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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
6 SAN JOSE DIVISION
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8 CALIFORNIA DEPARTMENT OF
9 MOTOR VEHICLES,

10 Plaintiff,

11 v.

12 ROSALIE GUANCIONE,

13 Defendant.

Case No. [5:22-cv-04894-EJD](#)

**ORDER GRANTING IN PART
MOTION FOR EXTENSION OF TIME
TO FILE RESPONSE; GRANTING
MOTION TO PROCEED IN FORMA
PAUPERIS; DISMISSING
COMPLAINT**

Dkt. Nos. 3, 18, 22, 24

14 The Court ordered *pro se* Defendant Rosalie Guancione to show cause why this action
15 should not be remanded for lack of removal jurisdiction. *See* Dkt. No. 18. The order instructed
16 Ms. Guancione to file a response by October 21, 2022. *Id.* On October 20, 2022, Ms. Guancione
17 filed a motion for extension of time to file a response and for expedited discovery, informing the
18 Court that she had not received the Order to Show Cause in the mail until October 20, 2022 and
19 seeking an additional 10 days to respond. Dkt. No. 22. Ms. Guancione subsequently responded
20 on October 24, 2022, before the Court considered her request. Dkt. No. 24. As a threshold matter,
21 the Court **GRANTS in part** and **DENIES in part** Ms. Guancione's motion; the Court grants her
22 request for an extension of time to respond to the Order to Show Cause but denies her request for
23 expedited discovery. For the reasons discussed below, the Court **GRANTS** Ms. Guancione's
24 motion to proceed in forma pauperis and **DISMISSES** this action in its entirety.

I. REMOVAL

25 On August 26, 2022, Ms. Guancione purportedly "removed" this proceeding from the
26 California Department of Motor Vehicles ("DMV") Administrative Court pursuant to 28 U.S.C.

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1 §§ 1441 and 1443, and crossclaimed for deprivation of her civil rights under 42 U.S.C. § 1983,
2 conspiracy to deprive her right to travel under 42 U.S.C. §§ 1985 and 1986, and alleging
3 violations of her First, Fourth, Fifth, Seventh, and Fourteenth Amendment rights after the DMV
4 suspended her driver’s license following a car accident. Dkt. No. 1. In her response to the Order
5 to Show Cause, Ms. Guancione contends that the Court has original jurisdiction over the alleged
6 claims but acknowledges that “[t]he Cross Complaint is an action that was never in state court and
7 therefore cannot be remanded to state court.” Dkt. No. 26 at 2. Ms. Guancione maintains that the
8 Complaint and Cross-Complaint were originally filed in this Court. However, the case docket and
9 Ms. Guancione’s civil cover sheet indicate that this action was removed from the California DMV
10 Administrative Court. *See* Notice of Removal, Dkt. No. 1; Civil Cover Sheet, Dkt. No. 1-2.

11 The removal statute authorizes removal of actions that are brought in a state court of which
12 a district court has original jurisdiction. 28 U.S.C. § 1441(a). The California DMV is a state
13 administrative agency and not a state court, and thus Ms. Guancione’s “removal” of the action to
14 this Court was improper. *Oregon Bureau of Lab. & Indus. ex rel. Richardson v. U.S. W.*
15 *Commc’ns, Inc.*, 288 F.3d 414, 417, 419 (9th Cir. 2002) (holding that § 1441(a) does not authorize
16 removal of proceedings from an administrative agency even if it conducts “court-like
17 proceedings.”).

18 Accordingly, the Court finds that it lacks removal jurisdiction over this action.

19 **II. MOTION TO PROCEED IN FORMA PAUPERIS**

20 On August 26, 2022, Ms. Guancione also moved to proceed in forma pauperis (“IFP”).
21 Dkt. No. 3. Pursuant to 28 U.S.C. § 1915(a), any federal court may authorize a plaintiff to
22 prosecute an action without prepayment of fees or security where the plaintiff submits an affidavit
23 detailing their assets and averring that plaintiff is unable to pay. The Court has reviewed Ms.
24 Guancione’s IFP application and finds that she satisfies the economic eligibility requirement. Dkt.
25 No. 3. Accordingly, Plaintiff’s request to proceed IFP is **GRANTED**.

