

United States District Court  
For the Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

EDWARD E. VILLEGAS, )  
 )  
Plaintiff, )  
v. )  
THE DEPARTMENT OF MOTOR VEHICLES, )  
 )  
Defendant. )

Case No.: CV 11-05511 PSG  
**ORDER TO REASSIGN CASE; AND  
REPORT AND RECOMMENDATION  
THAT CASE BE DISMISSED WITH  
LEAVE TO AMEND**

On November 15, 2011, Plaintiff Edward E. Villegas (“Villegas”) proceeding *pro se* filed a complaint and an application to proceed *in forma pauperis*. Based on the application and the file herein,

IT IS HEREBY ORDERED that this case be reassigned to a District Judge with the recommendation that the case be dismissed with leave to amend.<sup>1</sup> A federal court must dismiss an *in forma pauperis* complaint if the complaint is: (1) frivolous; (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.<sup>2</sup>

<sup>1</sup> This court is ordering reassignment to a District Judge because, absent consent of all parties, a magistrate judge does not have authority to make case-dispositive rulings. *See, e.g., Tripathi v. Rison*, 847 F.2d 548, 549 (9th Cir. 1988).


<sup>2</sup> *See* 28 U.S.C. §1915(e)(2); *Neitzke v. Williams*, 490 U.S. 319, 324 (1989).

1 In the complaint, Villegas alleges that the California Department of Motor Vehicles  
2 (“DMV”) is violating both the Fifth and Fourteenth Amendments of the United States Constitution  
3 by refusing to release his driver’s license until he pays a registration fee and registers for a monthly  
4 class. In 1993, Villegas entered into a plea bargain for driving under the influence (“DUI”) within  
5 seven years of another DUI offense.<sup>3</sup> As part of the plea bargain, Villegas’ driver’s license was  
6 suspended for four years.<sup>4</sup> Villegas alleges that by withholding his license, after the four year  
7 suspension has lapsed, the DMV is violating his “vested and fundamental” right to drive under the  
8 Fourteenth Amendment, and also subjecting him to additional punishment for the same crime.<sup>5</sup>  
9 Villegas alleges that this violates the Double Jeopardy Clause of the Fifth Amendment.<sup>6</sup> While the  
10 complaint primarily relies on the Constitution to assert claims, it fails to provide any non-frivolous  
11 basis for jurisdiction in federal court. In addition, Villegas’ claims against the DMV may be  
12 precluded by the Eleventh Amendment.<sup>7</sup>

13 Generally, a district court must give *pro se* litigants an opportunity to amend their  
14 complaint. “[L]eave [to amend] shall be freely given when justice so requires.”<sup>8</sup> A federal court  
15 also must liberally construe the “inartful pleading” of parties appearing *pro se*.<sup>9</sup> Accordingly, this  
16 court recommends that the district judge dismiss the complaint with leave to amend.

17 **IT IS SO ORDERED.**

18 Dated: 2/17/2012

  
19 PAUL S. GREWAL  
20 United States Magistrate Judge

21 <sup>3</sup> Compl. at 1.

22 <sup>4</sup> *Id.*

23 <sup>5</sup> *Id.* at 10-11.

24 <sup>6</sup> *Id.*

25 <sup>7</sup> See, e.g., *Miller v. Geico Auto Insurer*, No. 7:04CV00702, 2005 U.S. Dist. LEXIS 14441 (W.D.  
26 Va. July 19, 2005) (holding that the Virginia DMV is a state agency that is immune from liability  
under the 11th Amendment).

27 <sup>8</sup> Fed. R. Civ. P. 15(a).

28 <sup>9</sup> *Hughes v. Rowe*, 449 U.S. 5, 9 (1980).