

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FRANK PERRELLI,	:
Plaintiff,	:
	:
-vs-	: Civil No. 3:02cv1101 (PCD)
	:
SOUTHWEST AIRLINES,	:
Defendant.	:

ORDER DISMISSING COMPLAINT

Plaintiff was granted leave to proceed in forma pauperis. Construing plaintiff’s complaint under the liberal standard afforded pro se submissions, *see Haines v. Kerner*, 404 U.S. 519, 520-21, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972), no cognizable claim against defendant can be identified and the complaint is dismissed sua sponte.

“A district court must dismiss an in forma pauperis action if the action is ‘frivolous or malicious.’ *See* 28 U.S.C. § 1915(e)(2)(B)(i). An action is ‘frivolous’ when either: (1) the factual contentions are clearly baseless, such as when allegations are the product of delusion or fantasy; or (2) the claim is ‘based on an indisputably meritless legal theory. . . . A claim is based on an ‘indisputably meritless legal theory’ when either the claim lacks an arguable basis in law . . . or a dispositive defense clearly exists on the face of the complaint.” *Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998) (citations omitted; internal quotation marks omitted).

Plaintiff’s complaint is deemed frivolous for failure to allege a civil rights violation with an arguable basis in law. Plaintiff alleges that defendant discriminated against him by refusing to “let [him] fly on vacation” and by not sending him a ticket after payment was tendered, thus violating his civil

rights. Plaintiff does not allege a basis for his discrimination claim nor does he indicate how defendant is either a state actor or acted under color of state law as is necessary for a violation of his civil rights. *See Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937-39, 102 S. Ct. 2744, 73 L. Ed. 2d 482 (1982); *Washington v. James*, 782 F.2d 1134, 1138 (2d Cir.1986).¹ The complaint is therefore dismissed without prejudice and with leave to file an amended complaint within thirty days.

SO ORDERED.

Dated at New Haven, Connecticut, July ____, 2002.

Peter C. Dorsey
United States District Judge

¹ If plaintiff's complaint is construed as alleging a contractual violation premised on the failure of defendant to provide transportation after he tendered payment, such a claim would not satisfy the amount in controversy required for jurisdiction pursuant to 28 U.S.C. § 1332(a).