26 “However, the Court has a continuing duty to dismiss a case filed without the prepayment

1 of the filing fee under § 1915(a) whenever it determines that the action is ‘(i) frivolous or
2 malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief
3 against a defendant who is immune from such relief.’” *Kimner v. Koh*, No. 21-CV-07107-VKD,
4 2021 WL 5410140, at *1 (N.D. Cal. Oct. 7, 2021) (quoting 28 U.S.C. § 1915(e)(2)(B)(i)–(iii)),
5 *report and recommendation adopted*, No. 5:21-CV-07107-EJD, 2021 WL 5410141 (N.D. Cal.
6 Oct. 28, 2021), *aff’d*, No. 21-CV-16932, 2022 WL 2340436 (9th Cir. June 29, 2022); *Barren v.*
7 *Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (“The language of § 1915(e)(2)(B)(ii) parallels
8 the language of Federal Rule of Civil Procedure 12(b)(6).”). A complaint must set forth “enough
9 facts to state a claim to relief that is plausible on its face,” otherwise it must be dismissed for
10 failure to state a claim. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547 (2007).

11 As discussed above, this action was improperly removed from the California DMV
12 Administrative Court. Therefore, the Court lacks jurisdiction over the suit.

13 **A. Plaintiff’s Cross-Complaint**

14 Ms. Guancione’s Notice of Removal refers to several alleged violations of her
15 constitutional rights. Ms. Guancione also filed a separate document titled “Complaint in Law for
16 Damages due to Discrimination and Denial of Rights.” *See* Dkt. No. 4. She subsequently filed a
17 Request for judicial notice filed as a “Cross-Complaint.” *See* Dkt. No. 7. These filings identify
18 the DMV, the Ventura Police Department, Officers Garcia and Orozco, multiple employees of the
19 DMV, and Ventura resident Mr. Sean Lim as “cross defendants.” Dkt. Nos. 4, 7.

20 As discussed previously, the Court lacks removal jurisdiction over this suit. It follows that
21 the Court also lacks jurisdiction over the cross complaint against the DMV, the Ventura Police
22 Department, Officers Garcia and Orozco, the named employees of the DMV, and Mr. Sean Lim.
23 Furthermore, the cross-claims are not legally cognizable for the reasons discussed below.

24 **1. Claims Against the California DMV**

25 All of Ms. Guancione’s cross claims against the DMV are not legally cognizable because
26 the DMV has immunity as a state agency under the Eleventh Amendment. *Franceschi v.*

1 *Schwartz*, 57 F.3d 828, 831 (9th Cir. 1995); *Gonye v. California Dep’t of Motor Vehicles*, No. 21-
2 CV-05223-BLF, 2021 WL 3473932, at *1 (N.D. Cal. July 28, 2021) (finding that plaintiff’s
3 claims against the DMV are barred by the Eleventh Amendment) (citing *Simmons v. Sacramento*
4 *Cnty. Superior Ct.*, 318 F.3d 1156, 1161 (9th Cir. 2003)). Eleventh Amendment immunity “bars
5 from the federal courts suits against a state by its own citizens, citizens of another state or citizens
6 or subjects of any foreign state” and “also extends to suits against a state agency.” *Gonye*, 2021
7 WL 3473932, at *1 (quoting *Harris v. Bus., Transp. & Hous. Agency*, No. 07-CV-0459-PJH, 2007
8 WL 1140667, at *6 (N.D. Cal. Apr. 17, 2007)). A state agency may waive immunity where it
9 clearly and expressly consents to suit in federal court. *Port Auth. Trans-Hudson Corp. v. Feeney*,
10 495 U.S. 299, 306 (1990). Because the California DMV has not consented to be sued in federal
11 court, the Court finds that Ms. Guancione has failed to state a claim upon which relief can be
12 granted and accordingly **DISMISSES** all claims against the DMV. *Gonye*, 2021 WL 3473932, at
13 *1.

14 2. Claims Against DMV Employees

15 Ms. Guancione also brings cross-claims against Mr. Stangis and Mr. Leland, employees of
16 the California DMV, in their individual and official capacities. Dkt. No. 4 at 3. “[S]tate officials
17 may be sued in their official capacity under [42 U.S.C.] § 1983 [or § 1985, 1986] for prospective
18 relief or in their individual capacity for any type of relief.” *Fenili v. California DMV*, No. 97-CV-
19 2868-FMS, 1998 WL 328619, at *2 (N.D. Cal. June 17, 1998). “A person deprives another of a
20 constitutional right under § 1983 only if he ‘does an affirmative act, participates in another’s
21 affirmative acts,’ or fails to perform a legally required duty which ‘causes the deprivation of
22 which’ the plaintiff complains.” *Fenili*, 1998 WL 328619, at *3 (quoting *Leer v. Murphy*, 844
23 F.2d 628, 633 (9th Cir.1988) (emphasis in original)).

24 Ms. Guancione’s cross-complaint is completely devoid of any specific allegations or facts
25 that tie Mr. Stangis or Leland to the harm alleged in either their individual or official capacities.
26 Ms. Guancione’s claims against Defendants Stangis and Leland are therefore **DISMISSED**.

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3. Claims Against Mr. Lim

Ms. Guancione names Mr. Lim, an individual who resides in Ventura, in her cross-complaint but does not allege any facts that could give rise to a cause of action against him. She states only that Mr. Lim “is an individual involved in the nucleus of facts in this case.” Dkt. No. 4 at 4. In her affidavit Ms. Guancione indicates that she was involved in a car accident in which Mr. Lim was the other driver and that this accident resulted in the subsequent suspension of her license. Affidavit, Dkt. No. 1-1 at 7. However, the complaint does not allege a viable cause of action for which relief can be granted against Mr. Lim; to the extent that Ms. Guancione has made any allegations against Mr. Lim they are **DISMISSED**.

4. Claims Against the Ventura Police Department and Individual Officers

Turning to the cross-claims against the remaining defendants, Ms. Guancione names Officers Garcia and Orozco with the Ventura Police Department as well as the Ventura Police Department in her complaint.

Ms. Guancione alleges that “two individuals who were acting as federal agents.... Wrote a communication initiating the termination of Cross Complainant’s ability to operate her motor vehicle.” Dkt. No. 4 ¶¶ 8-9. However, Ms. Guancione does not identify the federal agents described in her complaint, and from the face of her complaint it does not appear that she has named any defendants who are federal agents. In her affidavit she states that Officers Garcia and Orozco were the officers who arrived at the scene of her accident and alleges that Officers Garcia and Orozco did not document the facts of the accident correctly in their police report due to their bias against her age, race, gender, and disability. Dkt. No. 1-1 ¶¶ 81-118. However, the Court cannot assume that these two municipal officers identified in her affidavit are the unnamed “federal agents” alluded to in Ms. Guancione’s complaint. Moreover, at no point does Ms. Guancione make any specific allegations against the Ventura Police Department.

Accordingly, Ms. Guancione’s claims against Officers Garcia and Orozco and the Ventura Police Department are **DISMISSED**.

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III. CONCLUSION

For the reasons discussed above, Ms. Guancione’s motion to proceed in forma pauperis is **GRANTED**, and her action is **DISMISSED** because the Court lacks removal jurisdiction. Further, the claims against the California DMV are **DISMISSED WITH PREJUDICE**. The remaining cross-claims against the named DMV employees, Sean Lim, Officers Garcia and Orozco, and the Ventura Police Department are **DISMISSED WITHOUT PREJUDICE** to assert them in a separate lawsuit.

The Clerk shall close the file.

IT IS SO ORDERED.

Dated: November 3, 2022



EDWARD J. DAVILA
United States District Judge