

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUN 3 2024

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

TAIMING ZHANG,

Plaintiff-Appellant,

v.

APPLE, INC.,

Defendant-Appellee.

No. 23-15740

D.C. No. 3:23-cv-00972-TLT

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Trina L. Thompson, District Judge, Presiding

Submitted May 29, 2024**

Before: FRIEDLAND, BENNETT, and SANCHEZ, Circuit Judges.

Taiming Zhang appeals pro se from the district court's order denying his request to proceed in forma pauperis ("IFP") in his action alleging various federal and state law claims. We have jurisdiction under 28 U.S.C. § 1291. We affirm.

In his opening brief, Zhang failed to address the grounds for denial of his

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

request to proceed IFP and therefore has waived any such challenge. *See Indep. Towers of Wash. v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003) (explaining that “we will not consider any claims that were not actually argued in appellant’s opening brief”).

Zhang’s motions for reconsideration (Docket Entry Nos. 17 and 18) are denied as moot.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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Plaintiff-Appellant,

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APPLE, INC.,

Defendant-Appellee.

No. 23-15740

D.C. No. 3:23-cv-00972-TLT
Northern District of California,
San Francisco

ORDER

Before: FRIEDLAND, BENNETT, and SANCHEZ, Circuit Judges.

We treat Zhang's motion for reconsideration (Docket Entry No. 20) as a petition for panel rehearing. The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Zhang's petition for panel rehearing and petition for rehearing en banc (Docket Entry Nos. 20 and 21) are denied.

No further filings will be entertained in this closed case.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TAIMING ZHANG,
Plaintiff,

v.

APPLE INC.,
Defendant.

Case No. 23-cv-00972-TLT

**ORDER DENYING EX PARTE
MOTIONS**

Re: ECF Nos. 11, 12, 13

Pending before the Court is Plaintiff's ex parte motion on venue allocation without hearing and ex parte emergency motion for disqualification of judge and other things without hearing. ECF Nos. 11, 12. Plaintiff refiled the latter ex parte motion a second time. ECF No. 13. The latter motion is addressed to Chief Judge Richard Seeborg.

Both of Plaintiff's motions seek to reassign the case to the San Jose division. Specifically, Plaintiff takes issue with the case's random assignment to a District Judge outside the San Jose division that took place on March 2, 2023, pursuant to Caseload Rebalancing Pilot Program. *See* ECF No. 9. Under this program, "a small percentage of civil cases normally venued in San Jose may be assigned to district judges in San Francisco or Oakland without regard to the venue provisions in Civil Local Rule 3-2 (Commencement and Assignment of Action) and General Order 44—Assignment Plan." Northern District Extends Caseload Rebalancing Pilot Program, <https://cand.uscourts.gov/notices/northern-district-extends-caseload-rebalancing-pilot-program/> (last visited April 11, 2023).

Under Civil Local Rule 7-10, "a party may file an ex parte motion, that is, a motion filed without notice to opposing party, only if a statute, Federal Rule, local rule, or Standing Order authorizes ex parte filing." Contrary to this rule, Plaintiff does not "include a citation to the statute, rule, or order which permits the use of an ex parte motion to obtain the relief sought." Civ.


1 L.R. 7-10. Moreover, Plaintiff has not provided any authority that Plaintiff may seek relief other
2 than from the assigned judge.

3 Accordingly, for the foregoing reasons, Plaintiff's ex parte motions are **DENIED**
4 **WITHOUT PREJUDICE.**

5 This Order terminates ECF Nos 11, 12, and 13.

6 **IT IS SO ORDERED.**

7 Dated: April 11, 2023

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11 TRINA L. THOMPSON
12 United States District Judge
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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TAIMING ZHANG,
Plaintiff,

v.

APPLE INC.,
Defendant.

Case No. 23-cv-00972-TLT

**ORDER DENYING PLAINTIFF'S
APPLICATION TO PROCEED IN
FORMA PAUPERIS**

Re: ECF Nos. 2, 4

Pending before the Court is Plaintiff's application to proceed in forma pauperis. For the reasons below, Plaintiff's application is **DENIED**. Plaintiff must pay the entire filing fee of \$402.00 in full no later than April 28, 2023. Failure to make this payment will result in dismissal of this action without prejudice.

I. BACKGROUND

Plaintiff Taiming Zhang brings this action against Apple Inc. Plaintiff's 96-page complaint brings claims for physical injury, intentional infliction of emotional distress, fraud, restitution of void contract, and compensation for crime prevention. Compl. ¶ 4, ECF No. 1. Plaintiff also alleges that the Court has subject matter jurisdiction because Plaintiff's claims are an issue of federal law "for a) it relates to physical injuries, and b) it alleges a civil rights violation" and there is diversity jurisdiction. *Id.* ¶ 2.

