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

BRODERICK WARFIELD,

No. 2:17-CV-1259-CMK-P

Plaintiff,

vs.

ORDER

HEATHER McCOUGH, 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 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,

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. Additionally, it is
6 impossible for the court to conduct the screening required by law when the allegations are vague
7 and conclusory.

8 Plaintiff names the following as defendants: (1) Heather McCough; (2) Solano
9 County SPCA; (3) Solan County Custody Div.; and (4) Mike Donnelly, aka "Christopher."
10 Neither Heather McCough nor Mike Donnelly, aka "Christopher," are alleged to be government
11 officials. Plaintiff outlines three claims. In his first claim, plaintiff alleges that defendant
12 McCough stole his dog. In his second claim, plaintiff appears to claim that unnamed officials at
13 the Solano County Jail interfered with his access to the courts by improperly handling his legal
14 mail. In his third claim, plaintiff alleges that unnamed officials at the Solano County Jail
15 improperly ignored his reports that he saw the actual perpetrator (defendant Mike Donnelly, aka
16 "Christopher") of the crimes for which he was convicted on television.

17 The complaint suffers from a number of fatal defects. First, plaintiff does not
18 name any individual defendant who is alleged to be a government official. Because the private
19 parties named in the complaint did not act under color of state law, plaintiff has not stated a
20 cognizable § 1983 claim against them. See Price v. Hawai'i, 939 F.2d 702 (1991). Next,
21 plaintiff does not allege an actual injury – such as prejudice with respect to contemplated or
22 existing litigation, the inability to meet a filing deadline, or inability present a non-frivolous
23 claim – in regard to his claim that unnamed jail officials improperly handled his legal mail. See
24 id.; see also Phillips v. Hust, 477 F.3d 1070, 1075 (9th Cir. 2007). Finally, with respect to
25 plaintiff's third claim, plaintiff does not allege any violation of his constitutional or statutory
26 rights.

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Because it does not appear possible that the deficiencies identified herein can be cured by amending the complaint, plaintiff is not entitled to leave to amend prior to dismissal of the entire action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc). Plaintiff shall show cause in writing, within 30 days of the date of this order, why this action should not be dismissed for failure to state a claim. Plaintiff is warned that failure to respond to this order may result in dismissal of the action for the reasons outlined above, as well as for failure to prosecute and comply with court rules and orders. See Local Rule 110.

IT IS SO ORDERED.

DATED: September 19, 2017


_____ **CRAIG M. KELLISON**
UNITED STATES MAGISTRATE JUDGE