

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-12575-BB

JUSTIN LASTER,

Plaintiff - Appellant,

versus

STATE OF GEORGIA,
GEORGIA STATE BOARD OF WORKERS' COMPENSATION,
GEORGIA DEPARTMENT OF ADMINISTRATIVE SERVICES,
GEORGIA DEPARTMENT OF CORRECTIONS,

Defendants - Appellees.

Appeal from the United States District Court
for the Middle District of Georgia

ENTRY OF DISMISSAL: Pursuant to the 11th Cir.R. 42-2(c), this appeal is DISMISSED for want of prosecution because the appellant Justin Laster failed to file an appendix within the time fixed by the rules, effective September 04, 2020.

DAVID J. SMITH
Clerk of Court of the United States Court
of Appeals for the Eleventh Circuit

by: Tonya L. Richardson, BB, Deputy Clerk

FOR THE COURT - BY DIRECTION

Appendix A

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

JUSTIN LASTER,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. 1:20-CV-81 (LAG)
	:	
STATE OF GEORGIA, <i>et al.</i> ,	:	
	:	
Defendants.	:	
	:	

ORDER

Before the Court are *pro se* Plaintiff Justin Laster's Complaint (Doc. 1) and motions for leave to proceed *in forma pauperis* (IFP) (Docs. 2, 5).¹ For the reasons stated below, Plaintiff's motions are **GRANTED**, but Plaintiff's Complaint is **DISMISSED** without prejudice pursuant to 28 U.S.C. § 1915(e)(2).

DISCUSSION

Courts follow a well-established two-step procedure when processing *pro se* complaints filed IFP under 28 U.S.C. § 1915. *See Procup v. Strickland*, 760 F.2d 1107, 1114 (11th Cir. 1985). “Initially, the district court must determine whether the plaintiff is unable to prepay costs and fees and is therefore a pauper under the statute.” *Id.* “Only after making a finding of poverty and docketing the case can the court proceed to the next question: whether the claim asserted is frivolous or malicious.” *Id.*

I. Financial Status

Pursuant to 28 U.S.C. § 1915(a), a court “may authorize the commencement . . . of any suit, action, or proceeding . . . without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such [litigant] possesses that

¹ Plaintiff filed his first IFP motion on May 5, 2020. (Doc. 2.) On May 8, the Court ordered Plaintiff to file an amended application with further information regarding his assets and expenses. (Doc. 4.) Plaintiff submitted an amended application, including sufficient information for the Court to determine his ability to pay his court costs, on May 19. (Doc. 5.)

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the person is unable to pay such fees or give security therefor.”² 28 U.S.C. § 1915(a)(1). Section 1915 is designed to ensure that indigent litigants have meaningful access to the courts. *Neitzke v. Williams*, 490 U.S. 319, 324 (1988). Section 1915 authorizes suits without the prepayment of fees and costs for indigent litigants. *Denton v. Hernandez*, 504 U.S. 25, 27 (1992). It does not, however, create an absolute right to proceed in civil actions without payment of costs. *Bey v. Lenox Mun. Court*, 2017 WL 6617053, at *1 (M.D. Ga. Dec. 4, 2017) (quoting *Startti v. United States*, 415 F.2d 1115, 1116 (5th Cir. 1969)). Instead, the statute conveys only a privilege to proceed to those litigants unable to pay filing fees when the action is not frivolous or malicious. *Startti*, 415 F.2d at 1116.

In his IFP applications, Plaintiff states that he has been unemployed since August 2019, and has no income, no cash, and no other assets. (Doc. 2 at 2–3; Doc. 5 at 1–3.) His average monthly expenses—which are paid by family members—total \$945.00. (Doc. 2 at 4–5; Doc. 5 at 3.) Additionally, he lists debts totaling \$2,600.00. (Doc. 5 at 2.) The filing fee for a civil case is \$400.00. Plaintiff, therefore, qualifies under § 1915. Accordingly, Plaintiff’s motions for leave to proceed IFP are **GRANTED**.

II. Frivolity Review

A. Legal Standard

Because Plaintiff has been granted leave to proceed IFP, the Court must conduct a review of his Complaint pursuant to 28 U.S.C. § 1915(e). Section 1915(e) provides that an IFP action shall be dismissed, at any time, if it is frivolous or malicious, fails to state a claim, or seeks monetary relief from a defendant immune from such relief. *Id.* § 1915(e)(2)(B). “Dismissal for failure to state a claim is appropriate if the complaint’s factual allegations fail to state a claim for relief that is ‘plausible on its face.’” *Jacobs v. Blando*, 592 F. App’x 838, 840 (11th Cir. 2014) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). A claim is facially plausible “when the plaintiff pleads factual content that allows the court to draw a reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*

As a general rule, “[p]ro se pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed.” *Tannenbaum v. United States*,

² As the Eleventh Circuit noted in *Martinez v. Kristi Cleaners, Inc.*, 364 F.3d 1305, 1306 n.1 (11th Cir. 2004), “the affidavit requirement applies to all persons requesting leave to proceed [IFP].”

148 F.3d 1262, 1263 (11th Cir. 1998); *see also Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (“[A] *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.”). “But the leniency accorded *pro se* litigants does not give a court license to serve as *de facto* counsel for a party or to rewrite an otherwise deficient pleading to sustain an action.” *Matthews, Wilson & Matthews, Inc. v. Capital City Bank*, 614 F. App’x 969, 969 n.1 (11th Cir. 2015) (citing *GJR Invs., Inc. v. Cty. of Escambia*, 132 F.3d 1359, 1369 (11th Cir. 1998), *overruled in part on other grounds by Randall v. Scott*, 610 F.3d 701, 709 (11th Cir. 2010)).

B. Plaintiff’s Statement of Claim

Plaintiff sues the State of Georgia and three state agencies: the Georgia State Board of Workers’ Compensation, Georgia Department of Administrative Services, and Georgia Department of Corrections. (Doc. 1 at 1.) His allegations arise out of a workers’ compensation claim following an injury he sustained on May 24, 2019 while working for the State of Georgia and Georgia Department of Corrections. (*Id.* ¶ 12.) He filed a workers’ compensation claim on September 3, 2019. (*Id.* ¶ 13.) Plaintiff alleges that Defendants unlawfully obtained his protected health information in the course of investigating and adjudicating his claim. (*Id.* ¶¶ 16-18.) Plaintiff alleges claims under 18 U.S.C. §§ 241, 245, and 246; 42 U.S.C. § 1320d-6; 42 U.S.C. § 1983 for violations of the Privileges or Immunities, Equal Protection, and Due Process Clauses of the Fourteenth Amendment; and O.C.G.A. §§ 9-15-14, 16-11-37, 34-9-17, 34-9-18, 34-9-19, 34-9-207, 34-9-221, 50-21-24.1, and 51-7-81. (*Id.* ¶¶ 22, 35-51.)

1. Title 18 Claims

Plaintiff alleges that Defendants have violated three provisions of Title 18, the federal criminal code: 18 U.S.C. §§ 241, 245, and 246 (“conspiracy against rights,” “federally protected activities,” and “deprivation of relief benefits”). “[T]he fact that a federal statute has been violated and some person harmed does not automatically give rise to a private cause of action in favor of that person.” *Cannon v. Univ. of Chi.*, 441 U.S. 677, 688 (1979). “Instead, the statute must either explicitly create a right of action or implicitly contain one.” *Morrell v. Lunceford*, 2011 WL 4025725, at *6 (S.D. Ala. Aug. 18) (quoting *Williams v. Cerny*, 2010 WL 4967773, at *1–2 (E.D. Cal. Dec. 1, 2010)), *report and recommendation adopted*, 2011 WL 4025415 (S.D. Ala.

Sept. 12, 2011). “[A]s a general matter, Title 18 is a federal criminal statute which does not create civil liability or a private right of action Thus, private parties may not maintain suit under most provisions of Title 18.” *Id.* (quoting *Shipp v. Donaber*, 2010 WL 1257972, at *11 (E.D. Pa. Mar. 25, 2010)). There is no private right of action in the language of §§ 241, 245, or 246. Therefore, a private party cannot sue for violations of those sections. *See Cohen v. Carmel*, 2010 WL 2991558, at *1 (S.D. Fla. July 27, 2010) (“The Plaintiff’s claims arising out of 18 U.S.C. §§ 241 and 242 must be dismissed because there is no private cause of act[on] arising from these criminal statutes.”). Accordingly, Plaintiff’s claims under 18 U.S.C. §§ 241, 245, and 246 must be dismissed because they fail to state claims for which relief can be granted.

2. HIPAA Claims

Plaintiff alleges a claim under a provision of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. § 1320d-6, which prohibits wrongfully disclosing or obtaining private health information. “[I]t is well-established that HIPAA provides no private right of action.” *Brush v. Miami Beach Healthcare Grp. Ltd.*, 238 F. Supp. 3d 1359, 1367 (S.D. Fla. 2017); *Sneed v. Pan American Hosp.*, 370 F. App’x 47, 50 (11th Cir. 2010) (“We decline to hold that HIPAA creates a private cause of action.”); *Means v. Indep. Life & Acc. Ins. Co.*, 963 F. Supp. 1131, 1135 (M.D. Ala. 1997) (finding no evidence that Congress intended to create a private right of action under HIPAA). Accordingly, Plaintiff’s HIPAA claims must be dismissed because they fail to state claims for which relief can be granted.

3. Section 1983 Claims

Plaintiff alleges claims for violations of the Fourteenth Amendment, brought pursuant to 42 U.S.C. § 1983. Section 1983 provides a way for individuals to sue when their federally protected rights, including their Fourteenth Amendment rights, are violated. Thus, § 1983 “provides ‘a method for vindicating federal rights elsewhere conferred.’” *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979)). An individual cannot assert a claim directly under the Fourteenth Amendment. *Am. Gen. Life & Acc. Ins. Co. v. Ward*, 509 F. Supp. 2d 1324, 1334 (N.D. Ga. 2007). The Court has liberally construed Plaintiff’s Fourteenth Amendment claims as brought pursuant to § 1983. However, to the extent that Plaintiff alleges claims directly under the Fourteenth Amendment, those claims must be dismissed because they fail to state claims for which relief can be granted.

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If these claims are brought pursuant to § 1983, this statute provides a cause of action against any “person” acting “under color of state law” who deprives an aggrieved person of rights secured by federal law. But states and state agencies cannot be sued under § 1983, because they are not “persons” within the meaning of the statute. *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 71 (1989); *Smith v. Deal*, 760 F. App’x 972, 975 (11th Cir. 2019). The Defendants are a state and three state agencies. Therefore, Plaintiff’s § 1983 claims must be dismissed because they fail to state claims for which relief can be granted.

4. State Claims

Plaintiff’s remaining claims allege violations of various Georgia state statutes: O.C.G.A. §§ 9-15-14, 16-11-37, 34-9-17, 34-9-18, 34-9-19, 34-9-207, 34-9-221, 50-21-24.1, and 51-7-81. District courts have supplemental jurisdiction to entertain state law claims so related to claims within the Court’s original jurisdiction that they form part of the same case or controversy. 28 U.S.C. § 1337. A district court may, however, decline to exercise supplemental jurisdiction when all original jurisdiction claims have been dismissed. *Id.* § 1337(c)(3). As there are no remaining federal claims, and there is no other basis for the Court’s jurisdiction over this case, the Court declines to exercise supplemental jurisdiction over Plaintiff’s state law claims.

Even if the Court chose to exercise supplemental jurisdiction over Plaintiff’s state law claims, they would have to be dismissed, because sovereign immunity protects the state and its agencies from suit for violation of state law. “The Georgia Constitution extends sovereign immunity to ‘the state and all of its departments and agencies’” *Richardson v. Quitman Cty.*, 912 F. Supp. 2d 1354, 1368 (M.D. Ga. 2012) (quoting Ga. Const. art. I, § II, ¶ IX(e)); *see also* *Gilbert v. Richardson*, 452 S.E.2d 476, 479 (Ga. 1994). This immunity “can only be waived by an Act of the General Assembly which specifically provides that sovereign immunity is thereby waived and the extent of such waiver.” Ga. Const. art. I, § II, ¶ IX(e). While Georgia has waived sovereign immunity in certain circumstances, “[t]he state does not waive any immunity with respect to actions brought in the courts of the United States.” O.C.G.A. § 50-21-23. Therefore, whether or not the state has waived sovereign immunity for any of Plaintiff’s state law claims, the state has not consented to being sued in federal court. Accordingly, Plaintiff’s state law claims are barred by sovereign immunity.

CONCLUSION

For the reasons set forth above, Plaintiff's motions for leave to proceed *in forma pauperis* (Docs. 2, 5) are **GRANTED**, and Plaintiff's Complaint (Doc. 1) is **DISMISSED** without prejudice pursuant to 28 U.S.C. § 1915(e)(2).

SO ORDERED, this 1st day of July, 2020.

/s/ Leslie A. Gardner
LESLIE A. GARDNER, JUDGE
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

JUSTIN LASTER,

*

Plaintiff,

*

v.

Case No. 1:20-CV-81 (LAG)

*

STATE OF GEORGIA, et al.,

*

Defendants.

*

JUDGMENT

Pursuant to this Court's Order dated July 1, 2020, and for the reasons stated therein,
JUDGMENT is hereby entered dismissing this case. Plaintiff shall recover nothing of Defendants.

This 1st day of July, 2020.

David W. Bunt, Clerk

s/ M. Danielle Morrow, Deputy Clerk

Appendix B

**Additional material
from this filing is
available in the
Clerk's Office.**