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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MICHAEL J. WILLIAMS,
Plaintiff,
v.
JAY EDWARD CERNY dba LOS OLIVOS
CML, Inc., CCOW dba County Bank of
Merced, MATT PERETZ dba Argo Equities,
Defendants.

) 1:10-cv-01793 AWI GSA

) **FINDINGS AND RECOMMENDATIONS**
) **REGARDING PLAINTIFF’S**
) **COMPLAINT**

) (Document 1)

Plaintiff Michael J. Williams (“Plaintiff”), appearing pro se and proceeding in forma pauperis, filed the instant complaint against Defendants Jay Edward Cerny, dba Los Olivos CML, Inc., CCOW, dba County Bank of Merced, and Matt Peretz, dba Argo Equities, on September 30, 2010. (Doc. 1.)

DISCUSSION

A. Screening Standard

Pursuant to Title 28 of the United States Code section 1915(e)(2), the Court must conduct an initial review of the complaint for sufficiency to state a claim. The Court must dismiss a

1 complaint or portion thereof if the Court determines that the action is legally “frivolous or
2 malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from
3 a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). If the Court determines
4 that the complaint fails to state a claim, leave to amend may be granted to the extent that the
5 deficiencies of the complaint can be cured by amendment.

6 A complaint must contain “a short and plain statement of the claim showing that the
7 pleader is entitled to relief . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
8 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
9 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) (citing
10 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65 (2007)). Plaintiff
11 must set forth “sufficient factual matter, accepted as true, to ‘state a claim that is plausible on its
12 face.’” *Iqbal*, 129 S.Ct. at 1949 (quoting *Twombly*, 550 U.S. at 555). While legal conclusions
13 can provide a framework of a complaint, they must be supported by factual allegations. *Iqbal*,
14 129 S.Ct. at 1950. While factual allegations are accepted as true, legal conclusion are not. *Iqbal*
15 at 1949.

16 In reviewing a complaint under this standard, the Court must accept as true the allegations
17 of the complaint in question, *Hospital Bldg. Co. V. Trustees of Rex Hospital*, 425 U.S. 738, 740
18 (1976), construe the pro se pleadings liberally in the light most favorable to the Plaintiff, *Resnick*
19 *v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000), and resolve all doubts in the Plaintiff’s favor,
20 *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969).

21 A pleading may not simply allege a wrong has been committed and demand relief. The
22 underlying requirement is that a pleading give “fair notice” of the claim being asserted and the
23 “grounds upon which it rests.” *Conley v. Gibson*, 355 U.S. 41, 47-48 (1957); *Yamaguchi v.*
24 *United States Department of Air Force*, 109 F.3d 1475, 1481 (9th Cir. 1997).

1 liability); *Moore v. Kamikawa*, 940 F.Supp. 260, 265 (D.Hawai'i 1995) (criminal conspiracy
2 statutes, making it a crime for two or more persons to conspire to deprive another of rights
3 secured by the Constitution or laws of the United States or to deprive another of such rights,
4 under color of law, on account of alienage, color, or race, provided no basis for civil liability);
5 *John's Insulation, Inc. v. Siska Const. Co., Inc.*, 774 F.Supp. 156 (S.D.N.Y. 1991) (federal
6 criminal statute which permits federal prosecutions for interference with federally protected
7 rights confers neither substantive rights nor private right of action for damages).

8 Thus, Plaintiff may not assert a cause of action pursuant to Title 18 of the United States
9 Code because it involves criminal statutes only; it does not provide for a civil cause of action
10 brought by a private citizen. In other words, only the United States government may bring
11 criminal charges against a defendant or defendants for a violation of a criminal statute.
12 Therefore, because Plaintiff has failed to state a claim upon which relief may be granted, and
13 granting Plaintiff leave to amend would prove futile, this Court will recommend dismissal of this
14 claim.

15 **2. 29 U.S.C. § 1109**

16 Next, Plaintiff claims that all Defendants breached their fiduciary duties pursuant to Title
17 29 of the United States Code section 1109. (*See* Doc. 1 at 1.) That section provides as follows:

18 (a) Any person who is a fiduciary with respect to a plan who breaches any
19 of the responsibilities, obligations, or duties imposed upon fiduciaries by this
20 subchapter shall be personally liable to make good to such plan any losses to the
21 plan resulting from each such breach, and to restore to such plan any profits of
22 such fiduciary which have been made through use of assets of the plan by the
23 fiduciary, and shall be subject to such other equitable or remedial relief as the
24 court may deem appropriate, including removal of such fiduciary. A fiduciary
25 may also be removed for a violation of section 1111 of this title.

26 (b) No fiduciary shall be liable with respect to a breach of fiduciary duty
27 under this subchapter if such breach was committed before he became a fiduciary
28 or after he ceased to be a fiduciary.

29 Title 29 of the United States Code involves the Labor code, and more specifically, the
30 protection of employee benefits pursuant to the Employee Retirement Income Security Act
31 (“ERISA”). Plaintiff was not an employee and/or beneficiary of a retirement plan administered
32

1 by Defendants and thus he cannot state a cause of action pursuant to Title 29 of the United States
2 Code. *See* 28 U.S.C. § 1132(a)(3) (providing a civil action may be brought “by a participant,
3 beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this
4 subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to
5 redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the
6 plan”).

7 Here, the transaction between Plaintiff and Defendants appears to have involved financial
8 negotiations regarding a loan for Plaintiff’s business, B & T Industries. (Doc. 1 at 3, § 6.) There
9 is no indication that the loan involved retirement benefits or funds; accordingly, it appears the
10 transaction was not one arising under the Labor code or ERISA, and thus, Plaintiff cannot state a
11 claim pursuant to Title 29 of the United States Code section 1109. Therefore, because Plaintiff
12 has failed to state a claim upon which relief may be granted, and granting Plaintiff leave to
13 amend would prove futile, this Court will recommend dismissal of this claim.

14 **FINDINGS AND RECOMMENDATIONS**

15 For the foregoing reasons, the Court HEREBY RECOMMENDS that this action be
16 DISMISSED WITHOUT LEAVE TO AMEND.

17 These findings and recommendations will be submitted to the Honorable Anthony W.
18 Ishii pursuant to the provisions of section 636(b)(1). Within thirty (30) days after being served
19 with these findings and recommendations, the parties may file written objections with the Court.
20 The document should be captioned "Objections to Magistrate Judge's Findings and
21 Recommendations." The parties are advised that failure to file objections within the specified
22 time may waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153
23 (9th Cir. 1991).

24
25 IT IS SO ORDERED.

26 **Dated: December 1, 2010**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE