

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

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

LEE WILSON,

No. CIV S-09-2191-LKK-CMK-P

Plaintiff,

vs.

FINDINGS AND RECOMMENDATIONS

SANDRA LEE WEVER, et al.,

Defendants.

_____ /

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s amended complaint (Doc. 47).

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a “. . . short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and directly. See McHenry v. Renne,

1 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied
2 if the complaint gives the defendant fair notice of the plaintiff's claim and the grounds upon
3 which it rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff must
4 allege with at least some degree of particularity overt acts by specific defendants which support
5 the claims, vague and conclusory allegations fail to satisfy this standard.

6 7 **I. PLAINTIFF'S ALLEGATIONS**

8 In the original complaint, plaintiff named the following as defendants: Sandra Lee
9 Wever, Mary Daved, James Bueler, Shawn Webber, Maria Webber, and Dave Wever. Plaintiff
10 appears to now name the following as defendants: Sandra Lee Wever, William Proffitt, Richard
11 Teixeira, and Mary Daved. Plaintiff alleges:

12 Sandra Wever conspired with her co-defendants to deprive plaintiff
13 of his civil rights in violation of the U.S. Constitution of the United States
of America, Civil Rights Act, 42 U.S.C. § 1983.

14 Ms. Wever as a member of a white supremacist [sic] group
perpetrated "hate crimes" against the plaintiff. Ms. Wever did this in
15 apparent response to finding out the plaintiff has or may have Jewish
ancestry (a female named "Heller") and African-American ancestor.

16 Ms. Wever made false accusations to the police to get him out of
the way so she and her co-defendants could steal his possessions. Just like
17 what happened in the 1930's in Nazi Germany. Ms. Wever's maiden name
is "Schwartz." She fancies herself a Nazi.

18 Plaintiff has dozens of witnesses to support his claim including an
F.B.I. Special Agent Larry Ott (retired) who now works for Butte County
19 Public Defender's Office as a private investigator. He can attest to the
following:

- 20 1) That Sandra Wever confessed to William Proffitt (a police
21 investigator) that she stole my vehicle and forged the title
and nothing was done.
- 22 2) That Sandra Wever was seen by two witnesses burglarizing
23 my property. The witnesses informed William Proffitt and
nothing was done.
- 24 3) Sandra Wever forged checks on plaintiff's bank account.
25 William Proffitt was informed and did nothing.

26 ///

1 Mr. Proffitt is rumored to be having a relationship with Ms. Wever
2 and is aiding a& abetting her in your criminal conspiracy, using his
3 position as the investigator in my case to protect Ms. Wever from criminal
prosecution and to assist in furthering my prosecution.

4 It appears that Wever is alleged to be a private individual. The amended complaint asserts no
5 specific allegations against Richard Teixeira or Mary Daved (who are referred to only as “co-
6 defendants”).

8 II. DISCUSSION

9 To state a claim under § 1983, the plaintiff must allege that defendants acted
10 under color of state law. See Crumptom v. Gates, 947 F.2d 1418, 1420 (9th Cir. 1991). Private
11 parties do not generally act under state law. See Price v. Hawai’i, 939 F.2d 702, 707-08 (9th Cir.
12 1991). As outlined in the court’s September 24, 2010, order, a private individual may be liable
13 under § 1983 if she conspired or entered joint action with a state actor. To establish conspiracy,
14 the plaintiff must allege facts that show a meeting of the minds to violate constitutional rights,
15 and each participant in the alleged conspiracy must at least share the common objective of the
16 conspiracy. In the typical case involving claimed civil rights violations by private individuals,
17 the question is whether the state actor was sufficiently involved. This involvement may be
18 shown if the state actor knowingly accepts the benefits derived from the unconstitutional
19 behavior of the private individual. A bare allegation, however, of such joint action is
20 insufficient. The plaintiff must allege facts tending to show that the private individual acted
21 under color of state law or authority. Applying these pleading standards to the allegations in the
22 original complaint, the court stated:

23 . . . Upon . . . a liberal review of plaintiff’s complaint, the court
24 concludes that while plaintiff has not met the level of factual specificity
25 required by the Federal Rules of Civil Procedure, there is the possibility
26 that the defects in the complaint can be cured through amendment.

///

1 Plaintiff has not pled facts sufficient to prove that there was an
2 agreement between Ms. Wever and the police; however, the statements
3 “Ms. Wever set him [plaintiff] up with police” and “[j]ust like what
4 happened in the 1930's in Nazi Germany” indicates to this court that
5 plaintiff is attempting to allege that Ms. Wever conspired with named
6 defendants *and* police in order to deprive plaintiff of his property.

7 In the amended complaint, plaintiff alleges that Wever made “false accusations”
8 to the police “to get him out of the way” so that Wever and others could steal his property, that
9 Wever stole his property, that Proffitt – a police officer – knew about these crimes, and that
10 Proffitt took no action on such knowledge. Plaintiff also alleges that Wever and Proffitt are
11 involved in a relationship and that Proffitt failed to act in order to protect Wever. Plaintiff does
12 not allege that Proffitt stole any of his property.

13 The court finds that these allegations are insufficient to establish that Wever was
14 acting under color of state law. Specifically, plaintiff has not alleged facts to show any meeting
15 of the minds between Wever and Proffitt (or any other state actor) that they shared a common
16 objective to violate plaintiff’s constitutional rights. While the facts alleged in the amended
17 complaint may be sufficient to show that Wever – a private individual – intended to discriminate
18 against plaintiff, plaintiff only alleges that Proffitt knew after-the-fact of improper conduct by
19 Wever and failed to do anything about it. And, while plaintiff claims that Proffitt turned a blind
20 eye in order to protect Wever, with whom Proffitt was having a relationship, plaintiff does not
21 allege any facts to show that Proffitt shared Wever’s goal of discrimination. Further, there are no
22 allegations that any state actor knowingly accepted a benefit of Wever’s misconduct (i.e., that
23 Proffitt received the stolen property or somehow otherwise benefitted from the theft of plaintiff’s
24 property). In short, there are no allegations that Wever (or any “co-defendants”) essentially acted
25 under the color of state authority flowing from a conspiracy with Proffitt. Rather, the allegations
26 show that Wever acted out of her own motivations and that Proffitt covered up Wever’s conduct
after the fact due to their relationship.

///

1 Plaintiff was provided an opportunity to amend in order clarify whether his
2 allegation that Wever essentially set him up with police “just like in the 1930's Nazi Germany”
3 indicates a conspiracy. The court finds that plaintiff has failed to do so and cannot state a claim
4 against Wever. As to Proffitt, there are no allegations in the amended complaint that, on his
5 own, Proffitt intentionally discriminated against plaintiff.
6

7 **III. CONCLUSION**

8 Because it does not appear possible that the deficiencies identified herein can be
9 cured by further amending the complaint, plaintiff is not entitled to leave to amend prior to
10 dismissal of the entire action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000)
11 (en banc).

12 Based on the foregoing, the undersigned recommends that this action be dismissed
13 and that any pending motions be denied as moot.

14 These findings and recommendations are submitted to the United States District
15 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 20 days
16 after being served with these findings and recommendations, any party may file written
17 objections with the court. The document should be captioned “Objections to Magistrate Judge's
18 Findings and Recommendations.” Failure to file objections within the specified time may waive
19 the right to appeal. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).
20

21
22 DATED: June 22, 2011

23 
24 **CRAIG M. KELLISON**
25 UNITED STATES MAGISTRATE JUDGE
26