

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

FILED
U.S. DISTRICT COURT
WAYCROSS, GA.
2007 JUN 14 A 11:09

R. Owen
CLERK OF COURT

MICHAEL A. JOHNSON,)
)
 Plaintiff,)
)
 v.)
)
 KROGER SUPER MARKET,)
)
 Defendant.)

CIVIL ACTION NO.: CV507-051

MAGISTRATE JUDGE'S ORDER
and REPORT AND RECOMMENDATION

Plaintiff, who is incarcerated at the Ware County Jail in Waycross, Georgia, has submitted to the Court for filing a complaint and an application seeking to proceed *in forma pauperis*.

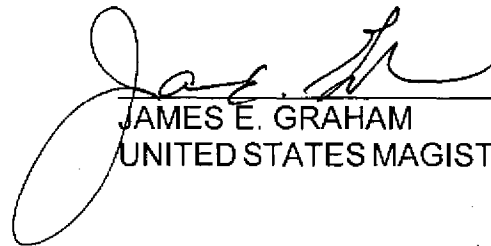
Plaintiff seeks to file his complaint under 42 U.S.C. § 1983. Plaintiff alleges that on July 11, 2006, Mike Griffin, a security and loss prevention officer for Kroger detained and searched him while making a "citizen's arrest" for attempted shoplifting. Plaintiff seeks an Order directing Defendant, *inter alia*, to pay him for his "pain and suffering, false imprisonment, punitive damages, mental anguish, loss (sic) wages, deflammation of character, pain caused to my family by me being falsely imprisoned and personal injury."

A plaintiff states a cognizable claim for relief under 42 U.S.C. § 1983 if his complaint alleges facts showing that his rights as secured by the Constitution and the laws of the United States were violated, and that the violation was committed by a person acting under color of state law. Touchston v. McDermott, 234 F.3d 1133, 1137 (11th Cir. 2000). 42

U.S.C. § 1983 provides a remedy for violations of a person's constitutional rights by a defendant who acts under color of state law, *i.e.*, a "state actor." A successful section 1983 action requires a showing that the conduct complained of was committed by a person acting under color of state law. Harvey v. Harvey, 949 F.2d 1127, 1130 (11th Cir. 1992). Plaintiff has failed to show that Defendant was a state actor at the time of the alleged incident.

Plaintiff has made no showing of an alleged violation of his constitutional rights. Accordingly, Plaintiff's application to proceed *in forma pauperis* is **DENIED**. Furthermore, it is my **RECOMMENDATION** that Plaintiff's Complaint be **DISMISSED** for failure to state a claim for relief under 42 U.S.C. § 1983.

So **ORDERED** and **REPORTED** and **RECOMMENDED**, this 14th day of June, 2007.



JAMES E. GRAHAM
UNITED STATES MAGISTRATE JUDGE