at Central California Women’s Facility in Chowchilla, has filed a pro se complaint for damages under 42 U.S.C. § 1983 against Lester McDaugherty, a former prisoner she alleges stole monies from her. Plaintiff also seeks to proceed in forma pauperis (IFP) under 28 U.S.C. § 1915, which based solely on her affidavit of poverty, the court grants in an accompanying order.

**DISCUSSION**

A. Standard of Review

Federal courts “shall dismiss” an action brought IFP under § 1915 at any time if the court determines that the action “is frivolous or malicious,” “fails to state a claim on which relief may be granted,” or “seeks monetary relief from a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2). Pro se pleadings must be liberally construed, however. Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1990).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

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B. Legal Claims


Plaintiff’s action against defendant, a private individual, must be dismissed for failure to state a claim under § 1983 because a private individual does not act under color of state law, an essential element of a § 1983 action. See Gomez v. Toledo, 446 U.S. 635, 640 (1980). Purely private conduct, no matter how wrongful, is not covered under § 1983. See Van Ort v. Estate of Stanewich, 92 F.3d 831, 835 (9th Cir. 1996). But plaintiff may well be able to seek relief in state court for violation of California law.

**CONCLUSION**

For the foregoing reasons, plaintiff’s action is DISMISSED under § 1915(e)(2) for failure to state a claim on which relief may be granted. The dismissal is without prejudice to seeking relief in state court, if appropriate.

**IT IS SO ORDERED.**

Dated: January 22, 2018

  
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CHARLES R. BREYER  
United States District Judge