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United States District Court
For the Northern District of California

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

JOSEPH VICTOR LAGANA,

Plaintiff,

v.

DEMOCRATIC PARTY, et al.,

Defendants.

No. C 12-6379 CW

ORDER GRANTING
PLAINTIFF'S
APPLICATION TO
PROCEED IN FORMA
PAUPERIS AND
DISMISSING
COMPLAINT

_____ /

Plaintiff Joseph Lagana has filed an application for leave to proceed in forma pauperis (IFP). The matter was decided on the papers. Having considered all of the papers filed by Plaintiff, the Court grants the application to proceed IFP and dismisses the complaint.

LEGAL STANDARD

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 appears from his application that his assets and income are insufficient to enable him to prosecute the action. Accordingly, the

1 the Ninth Circuit dismissed Plaintiff's appeal, Plaintiff filed a
2 Fourth Amended Complaint and a Notice of Removal from State Court
3 to Federal Court. See Case No. 08-3392, Docket Nos. 89, 90. On
4 November 3, 2010, the Court granted the defendant's motion to
5 strike the Fourth Amended Complaint and remand the case to state
6 court. See Case No. 08-3392, Docket No. 93.

7 In state court, Plaintiff filed a copy of the same complaint
8 filed in this Court as the Fourth Amended Complaint. See SF
9 Superior Court 08-475803, Docket Entry for August 19, 2010. On
10 October 6, the state court granted the defendant's motion to
11 strike the amended complaint. On June 30, 2011, the state court
12 granted the defendant's unopposed motion for summary judgment.
13 Judgment was entered in the defendant's favor on November 10,
14 2011.

15 II. Current Lawsuit

16 Plaintiff has now filed a copy of the complaint filed as the
17 Fourth Amended Complaint in the 2008 case and filed in the state
18 court on August 19, 2010, with hand-written alterations and
19 without the last page. The vast majority of the allegations and
20 claims are identical to those stated in the Third Amended
21 Complaint in the 2008 case, all of which were resolved on the
22 merits in favor of the City and County of San Francisco, the
23 defendant in that case. Plaintiff now names many other
24 defendants, including the Democratic Party, the "Santa Clara
25 Police Department," the "City and County of Santa Clara," and
26 numerous individuals who are sued in their official and individual
27 capacities.
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DISCUSSION

I. Additional Defendants

Plaintiff has handwritten the names of several defendants on the caption of his complaint. These defendants are "Democratic Party," "Santa Clara Police Department," "City and County of Santa Clara," "Santa Clara Mayor Jamie L. Matthews," and "Judy Lamar-Mc___." However, the complaint does not include any factual allegations regarding these defendants. Accordingly, all claims plead against these defendants are dismissed.

II. Civil Rights Claims

Plaintiff alleges that Defendants violated his rights under the First, Fourth, and Fourteenth Amendments to the United States Constitution. Title 42 U.S.C. § 1983 "provides a cause of action for the 'deprivation of any rights, privileges, or immunities secured by the Constitution and laws' of the United States." Wilder v. Virginia Hosp. Ass'n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983). "For actions under 42 U.S.C. § 1983, courts apply the forum state's statute of limitations for personal injury actions" Jones v. Blanas, 383 F.3d 918, 927 (9th Cir. 2004). In California, the statute of limitations for personal injury claims is two years. Cal. Civ. Proc. Code § 335.1.

Plaintiff has also alleged a claim under 42 U.S.C. § 1985. The Ninth Circuit has held that actions under § 1985 are "best characterized as personal injury actions and are governed by the same statute of limitations as actions under § 1983." McDougal v. County of Imperial, 942 F.2d 668, 673-74 (9th Cir. 1991).

California state law also applies to determine whether equitable tolling excuses the filing of a § 1983 or § 1985 claim outside of

1 the statute of limitations. Estate of Blue v. County of Los
2 Angeles, 120 F.3d 982, 984 (9th Cir. 1997). Under California's
3 equitable tolling doctrine, the time a plaintiff spends pursuing
4 his or her claims in state court may suspend the running of the
5 statute of limitations in federal court when three conditions are
6 satisfied: "(1) timely notice to the defendant in filing the first
7 claim; (2) lack of prejudice to defendant in gathering evidence to
8 defend against the second claim; and, (3) good faith and
9 reasonable conduct by the plaintiff in filing the second claim."
10 Donoghue v. County of Orange, 848 F.2d 926, 931 (9th Cir. 1988)
11 (citing Collier v. City of Pasadena, 142 Cal. App. 3d 917, 922-24
12 (1983)).

13 Plaintiff's §§ 1983 and 1985 claims are based on events that
14 occurred between 2008 and 2010. The event with the latest date
15 described in Plaintiff's complaint is a phone call made on August
16 17, 2010. See Complaint at ¶ 129. However, Plaintiff filed his
17 complaint on December 11, 2012, more than two years after the
18 events described. Although Plaintiff was pursuing identical or
19 related claims in both state and federal court between 2008 and
20 2011, the Court will not grant Plaintiff leave to amend to allege
21 that the late filing of his §§ 1983 and 1985 claims should be
22 excused by the doctrine of equitable tolling. The Court finds
23 that Plaintiff has not acted reasonably and in good faith. First,
24 Plaintiff did not actively pursue his claims in state court after
25 his 2008 case was dismissed by this Court. Instead, he failed to
26 oppose the defendant's motion for summary judgment in state court
27 and proceeded to refile his claims in this Court. Moreover,
28

1 Plaintiff has refiled multiple claims that were previously decided
2 on the merits by either this Court or the state court.

