

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DACOREY SATTERWHITE,
Plaintiff,
v.
24 HOUR FITNESS,
Defendant.

Case No. [5:17-cv-00848-HRL](#)

ORDER FOR REASSIGNMENT TO A DISTRICT JUDGE

ORDER GRANTING APPLICATION TO PROCEED IN FORMA PAUPERIS

REPORT AND RECOMMENDATION RE DISMISSAL

Re: Dkt. No. 2

DaCorey Satterwhite seeks to sue 24 Hour Fitness for \$5 million dollars for “pain and suffering.” He also seeks leave to proceed in forma pauperis (IFP). His complaint is based on the following allegations: (1) a gym trainer “made a comment can you do a push-up”; (2) when he asked about his gym membership, an employee said that his “account was out” because Satterwhite missed his appointment, and then that employee “got an attitude”; (3) another employee said to call the police on Satterwhite because Satterwhite was concerned about his membership; (4) when Satterwhite first started his membership, an employee “made a comment are you sure the money is on this card” and also said “you stink you smell like tobacco”; and (5) another employee “made a comment and said check in Big Dude.” (Dkt. 1). For the reasons stated below, the undersigned grants the IFP application, but recommends that this matter be

1 dismissed for lack of federal subject matter jurisdiction.

2 A court may authorize the commencement of a civil action in forma pauperis (“IFP”) if the
3 court is satisfied that the applicant cannot pay the requisite filing fees. 28 U.S.C § 1915(a)(1). In
4 evaluating such an application, the court should “gran[t] or den[y] IFP status based on the
5 applicant’s financial resources alone and then independently determin[e] whether to dismiss the
6 complaint on the grounds that it is frivolous.” Franklin v. Murphy, 745 F.2d 1221, 1226-27 n.5
7 (9th Cir. 1984). A court may dismiss a case filed without the payment of the filing fee whenever it
8 determines that the action “(i) is frivolous or malicious; (ii) fails to state a claim on which relief
9 may be granted; or (iii) seeks monetary relief against a defendant who is immune from such
10 relief.” 28 U.S.C. § 1915(e)(2)(B)(i)-(iii). Additionally, the court has a continuing duty to
11 determine whether it has subject matter jurisdiction and must dismiss a case where jurisdiction is
12 lacking. Fed. R. Civ. P. 12(h)(3).

13 Satterwhite’s IFP application is granted because the record indicates that he lacks sufficient
14 finances to pay the filing fee. Even so, this court finds that Satterwhite’s suit cannot proceed here
15 because there is no federal subject matter jurisdiction over his complaint.

16 Satterwhite does not invoke federal question jurisdiction, (see Dkt. 1-1), and this court
17 finds that there is no federal question jurisdiction anyway. Federal courts have original
18 jurisdiction over civil actions “arising under the Constitution, laws, or treaties of the United
19 States.” 28 U.S.C. § 1331. A claim “arises under” federal law if, based on the “well-pleaded
20 complaint rule,” the plaintiff alleges a federal claim for relief. Vaden v. Discovery Bank, 129 S.
21 Ct. 1262, 1272 (2009). Satterwhite’s complaint alleges no facts giving rise to a cognizable claim
22 for relief under federal law.

23 There is also no basis for diversity jurisdiction under 28 U.S.C. § 1332. Federal district
24 courts have jurisdiction over civil actions in which the matter in controversy exceeds the sum or
25 value of \$75,000 (exclusive of interest and costs) and is between citizens of different states. 28
26 U.S.C. § 1332. Here, the record indicates that both Satterwhite and defendant are California
27 citizens. (Dkt. 1-1).

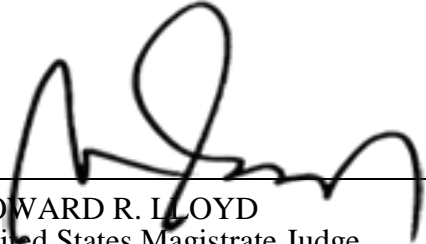
28 There being no basis for federal question or diversity jurisdiction, this case should be

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dismissed. Because the parties have yet to consent to the undersigned's jurisdiction, this court
ORDERS the Clerk of the Court to reassign this case to a District Judge. The undersigned further
RECOMMENDS that Satterwhite's complaint be dismissed for lack of subject matter jurisdiction.
Any party may serve and file objections to this Report and Recommendation within fourteen days
after being served. 28 U.S.C. § 636(b)(1)(B), (C); Fed. R. Civ. P. 72.

SO ORDERED.

Dated: May 8, 2017



HOWARD R. LLOYD
United States Magistrate Judge

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5:17-cv-00848-HRL Notice sent by U.S. Mail on 5/8/17 to:

DaCorey Satterwhite
479 Blossom Hill Road
San Jose, CA 95123