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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT CORTEZ, CASE NO. 1:11-cv-00900-OWW-GBC (PC)
Plaintiff,
v. ORDER DISMISSING ACTION WITH
PREJUDICE, FOR FAILURE TO STATE A
CLAIM UPON WHICH RELIEF MAY BE
GRANTED UNDER SECTION 1983
(Doc. 7)
WALMART STORE, et al.,
Defendants.

I. Procedural Background

Plaintiff Robert Cortez (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on June 3, 2011. (Doc. 1). Plaintiff filed a first amended complaint on June 20, 2011.

II. Screening Order of First Amended Complaint filed June 20, 2011

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 fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

Plaintiff’s claim is the following:

When I was a toddler, I was placed on this property that Walmart is built on at Herndon and Ingram, Fresno CA, 93650. Between 1974 and 1980, adults placed me in a house where I was abused and placed on a steel beam. The beam had metal slag

1 from a cutting process and oil was placed on the beam, as I crossed over it, which
2 resulted in my penis and testicles to be severed off. As I bled, A woman I think is
3 C/O M. Pina somehow helped me get medical attention. Growing up I did not have
4 feeling in this area of my body. This problem affected all portions of my life. I feel
5 asleep from the loss of blood. I asked to be placed in the dirt to sleep and have been
under investigation since of before this incident. My life has been oppressed by law
enforcement over this compan[y's] abuse of influence. I don't want to die or lose my
freedom to rich and powerful people. They plant evidence on me and pay for
testimony.

6 (Doc. 7 at 4-5). The first amended complaint continues to detail what happen to his severed penis
7 as a child and other childhood experiences and rambles on incoherently throughout the rest of the
8 complaint. (Doc. 7 at 6-9). As relief, Plaintiff seeks punitive, monetary damages and injunctive
9 relief which includes a request for a "cell phone chrono" and for the Court to stop unidentified
10 people from blaming Plaintiff "for things." (Doc. 1 at 2). Plaintiff lists Wal Mart and Parole Agent
11 Joe Chacon as defendants. (Doc 7. At 12).

12 To state a claim under section 1983, a plaintiff must allege that (1) the defendant acted under
13 color of state law and (2) the defendant deprived him of rights secured by the Constitution or federal
14 law. *Long v. County of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006). Generally, private parties
15 are not acting under color of state law. *Brentwood Academy v. Tennessee Secondary School Athletic*
16 *Assoc.*, 531 U.S. 288, 295, 121 S.Ct. 924, 930 (2001); *Single Moms, Inc. v. Montana Power Co.*, 331
17 F.3d 743, 746-47 (9th Cir. 2003); *Sutton v. Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 835 (9th
18 Cir. 1999); *Price v. Hawaii*, 939 F.2d 702, 707-08 (9th Cir. 1991). Moreover, Plaintiff must set forth
19 "sufficient factual matter, accepted as true, to 'state a claim that is plausible on its face.'" *Iqbal*, 129
20 S.Ct. at 1949 (quoting *Twombly*, 550 U.S. at 555). Facial plausibility demands more than the mere
21 possibility that a defendant committed misconduct, *Iqbal* at 1950, and while factual allegations are
22 accepted as true, legal conclusion are not, *id.* at 1949.

23 Plaintiff's complaint fails to state any claims upon which relief may be granted. The
24 questionable nature of Plaintiff's claims aside, the complaint is against Walmart which is not a
25 government actor and Plaintiff fails to link any conduct to the rest if the named defendants.
26 Plaintiff's incoherent allegations of harm stemming from childhood do not give rise to any facially
27 plausible claims for relief. See *Iqbal* at 1949-50.

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1 **IV. Conclusion and Order**

2 Plaintiff's complaint fails to state any claims upon which relief may be granted. Accordingly,
3 it is HEREBY ORDERED that:

- 4 1. This action is dismissed, with prejudice, for failure to state a claim;
5 2. This dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g); and
6 3. The Clerk's Office shall enter judgment.

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10 IT IS SO ORDERED.

11 **Dated: June 27, 2011**

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE