

1  
2  
3  
4  
5  
6  
7  
8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 JOHN KENT,

11 Plaintiff,

No. CIV-S-09-02905 KJM KJN PS

12 vs.

13 CALIFORNIA DEPARTMENT OF  
14 CONSUMER AFFAIRS,  
15 CONTRACTORS STATE LICENSE  
BOARD, et al.,

16 Defendants.

ORDER

17  
18 In this case, plaintiff is proceeding pro se, and has brought a number of claims  
19 including claims based on alleged violations of civil rights under 42 U.S.C. § 1983. On June 28,  
20 2011, the magistrate judge filed findings and recommendations, which were served on the parties  
21 and which contained notice to the parties that any objections to the findings and  
22 recommendations were to be filed within fourteen days. Although no timely objections to the  
23 findings and recommendations were filed, the court will consider plaintiff's objections filed on  
24 July 18, 2011 (ECF No. 46).

25 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule  
26 304, this court has conducted a *de novo* review of this case. Having carefully reviewed the file,

1 the court finds the findings and recommendations to be supported by the record and by the  
2 proper analysis, with the exception of the analysis and recommendation regarding plaintiff's  
3 third claim for relief.

4 Accordingly, IT IS HEREBY ORDERED that:

5 1. The Findings and Recommendations filed on June 28, 2011, are ADOPTED,<sup>1</sup>  
6 except with respect to plaintiff's third claim for relief.<sup>2</sup>

7 2. The motion to dismiss plaintiff's Ninth Amended Complaint filed by  
8 defendants Kevin Carr, Thomas Ebling, Jim Kleiman, Rick Lopez, Patricia Nelson, Sue Payne,  
9 Diana Roach, Anita Sisneros, Sue Stirewalt, Stephen Takimoto, Carl Vega, Rick Villucci and  
10 Leslie Yocum-Howell is granted in part and denied in part.

11 3. Plaintiff's first, second, fourth, fifth and seventh claims for relief are dismissed  
12 with prejudice.

13 4. Plaintiff's third and sixth claims for relief are dismissed without prejudice.  
14 Plaintiff shall incorporate the claims he believes are not time-barred in any amendment of his  
15 third claim for relief, based on the information presented in his objections.

16 5. Plaintiff is granted leave to file a tenth amended complaint that attempts to  
17 cure the pleading deficiencies in plaintiff's third and sixth claims for relief and re-alleges  
18 plaintiff's eighth and ninth claims for relief as provided in the magistrate judge's findings and  
19 recommendations.

20 /////


---

21  
22 <sup>1</sup> The court notes that *DiCampli-Mintz v. County of Santa Clara*, cited in the findings and  
23 recommendations at page 20, has been accepted for review by the California Supreme Court.  
*DiCampli- Mintz v. County of Santa Clara*, 257 P.3d 1130, 129 Cal. Rptr. 3d 325 (Aug. 10, 2011).

24 <sup>2</sup> The magistrate judge recommends dismissing this claim as time-barred due to plaintiff's  
25 specific reference to only the October 13, 2005 incident in his complaint. (Ninth Am. Compl.  
26 ¶¶ 105-109.) However, as plaintiff maintains in his objections to the findings and  
recommendations, he intended to incorporate allegations which are not time-barred. (Pl.'s Obj. to  
F&R at 2.) Given the liberal pleading standard afforded pro se litigants, the court grants plaintiff  
leave to amend this claim.

1                   6. This matter is referred back to magistrate judge for entry of any order that  
2 judge deems appropriate addressing the nature and timing of the further amended complaint to  
3 be filed by plaintiff.

4 DATED: September 26, 2011.

5  
6   
7 \_\_\_\_\_  
8 UNITED STATES DISTRICT JUDGE  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26