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

JOSEPH MCINERNEY,  
Plaintiff,  
v.  
CITY OF SAN JOSE, et al.,  
Defendants.

No. 11-03018 CW  
ORDER GRANTING  
APPLICATION TO  
PROCEED IN FORMA  
PAUPERIS,  
DISMISSING  
COMPLAINT AND  
DENYING AS MOOT  
MOTION FOR  
EXTENSION OF TIME  
TO SERVE  
DEFENDANTS

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Plaintiff Joseph McInerney applies for leave to proceed in forma pauperis (IFP) and an extension of time to serve Defendants. The matter was decided on the papers. Having considered all of the papers filed by Plaintiff, the Court grants the application to proceed IFP, dismisses the complaint and denies as moot the motion for an extension of time to serve Defendants.

DISCUSSION

A court may authorize a plaintiff to prosecute 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 provide such security. See 28 U.S.C. § 1915(a). Plaintiff has submitted the required documentation, and it is evident from his application that his assets and income are

1 insufficient to enable him to prosecute the action. Accordingly,  
2 his application to proceed without the payment of the filing fee is  
3 GRANTED.

4 The Court's grant of Plaintiff's application to proceed IFP,  
5 however, does not mean that he may continue to prosecute his  
6 complaint. A court is under a continuing duty to dismiss a case  
7 filed without the payment of the filing fee whenever it determines  
8 that the action "(i) is frivolous or malicious; (ii) fails to state  
9 a claim on which relief may be granted; or (iii) seeks monetary  
10 relief against a defendant who is immune from such relief." 28  
11 U.S.C. § 1915(e)(2)(B)(i)-(iii). Because a dismissal pursuant to  
12 § 1915(e)(2)(B) is not a dismissal on the merits, but rather an  
13 exercise of the court's discretion under the IFP statute, the  
14 dismissal does not prejudice the filing of a paid complaint making  
15 the same allegations. Denton v. Hernandez, 504 U.S. 25, 32 (1992).

16 Plaintiff names many Defendants, such as the City of San Jose,  
17 the City and County of San Francisco, the Tides Center, the Dish,  
18 the John Stewart Company, Northern California Presbyterian Homes  
19 and Services, Silicon Valley Real Estate Investment, Walgreens, and  
20 several individuals. Plaintiff makes the following allegations.  
21 Defendants illegally obtained Plaintiff's medical records from the  
22 San Francisco Community Mental Health Services to frame him as a  
23 mentally disordered sex offender so that they could incarcerate him  
24 in Atascadero State Hospital for the criminally insane.  
25 Plaintiff's false diagnosis as a mentally disordered sex offender  
26 was incorporated into a counterfeit web site maintained by  
27 Defendants as part of a campaign to maintain illegal video

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1 surveillance of Plaintiff in his last three residences. Defendants  
2 doctored the photographs to make Plaintiff's activities in his  
3 residences appear to be taking place in public. Defendants  
4 published this slanderous material to Lucasfilm and its attorney,  
5 David Anderman, who re-published it to agents of the Federal Bureau  
6 of Investigation. Defendants employed people to impersonate  
7 Plaintiff in order to impede Plaintiff's chances of being employed  
8 by Lucasfilm and to frame Plaintiff for fraud, perjury and tax  
9 evasion, after attempting to frame him for putting pornographic  
10 pictures of himself on a web site accessible to minors on  
11 MySpace.com.

12 Defendants hired the John Stewart Company to install a  
13 surveillance camera in Plaintiff's unit in the LeNain Hotel and  
14 solicited the Tides Center, Dish, Shawn Hughes and Does 50 through  
15 151 to continue the illegal surveillance. Defendant Northern  
16 California Presbyterian Homes also cooperated and assisted in the  
17 installation of cameras in Plaintiff's apartment unit.

18 Based on these allegations, Plaintiff asserts causes of action  
19 for violation of 42 U.S.C. §§ 1981 through 1983, 1985, 1986 and  
20 1988. He also asserts state law claims of invasion of privacy,  
21 conspiracy to defame, violation of government records, conspiracy  
22 to falsely impersonate Plaintiff, identity theft, negligence,  
23 intentional infliction of emotional distress, fraud, unlawful  
24 searches and seizures, and violation of the First, Fourth, Fifth,  
25 and Eighth Amendments to the United States Constitution. Plaintiff  
26 seeks a restraining order against Defendants enjoining them from  
27 reproducing, distributing or showing photographs of Plaintiff and  
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1 requiring them to return the photographs to him along with his  
2 medical records. He also seeks punitive, exemplary and statutory  
3 damages for each publication.

4 Even interpreted liberally, Plaintiff's allegations do not  
5 state a claim upon which relief can be granted. Therefore, his  
6 complaint is dismissed without prejudice to filing as a paid  
7 complaint. Plaintiff's motion for an extension of time to serve  
8 Defendants is denied as moot.

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IT IS SO ORDERED.

Dated: 10/19/2011

  
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CLAUDIA WILKEN  
United States District Judge

1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

4 JOSEPH MCINERNEY et al,

5 Plaintiff,

6 v.

7 CITY OF SAN JOSE et al,

8 Defendant.

Case Number: CV11-03018 CW

**CERTIFICATE OF SERVICE**

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

11 That on October 19, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said  
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located  
14 in the Clerk's office.

15 Joseph McInerney  
16 60 North Third Street #301  
17 San Jose, CA 95112

Dated: October 19, 2011

Richard W. Wieking, Clerk  
By: Nikki Riley, Deputy Clerk

United States District Court  
For the Northern District of California