

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RICHARD ACORD,
Plaintiff,
v.
CHAMPIONS RECOVERY
ALTERNATIVES, *et al.*
Defendants.

Case No. 1:17-cv-01145-LJO-EPG

**FINDINGS AND RECOMMENDATIONS
THAT THIS CASE BE DISMISSED, WITH
PREJUDICE, FOR FAILURE TO STATE A
CLAIM, FAILURE TO PROSECUTE, AND
FAILURE TO COMPLY WITH COURT
ORDER**

(ECF No. 1)

**OBJECTIONS, IF ANY, DUE WITHIN
TWENTY-ONE (21) DAYS**

On August 25, 2017, Richard Acord (“Plaintiff”), appearing *pro se* and *in forma pauperis*, commenced this action pursuant to 42 U.S.C. § 1983 by the filing of a Complaint. (ECF No. 1). The Complaint alleges that Defendants Champions Recovery Alternatives, Maria Stevens, Randy Hano, and Coven Hardcastle breached their contractual, legal, and moral obligation to maintain Plaintiff’s confidentiality.

On January 30, 2018, the Court screened the Complaint and determined that it fails to state any cognizable claims. (ECF No. 7). Specifically, the Court concluded that Plaintiff failed to allege that Defendants are state actors or acted under the direction of or in cooperation with any state actor. *Id.*

1 The screening order directed Plaintiff to file an amended complaint or notify the Court
2 that he wishes to stand on the Complaint, subject to the issuance of findings and
3 recommendations to the assigned district judge, within thirty days of service of the order. *Id.* The
4 Court also warned Plaintiff that failure to file an amended complaint or to notify the court that he
5 wishes to stand on the Complaint could result in the dismissal of this case. *Id.*

6 The thirty-day period has expired, and Plaintiff has not filed an amended complaint or
7 notified the Court that he wishes to stand on the Complaint. Accordingly, the Court recommends
8 that this action be dismissed, with prejudice, for failure to state a claim, failure to prosecute, and
9 failure to comply with a court order. Plaintiff may file objections within twenty-one days from
10 the date of service of these findings and recommendations.

11 I. SCREENING REQUIREMENT

12 Under 28 U.S.C. § 1915(e)(2), the Court must conduct a review of an *in forma pauperis*
13 complaint to determine whether it “state[s] a claim on which relief may be granted,” is “frivolous
14 or malicious,” or “seek[s] monetary relief against a defendant who is immune from such relief.” If
15 the Court determines that the complaint fails to state a claim, it must dismiss the complaint. *Id.*
16 Leave to amend may be granted to the extent that the deficiencies of the complaint can be cured
17 by amendment. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

18 A complaint must contain “a short and plain statement of the claim showing that the
19 pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
20 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
21 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell*
22 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual
23 matter, accepted as true, to ‘state a claim that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S.
24 at 663 (quoting *Twombly*, 550 U.S. at 555). While factual allegations are accepted as true, legal
25 conclusions are not. *Id.* at 678.

26 In determining whether a complaint states an actionable claim, the Court must accept the
27 allegations in the complaint as true, *Hosp. Bldg. Co. v. Trs. of Rex Hospital*, 425 U.S. 738, 740
28 (1976), construe *pro se* pleadings liberally in the light most favorable to the Plaintiff, *Resnick v.*

1 *Hayes*, 213 F.3d 443, 447 (9th Cir. 2000), and resolve all doubts in the Plaintiff's favor. *Jenkins*
2 *v. McKeithen*, 395 U.S. 411, 421 (1969). Pleadings of *pro se* plaintiffs "must be held to less
3 stringent standards than formal pleadings drafted by lawyers." *Hebbe v. Pliler*, 627 F.3d 338, 342
4 (9th Cir. 2010) (holding that *pro se* complaints should continue to be liberally construed after
5 *Iqbal*).

6 **II. PLAINTIFF'S ALLEGATIONS**

7 Plaintiff alleges that in July and August 2016, he was a client of Champions Recovery
8 Alternatives' Samuels' House Residential Treatment Program and a client of the other
9 Defendants. Defendants have a contractual, legal, and moral obligation to maintain client
10 confidentiality, even after clients are discharged from their treatment programs, unless
11 information about the client becomes public through the filing of a criminal complaint.

