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

ANTHONY BROOKS,
Plaintiff,

No. CIV S-10-2246-MCE-CMK-P

vs.

FINDINGS AND RECOMMENDATIONS

KENNETH JAMES LEE, et al.,
Defendants.

_____ /

Plaintiff, a state prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s complaint (Doc. 1).

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*, 84 F.3d 1172,

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

8 **I. PLAINTIFF'S ALLEGATIONS**

9 Plaintiff alleges his public defender misled him in signing a plea agreement due
10 to his learning disability and illiteracy. He has named both the public defender and the Vallejo
11 Public Defender's office as defendants to this action.

12 **II. DISCUSSION**

13 Section 1983 provides that "[e]very person who, under color of any statute,
14 ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia,
15 subjects, or causes to be subjected, any citizen of the United States or other person within the
16 jurisdiction thereof to the deprivation of any rights, privileges, or immunity secured by the
17 Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or
18 other proper proceeding for redress" 42 U.S.C. § 1983. "Traditionally, the requirements for
19 relief under [§] 1983 have been articulated as (1) a violation of rights protected by the
20 Constitution or created by federal statute, (2) proximately caused (3) by conduct of a 'person' (4)
21 acting under color of state law." Crumpton v. Gates, 947 F.2d 1418, 1420 (9th Cir. 1991).
22 Generally, plaintiffs are required to "plead that (1) the defendants acting under color of state law
23 (2) deprived plaintiffs of rights secured by the Constitution or federal statutes." Gibson v. United
24 States, 781 F.2d 1334, 1338 (9th Cir. 1986); see also WMX Techs., Inc. v. Miller, 197 F.3d 367,
25 372 (9th Cir. 1999) (en banc). Public defenders, acting as an advocate for their client, are not
26 acting under color of state law for § 1983 purposes. See Georgia v. McCollum, 505 U.S. 42, 53

1 (1992); Polk County v. Dodson, 454 U.S. 312, 320-25 (1981).

2 Plaintiff's complaint names only his criminal defense attorney, Kenneth James
3 Lee, and the Vallejo Public Defender's office. The defendants were presumably appointed to
4 represent Plaintiff in his state criminal proceedings. However inadequate that representation
5 was, they were acting as advocates for Plaintiff. There is nothing in the complaint to indicate
6 that any of the defendants were acting in any other capacity. Plaintiff therefore cannot state a
7 claim under § 1983 against them.

8 The undersigned finds that Plaintiff fails to state a claim upon which relief can be
9 granted because the only named defendants were not acting under color of state law.

10 III. CONCLUSION

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

14 Based on the foregoing, the undersigned recommends that this action be dismissed
15 for Plaintiff's failure to state a claim upon which relief can be granted.

16 These findings and recommendations are submitted to the United States District
17 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
18 after being served with these findings and recommendations, any party may file written
19 objections with the court. Responses to objections shall be filed within 14 days after service of
20 objections. Failure to file objections within the specified time may waive the right to appeal.
21 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

22
23 DATED: October 26, 2010

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