II. LEGAL STANDARD

Individuals must pay a filing fee of \$402.00 to commence an action in the Northern District of California. *See* Civ. L.R. 5-4(a)(2); Court Fee Schedule Summary, <https://cand.uscourts.gov/about/clerks-office/court-fees/>. A court "may authorize the commencement, prosecution or defense of any suit, action or proceeding . . . without prepayment of fees . . . [if] the person is unable to pay such fees or give security therefor." 28 U.S.C. §

1 1915(a). Even with a showing that the individual's inability to pay or to give security for fees, a
2 court may deny the application if it determines at the outset "from the face of the proposed
3 complaint that the action is frivolous or without merit." *Tripati v. First Nat'l Bank & Trust*, 821
4 F.2d 1368, 1370 (9th Cir. 1987); see also 28 U.S.C. § 1915(e)(2)("[T]he court shall dismiss the
5 case at any time if the court determines that . . . the action or appeal . . . is frivolous or malicious
6 [or] fails to state a claim on which relief may be granted."). "[T]he privilege of proceeding in
7 forma pauperis is a matter within the discretion of the trial court and in civil actions for damages
8 should be allowed only in exceptional circumstances." *Weller v. Dickson*, 314 F.2d 598, 600 (9th
9 Cir. 1963).

10 **III. DISCUSSION**

11 **A. Inability to Pay**

12 Plaintiff is not employed, has never been employed, and has no income. ECF No. 2.
13 Plaintiff's statement of finances shows an inability to pay the filing fee.

14 **B. Merits of Plaintiff's Claims**

15 Plaintiff's complaint does not contain "a short and plain statement of the claim showing
16 that the pleader is entitled to relief," as required by Federal Rules of Civil Procedure. *See* Fed. R.
17 Civ. P. 8(a). Plaintiff appears to allege that Apple's sale of various models of iPhones to Plaintiff
18 were intentional acts to inflict physical harm upon Plaintiff. The Court is unaware how the sale of
19 a product can be directed at Plaintiff. Plaintiff's allegations of physical harm suffered by
20 individuals other than Plaintiff do not support his individual claims.

21 Plaintiff also alleges that Apple has committed a civil rights violation. Plaintiff, however,
22 does not allege that Apple engaged in state action. *See Tsao v. Desert Palace, Inc.*, 698 F.3d
23 1128, 1139 (9th Cir. 2012) ("[A] plaintiff must show that the conduct allegedly causing the
24 deprivation of a federal right was fairly attributable to the State.") (citation omitted).

25 In addition, Plaintiff's complaint contains vague legal conclusions that are not based on
26 relevant sources of law. Instead, Plaintiff spends numerous pages providing commentary on
27 Plaintiff's political views. *See, e.g.*, Compl. ¶ 17.

28 Accordingly, the Court finds that Plaintiff's complaint contains allegations that are

1 frivolous and fails to state a claim on which relief may be granted.

2 **IV. CONCLUSION**

3 For the foregoing reasons, Plaintiff's application to proceed in forma pauperis is **DENIED**.
4 The Court finds that this is not one of the "exceptional circumstances" that warrant proceeding in
5 forma pauperis. *See Weller*, 314 F.2d at 600.

6 Plaintiff must pay the filing fee no later than April 28, 2023, or face dismissal of this
7 action. Plaintiff is responsible for service of the summons and the complaint and any amendments
8 and attachments, as well as scheduling orders and other documents specified by the Clerk,
9 pursuant to Rule 4 of the Federal Rules of Civil Procedure.

10 This Order terminates ECF Nos. 2 and 4.

11 **IT IS SO ORDERED.**

12 Dated: April 11, 2023

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TRINA L. THOMPSON
United States District Judge

United States District Court
Northern District of California

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 23-90068

ORDER

Before: **HAWKINS, CHRISTEN, MILLER, NGUYEN, and BADE**, Circuit Judges, **DU, SNOW, BASTIAN, and GEE**, Chief District Judges, **BURGESS**, Senior District Judge.

Pursuant to Article VI of the Rules of Judicial-Conduct and Judicial-Disability Proceedings under 28 U.S.C. § 352(c), complainant has filed a petition for review of the order of the Chief Judge entered May 22, 2024, dismissing the complaint against a district judge of this circuit.

We have carefully reviewed the record and the authorities cited by the Chief Judge in her order of dismissal. We conclude there is no basis for overturning the order of dismissal.

For the reasons stated by the Chief Judge and based upon the controlling authority cited in support thereof, we affirm.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TAIMING ZHANG,
Plaintiff,

v.

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Defendant.

Case No. 23-cv-00972-TLT

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