12 Plaintiff was discharged from the treatment program without warning, and without an
13 opportunity to defend himself, when he was allegedly involved in an incident with a female staff
14 member of Samuels' House. No charges were brought against Plaintiff for the alleged incident.
15 Plaintiff was, however, on house arrest through the "Kings County E.M.S. System" and was
16 returned to custody due to his discharge from Samuels' House.

17 During the booking process, Plaintiff called Robert Jeffries, a resident of Samuels' House,
18 who said, "Don't worry brother, I'm going to squash that bullshit." This, Plaintiff alleges, serves
19 as evidence that Defendants breached their duty of client confidentiality almost immediately upon
20 his removal from Samuels' House by Kings County E.M.S. officers. During the booking process,
21 Plaintiff was also approached by Kings County Jail Classification staff regarding concerns for his
22 safety in the jail population due to the nature of the alleged incident at Samuels' House. This,
23 Plaintiff alleges, serves as evidence that Kings County Jail had knowledge of Plaintiff's phone
24 call with Mr. Jeffries, or that Samuels' House breached their duty of client confidentiality.

25 Plaintiff further alleges that he has had to answer numerous allegations and accusations in
26 person and on social media regarding his alleged behavior in the fourteen months since his
27 discharge from Samuels' House. He has been threatened numerous times due to the allegations
28 made against him at Samuels' House. Plaintiff was returned to the custody of Kings County Jail

1 on an unrelated matter on June 22, 2017. He has been physically assaulted by multiple inmates as
2 a direct result of his discharge from Samuels' House. Plaintiff believes there can be no other
3 explanation for the accusations, threats, and assault he has incurred, other than Samuels' House's
4 breach of client confidentiality.

5 **III. DISCUSSION**

6 **A. Section 1983 Liability**

7 To state a claim under § 1983, a plaintiff “must allege a violation of a right secured by the
8 Constitution and laws of the United States, and *must show that the alleged deprivation was*
9 *committed by a person acting under color of state law.*” *West v. Atkins*, 487 U.S. 42, 48 (1988)
10 (emphasis added). Private parties are not generally acting under color of state law for the
11 purposes of § 1983. *Price v. Hawaii*, 939 F.2d 702, 707-08 (9th Cir. 1991) (“Careful adherence to
12 the ‘state action’ requirement preserves an area of individual freedom by limiting the reach of
13 federal law and federal judicial power. It also avoids imposing on the State, its agencies or
14 officials, responsibility for conduct for which they cannot fairly be blamed”).

15 Nevertheless, in some circumstances, the actions of a private actor may render them liable
16 under § 1983. Under the “public function test,” private individuals or entities may be deemed
17 state actors for purposes of § 1983 when they perform a public function that has been
18 “traditionally the exclusive prerogative of the State.” *Rendell-Baker v. Kohn*, 457 U.S. 830, 842
19 (1982) (citations and quotation marks omitted; emphasis in original). “That a private entity
20 performs a function which serves the public does not make its acts state action.” *Id.*

21 Under the joint action test, a private individual may be liable as a state actor under § 1983
22 if he or she was part of a conspiracy or was a “willful participant in [other] joint action” with a
23 state actor that caused the constitutional violation. *Franklin v. Fox*, 312 F.3d 423, 445 (9th Cir.
24 2002). “To prove a conspiracy between private parties and the government under § 1983, an
25 agreement or ‘meeting of the minds’ to violate constitutional rights must be shown.” *Fonda v.*
26 *Gray*, 707 F.2d 435, 438 (9th Cir. 1983). “To be liable as a co-conspirator, a private defendant
27 must share with the public entity the goal of violating a plaintiff’s constitutional rights.” *Franklin*
28 *v. Fox*, 312 F.3d 423, 445 (9th Cir. 2002). “The Ninth Circuit requires a ‘substantial degree of

1 cooperation' between the government and a private citizen before finding such a conspiracy.”
2 *Annan-Yartey v. Honolulu Police Dep't*, 475 F.Supp.2d 1041, 1046 (D. Haw. 2007)(quoting
3 *Franklin*, 312 F.3d at 445).

4 Plaintiff alleges that Defendants caused severe damage to his name, reputation, and
5 standing in his community by violating his right to client confidentiality. Defendants do not
6 appear to be governmental entities or officers or employees of a governmental entity.
7 Furthermore, Plaintiff does not allege that Defendants undertook any action under the direction of
8 or in cooperation with any state actor. Thus, Plaintiff fails to state a cognizable claim under §
9 1983.

10 **B. Failure to Prosecute and to Comply with a Court Order**

11 Plaintiff has failed to comply with the screening order, which directed him to file an
12 amended complaint or notify the Court that he wishes to stand on the Complaint within thirty
13 days of its service. (ECF No. 7). The order was served on January 30, 2018. *Id.* Plaintiff has
14 failed to timely file an amended complaint, and has not otherwise prosecuted this action.

15 Courts may impose sanctions, including dismissal, as part of their inherent power “to
16 manage their own affairs so as to achieve the orderly and expeditious disposition of cases” or
17 based on a failure to comply with court orders. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43
18 (1991); *Pagtalunan v. Galazza*, 291 F.3d 639, 642 (9th Cir. 2002). A court may dismiss an action
19 based on a party’s failure to prosecute an action, failure to obey a court order, or failure to comply
20 with local rules. Fed. R. Civ. P. 41(b); L.R. 110; *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995)
21 (citing *United States v. Warren*, 601 F.2d 471, 474 (9th Cir. 1979)) (dismissal for noncompliance
22 with local rule); *Malone v. United States Postal Serv.*, 833 F.2d 128, 134 (9th Cir. 1987)
23 (dismissal for failure to comply with court order).

24 “In determining whether to dismiss [an action] for failure to prosecute or failure to comply
25 with a court order, the Court must weigh the following factors: (1) the public’s interest in
26 expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of
27 prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the
28 public policy favoring disposition of cases on their merits.” *Pagtalunan v. Galaza*, 291 F.3d 639,

1 642 (9th Cir. 2002) (citing *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

2 First, the public’s interest in expeditious resolution of litigation and the court’s need to
3 manage its docket always favor dismissal. *Id.* (quoting *Yourish v. California Amplifier*, 191 F.3d
4 983, 990 (9th Cir. 1999)). Thus, these factors weigh in favor of dismissal.

5 Second, the public policy favoring disposition on the merits always weighs against
6 dismissal. *Id.*

7 Turning to the risk of prejudice, “pendency of a lawsuit is not sufficiently prejudicial in
8 and of itself to warrant dismissal.” *Id.* at 642 (citing *Yourish*, 191 F.3d at 991). However, “delay
9 inherently increases the risk that witnesses’ memories will fade and evidence will become stale,”
10 *id.* at 643, and it is Plaintiff’s failure to file an amended complaint or to notify the Court that he
11 wishes to stand on the Complaint that is causing delay. The Court found that the Complaint fails
12 to state a claim over three months ago. The case is now stalled until Plaintiff files an amended
13 complaint or notifies the Court that he wishes to stand on the Complaint. Therefore, the third
14 factor weighs in favor of dismissal.

15 As for the availability of lesser sanctions, at this stage in the proceedings there is little
16 available to the Court that would constitute a satisfactory lesser sanction while protecting the
17 Court from further unnecessary expenditure of its scarce resources. Monetary sanctions are of
18 little use, considering Plaintiff’s *in forma pauperis* status, and given the stage of these
19 proceedings, the preclusion of evidence or witnesses is not available.

20 Thus, after weighing the factors, the Court finds that dismissal with prejudice is
21 appropriate.

22 **IV. CONCLUSION AND RECOMMENDATIONS**

23 The Court finds that the Complaint fails to state any cognizable claim upon which relief
24 may be granted under § 1983. Furthermore, Plaintiff has failed to comply with the screening
25 order, which directed him to file an amended complaint or notify the Court that he wishes to stand
26 on the Complaint. Plaintiff has failed to timely file an amended complaint, and has not otherwise
27 prosecuted this action.

28 Accordingly, the Court HEREBY RECOMMENDS that:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. Pursuant to 28 U.S.C. §1915(e)(2)(B)(ii), Fed. R. Civ. P. 41(b), and L.R. 110, this action be DISMISSED, with prejudice, based on Plaintiff’s failure to state a claim upon which relief may be granted under § 1983, as well as his failure to comply with a court order and failure to prosecute this action; and
2. The Clerk of Court be directed to close this case.

These findings and recommendations are submitted to the district judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one (21) days after being served with these findings and recommendations, Plaintiff may file written objections with the court. Such a document should be captioned, “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections within the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (quoting *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: May 7, 2018

/s/ Eric P. Gray
UNITED STATES MAGISTRATE JUDGE