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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
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11 JOSHUA NEIMAN-THOMAS,

12 Plaintiff,

13 v.

14 SAN LUIS OBISPO
CORRECTIONAL DEPARTMENT,
15 et al.,

16 Defendants.
17

NO. CV 17-4967-RGK (AGR)

ORDER TO SHOW CAUSE WHY
COURT SHOULD NOT
RECOMMEND DENIAL OF
REQUEST TO PROCEED
WITHOUT PREPAYMENT OF
FILING FEES

18 For the reasons set forth below, the court orders Plaintiff to show cause on
19 or before **August 10, 2017**, why this court should not recommend denial of his
20 request to proceed without prepayment of filing fees.

21 On July 6, 2017, Plaintiff, who is proceeding *pro se*, filed a civil rights
22 complaint along with a Request to Proceed in forma pauperis (“IFP Request”).

23 The Plaintiff’s name is Joshua Neiman Thomas.¹ However, the complaint
24 contains one claim that a person named “Murmur,” “suffered an unconstitutional
25 deprivation of his rights.” (Compl. at 2.) The complaint alleges that Murmur was
26 terminated from his position as art teacher for, among other things, “the way he
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28 ¹ The complaint also listed Armando Lopez, but Lopez’s name is struck out
by hand in the caption. Only Plaintiff Neiman-Thomas signed the complaint.

1 does his art,' for 'appearance and behavior [,,, that] is vulgar, [...] is conduct
2 unbecoming of a teacher, and [...] has caused disruption in the school.'" (*Id.*)

3 The prayer for relief states that "Plaintiff, Stephen Murmur" requests
4 declaratory relief and equitable relief regarding unconstitutional employment
5 practices, damages, attorneys fees and costs. (*Id.* at 3.)

6 I.

7 **PLAINTIFF MAY SUE ONLY ON HIS OWN BEHALF**

8 The complaint seeks relief for constitutional violations suffered by Stephen
9 Murmur. Plaintiff, however, is not Stephen Murmur.

10 "Any person representing himself or herself in a case without an attorney
11 must appear *pro se* for such purpose. That representation may not be delegated
12 to any other person – even a spouse, relative, or co-party in the case." Local
13 Rule 83-2.2.1; see *C.E. Pope Equity Trust v. United States*, 818 F.2d 696, 697
14 (9th Cir. 1987).

15 Accordingly, if Plaintiff decides to proceed with this case, he must allege
16 claims only on his own behalf and cannot allege claims on behalf of Stephen
17 Murmur or anyone else.

18 II.

19 **ALLEGATIONS THAT MAY PERTAIN TO PLAINTIFF**

20 Although the complaint does not expressly state any claim on behalf of
21 Plaintiff, the only allegation in the complaint that may refer to Plaintiff states:

22 Plaintiff[] brings this action resulting from damages
23 incurred due to unlawful seizure and detention from the
24 County of San Luis Obispo, San Luis Obispo Sheriff's
25 Department, Grover Beach Police Department and
26 Mendocino County Correctional Department on or about
27 June 18th 2015 and December 2016, respectively.

28 (*Id.* at 2.) The caption names the following as Defendants: San Luis Obispo

1 Correctional Department, Grover Beach Police Department, Detective Reggio
2 Bio, Detective Angelo Limon,² Deputy James Elmore and Community Bail Bonds.
3 (*Id.* at 1.)

4 If Plaintiff seeks to claim false arrest and false imprisonment, he must
5 allege facts sufficient to show the absence of probable cause to arrest him and
6 detain him for trial. See *Wige v. City of Los Angeles*, 713 F.3d 1183, 1185 (9th
7 Cir. 2013). The complaint does not allege any facts showing the absence of
8 probable cause. The complaint does not contain any facts indicating the charges
9 on which he was arrested or detained, the circumstances of his arrest or
10 detention, or what each named defendant did or did not do in connection with the
11 arrest or detention.

12 The Court cautions Plaintiff that any false arrest or false imprisonment claim
13 may be barred, pursuant to *Heck v. Humphrey*, 512 U.S. 477 (1994), if he was
14 convicted and that conviction has not been overturned. See *Lyll v. City of Los*
15 *Angeles*, 807 F.3d 1178, 1190 (9th Cir. 2015) (*Heck* bars claim of unreasonable
16 seizure by police); *Cabrera v. City of Huntington Park*, 159 F.3d 374, 380 (9th Cir.
17 1998) (*per curiam*) (*Heck* bars claims of false arrest and false imprisonment until
18 conviction invalidated).

19 Defendant Community Bail Bonds appears to be a private actor and not a
20 state actor subject to § 1983 suit. In general, private parties are not state actors.
21 *Price v. Hawaii*, 939 F.2d 702, 707-08 (9th Cir. 1991); see also *Florer v.*
22 *Congregation Pidyon Shevuyim, N.A.*, 639 F.3d 916, 922 (9th Cir. 2011) (“We
23 start with the presumption that conduct by private actors is not state action.”). “A
24 private [actor] may be liable under § 1983 if [it] conspired or entered joint action
25 with a state actor.” *Crowe v. Cnty. of San Diego*, 608 F.3d 406, 440 (9th Cir.

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27 ² Although the complaint is silent as to Limon’s occupation or title, Plaintiff
28 identifies him as a “Det[ective]” on the Certification And Notice Of Interested
Parties filed with the complaint.

1 2010) (citation omitted). To allege conspiracy in a § 1983 case, a plaintiff must
2 allege “an agreement or meeting of the minds’ to violate constitutional rights.” *Id.*
3 (citation omitted). The complaint alleges no such conspiracy.

4 **V.**

5 **ORDER**

6 For the foregoing reasons, IT IS ORDERED THAT Plaintiff shall show
7 cause in writing, on or before **August 10, 2017**, why the court should not
8 recommend that the request to proceed without prepayment of fees be denied.

9 Instead of filing a response to this order to show cause, Plaintiff may file a
10 First Amended Complaint that cures the deficiencies identified in this order. If
11 Plaintiff chooses to file a First Amended Complaint, it must be filed no later than
12 **August 10, 2017**; bear the docket number assigned in this case; be labeled "First
13 Amended Complaint"; and be complete in and of itself, without reference to the
14 original complaint, or any other pleading, attachment or document. The Clerk is
15 directed to provide Plaintiff with a blank Central District civil rights complaint form.
16 Plaintiff is free to attach additional pages to the form.

17 If Plaintiff fails to file a response to this order to show cause or a First
18 Amended Complaint on or before **August 10, 2017**, this court may recommend
19 that his request to proceed without prepayment of fees be denied.

20
21 DATED: July 10, 2017



ALICIA G. ROSENBERG

United States Magistrate Judge