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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WESLEY KANE CAMPBELL,
Plaintiff,
v.
LAWRENCE J. TURNER, et al.,
Defendants.

CASE NO. 1:10-cv-02193-OWW-GBC PC
FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSAL OF ACTION,
WITHOUT PREJUDICE, FOR FAILURE TO
STATE A CLAIM
(Doc. 1)
OBJECTIONS DUE WITHIN THIRTY DAYS

I. Screening Requirement

Plaintiff Wesley Kane Campbell¹ (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Currently pending before the Court is the complaint, filed on November 24, 2010. For the reasons discussed below, Plaintiff’s complaint fails to state a cognizable claim.

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that “fails to state a claim on which relief may be granted,” or that “seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C § 1915(e)(2)(B).

In determining whether a complaint states a claim, the Court looks to the pleading standard

¹Plaintiff is also known as Kane Campbell.

1 under Federal Rule of Civil Procedure 8(a). Under Rule 8(a), a complaint must contain “a short and
2 plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2).
3 “[T]he pleading standard Rule 8 announces does not require ‘detailed factual allegations,’ but it
4 demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” Ashcroft v.
5 Iqbal, 129 S. Ct. 1937, 1949 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 554, 555
6 (2007)).

7 **II. Discussion**

8 Plaintiff brings this suit against private attorney Lawrence Turner, Travis Campbell, and
9 Andra Campbell. The complaint claims that attorney Lawrence Turner had Travis Campbell and
10 Andra Campbell make up a false claim that Plaintiff raped their children and was involved in a
11 murder in the 1980s. Additionally, Defendants are trying to get him killed so they can extort
12 Plaintiff’s money from Defendant Turner’s law firm.

13 Liability under section 1983 exists where a defendant “acting under the color of law” has
14 deprived the plaintiff “of a right secured by the Constitution or laws of the United States.” Jensen
15 v. Lane County, 222 F.3d 570, 574 (9th Cir. 2000). “The United States Constitution protects
16 individual rights only from *government* action, not from *private* action.” Single Moms, Inc. v.
17 Montana Power Co., 331 F.3d 743, 746 (9th Cir. 2003) (emphasis in original). “Only when the
18 *government* is responsible for a plaintiff’s complaints are individual constitutional rights implicated.”
19 Single Moms, Inc., 331 F.3d at 746-47 (citing Brentwood Academy v. Tennessee Secondary School
20 Athletic Assoc., 531 U.S. 288, 295, 121 S. Ct. 924, 930 (2001)) (emphasis in original).

21 Plaintiff’s allegations that Defendants, an attorney and two private individuals, fabricated
22 facts to have him convicted of a crime so they can extort money do not allege acts by any person
23 “acting under the color of law” and do not state a cognizable claim under section 1983. See Rivera
24 v. Green, 775 F.2d 1381, 1384 (9th Cir. 1985).

25 **III. Conclusion and Recommendation**

26 The Court finds that Plaintiff’s complaint fails to state any claims upon which relief can be
27 granted under § 1983 against any named Defendant. Under Rule 15(a) of the Federal Rules of Civil
28 Procedure, leave to amend ‘shall be freely given when justice so requires.’” In addition, “[I]eave to

1 amend should be granted if it appears at all possible that the plaintiff can correct the defect.” Lopez
2 v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000) (internal citations omitted). However, in this action
3 Plaintiff’s suit against private parties is insufficient to state a claim under § 1983. The Court finds
4 that the deficiencies outlined above are not capable of being cured by amendment, and therefore
5 further leave to amend should not be granted. 28 U.S.C. § 1915(e)(2)(B)(ii); Noll v. Carlson, 809
6 F.2d 1446, 1448-49 (9th Cir. 1987).

7 Accordingly, based on the foregoing, the Court HEREBY RECOMMENDS that this action
8 be dismissed in its entirety, without prejudice, for failure to state a claim upon which relief can be
9 granted.

10 These findings and recommendations will be submitted to the United States District Judge
11 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30)
12 days after being served with these findings and recommendations, Plaintiff may file written
13 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s
14 Findings and Recommendations.” Plaintiff is advised that failure to file objections within the
15 specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d
16 1153 (9th Cir. 1991).

17 IT IS SO ORDERED.

18 Dated: December 9, 2010

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21 UNITED STATES MAGISTRATE JUDGE