

1 rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because Plaintiff must allege
2 with at least some degree of particularity overt acts by specific defendants which support the
3 claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is
4 impossible for the Court to conduct the screening required by law when the allegations are vague
5 and conclusory.

6 Plaintiff names as the only defendant the B-Side Bar. See ECF No. 1. According
7 to Plaintiff, an employee of the B-Side Bar falsely posed on Facebook and other social media that
8 Plaintiff is a “scammer.” Id. at 1. Plaintiff alleges damage to his reputation as a result. See id.

9 Plaintiff’s complaint suffers two critical defects. First, it fails to name an
10 individual acting under color of state law. Second, it fails to allege a violation of a constitutional
11 or federal statutory right, instead alleging only a state law tort claim for defamation. To state a
12 claim under § 1983 Plaintiff must “plead that (1) the defendants acting under color of state law
13 (2) deprived plaintiffs of rights secured by the Constitution or federal statutes.” Gibson v. United
14 States, 781 F.2d 1334, 1338 (9th Cir. 1986); see also Pistor v. Garcia, 791 F. 3d 1104, 1114 (9th
15 Cir. 2015); Long v. Cty. of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006); WMX Techs., Inc.
16 v. Miller, 197 F.3d 367, 372 (9th Cir. 1999) (en banc); Ortez v. Wash. Cty., Or., 88 F.3d 804, 810
17 (9th Cir. 1996). Here, Plaintiff does neither.

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

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 Based on the foregoing, the undersigned recommends that this action be dismissed
2 for failure to state a claim.

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

9
10 Dated: September 8, 2021



11 _____
12 DENNIS M. COTA
13 UNITED STATES MAGISTRATE JUDGE
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28