3 Accordingly, Plaintiff's §§ 1983 and 1985 claims are
4 dismissed with prejudice.

5 III. RICO Claim

6 At paragraphs 271 through 275, Plaintiff asserts a claim
7 under the Racketeer Influenced and Corrupt Organizations Act
8 (RICO). "RICO provides a private cause of action for '[a]ny
9 person injured in his business or property by reason of a
10 violation of section 1962 of this chapter.'" Hemi Group, LLC v.
11 City of New York, 130 S. Ct. 983, 987 (2010) (quoting 18 U.S.C.
12 § 1964(c)). Section 1962 contains the substantive criminal RICO
13 provisions.

14 Under RICO, a "plaintiff only has standing if, and can only
15 recover to the extent that, he has been injured in his business or
16 property by the conduct constituting the violation." Sedima,
17 S.P.R.L. v. Imrex Co., 473 U.S. 479, 496 (1985). The Supreme
18 Court has held that "to state a claim under civil RICO, the
19 plaintiff is required to show that a predicate offense not only
20 was a 'but for' cause of his injury, but was the proximate cause
21 as well." Hemi Group, 130 S. Ct. at 989 (internal quotation marks
22 omitted). For purposes of RICO, proximate cause requires "some
23 direct relation between the injury asserted and the injurious
24 conduct alleged." Holmes v. Sec. Investor Prot. Corp., 503 U.S.
25 258, 268 (1992).

26 It is not clear what activity Plaintiff alleges is the
27 racketeering activity that violates RICO or how such activity
28 relates to injuries sufficient to support standing. In his

1 statement of facts, Plaintiff alleges, "The Defendant is also
2 guilty of racketeering, punishable under the Federal RICO Act
3 because of their tampering of evidence, obstruction of justice,
4 and working with Ross Stores to harass the Plaintiff, impede his
5 protesting efforts, and deprive him of his rights." Complaint
6 ¶ 119. This allegation is not sufficient to establish that
7 Plaintiff has been "injured in his business or property." Sedima,
8 473 U.S. at 496.

9 Under the heading for his RICO claim, Plaintiff makes
10 specific allegations regarding the San Francisco Police Officer's
11 Association (SFPOA). First, he alleges that the unnamed Vice
12 President of the SFPOA "says majority of lawsuits against police
13 are frivolous and shows little remorse to the PLAINTIFF for the
14 wrongs committed by the SFPD officers towards the plaintiff."
15 Complaint ¶ 274. Next, Plaintiff alleges that the SFPOA "has been
16 lobbying to keep funding for cameras and recording devices in SFPD
17 vehicles in order to continue it's [sic] criminal enterprise that
18 is ran [sic] by miscreant SFPD officers," Complaint ¶ 275. These
19 allegations are not sufficient to establish any individual
20 criminal acts, or the "pattern of racketeering activity" required
21 by § 1962. Accordingly Plaintiff's RICO claim is dismissed.

22 IV. Other Federal Claims

23 In addition to claims under § 1983, Plaintiff alleges several
24 other federal claims: that Defendant violated 18 U.S.C. §§ 241,
25 242, 1512, 1513 and 42 U.S.C. § 14141.

26 As the Court found in its October 14, 2009 order granting
27 summary judgment to the defendant in Plaintiff's 2008 case,
28 "Sections 241 and 242 are criminal statutes. Plaintiff, as a

1 private citizen, may not bring a criminal action against
2 Defendant." Case No. 08-3392, Docket No. 70 at 10. This is also
3 true of §§ 1512 and 1513.

4 Title 42 U.S.C. § 14141 authorizes the Attorney General to
5 institute a civil action in certain circumstances. Plaintiff, as
6 a private citizen, may not bring a suit pursuant to this section.

7 Accordingly, Plaintiff's remaining federal claims are
8 dismissed with prejudice.

9 V. State Law Claims

10 As in the 2008 lawsuit, Plaintiff alleges that Defendants
11 have violated many state laws and provisions of the state
12 constitution. Title 28 U.S.C. § 1367(c)(2) authorizes district
13 courts to decline to exercise supplemental jurisdiction over a
14 state law claim if "the claim substantially predominates over the
15 claim or claims over which the district court has original
16 jurisdiction." In determining whether to decline to exercise
17 supplemental jurisdiction, the Court should consider whether
18 remanding the rest of the case to state court will accommodate the
19 values of "economy, convenience, fairness, and comity." Executive
20 Software North America, Inc. v. United States District Court, 24
21 F.3d 1545, 1557 (9th Cir. 1994), overruled on other grounds by
22 Cal. Dep't of Water Res. v. Powerex Corp., 533 F.3d 1087 (9th Cir.
23 2008).

24 As discussed above, the Court dismisses all of Plaintiff's
25 federal claims. Moreover, many of the state law claims in this
26 case are similar or identical to the state law claims in the 2008
27 case, which were resolved by the state court. It will be more
28 efficient for the state court to evaluate Plaintiff's state law

1 claims, including determining whether the claims are precluded by
2 the 2008 litigation. Accordingly, the values of economy,
3 convenience, fairness, and comity favor dismissal of the state law
4 claims.

5 CONCLUSION

6 For the foregoing reasons, the Court dismisses Plaintiff's
7 claims. Because amendment of Plaintiff's federal claims would be
8 futile, the complaint is dismissed without leave to amend.
9 Dismissal of Plaintiff's state law claims is without prejudice to
10 him refiling those claims in state court.

11 IT IS SO ORDERED.

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13 Dated: 1/30/2013

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15 CLAUDIA WILKEN
16 United States District Judge
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