

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

AUGUSTINE FALLAY,
Plaintiff,

No. CV 08-02261 CRB

**ORDER DISMISSING FIRST
AMENDED COMPLAINT**

v.

CITY AND COUNTY of SAN
FRANCISCO, et al.,
Defendants.

Plaintiff Augustine Fallay alleges that he was the victim of a wide-ranging conspiracy that involved, among other things, his termination, investigation, and prosecution. In his First Amended Complaint, filed in June 2009, Fallay sued four separate groups of Defendants: (1) David Carr and Bruce Whitten, both agents of the FBI (“Federal Defendants”); (2) the City and County of San Francisco and employees David Pfeifer, Lawrence Badiner, Craig Nikitas, Amy Lee, and Karla Johnson (“City Defendants”); (3) First American Specialty Insurance Company and employees Robert Dalton and Cindy Lloyd (“Insurer Defendants”); and (4) Tony Fu and Crystal Lei, private citizens. Cmplt. at ¶¶ 4-15. All of the defendants have moved to dismiss and/or strike the Complaint.¹

¹ The City Defendants have also moved to strike Docket Entry # 61, a “Response” filed by Plaintiff to the City Defendants’ Rely. The Court DENIES this motion to strike, but reminds Plaintiff to abide by Local Rule 7-3(d) in any future filings.

1 As the Court explained at the motion hearing on December 18, 2009, the motions are
2 GRANTED, with the following results.

3 As to the Federal Defendants:

- 4 • The complaint is dismissed for improper service.
- 5 • In the alternative, Plaintiff's claims against the Federal Defendants in their official capacities and in their individual capacities are dismissed with prejudice.

6 As to the City Defendants:

- 7 • The claims against David Pfeifer are dismissed with prejudice.
- 8 • The claims against Karla Johnson, Lawrence Badiner, Craig Nikitas, and Amy Lee are dismissed without prejudice.
- 9 • The FEHA claim is dismissed with prejudice.
- 9 • Plaintiff's remaining claims against the City are dismissed without prejudice.

10 As to the Insurer Defendants:

- 11 • The claims against Cindy Lloyd are dismissed without prejudice.
- 12 • The §§ 1981 and 1983 claims are dismissed with prejudice.
- 12 • The § 1985 claim is dismissed without prejudice.
- 13 • The claim for intentional infliction of emotional distress is dismissed with prejudice
- 13 • The malicious prosecution claim is dismissed without prejudice.
- 14 • The claim for breach of the covenant of good faith and fair dealing is dismissed with prejudice.
- 14 • The claim under Cal. Civil Code § 52.1 is dismissed without prejudice.

15 As to Fu and Lei:

- 16 • The claims against Fu and Lei are stricken based on Cal. Civ. Proc. Code § 425.16. In
17 the alternative:
- 18 • The §§ 1981 and 1983 claims are dismissed with prejudice.
- 18 • The § 1985 claim is dismissed without prejudice.
- 19 • The claim under Cal. Civil Code § 52.1 is dismissed without prejudice.
- 19 • The malicious prosecution claim is dismissed without prejudice.
- 20 • The intentional infliction of emotional distress claim is dismissed with prejudice.

21 Plaintiff shall have thirty (30) days from the date of this Order in which to file a
22 Second Amended Complaint, should he choose to do so. Plaintiff is reminded that a
23 complaint must "give the defendant fair notice of what the . . . claim is and the grounds upon
24 which it rests." Bell Atlantic v. Twombly, 550 U.S. 544, 555 (2007).

25 **IT IS SO ORDERED.**

26
27 Dated: December 21, 2009



CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE