

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

SHIYU WANG D.D.S.,

No. C 09-03508 CRB

Plaintiff,

**ORDER GRANTING MOTION TO
DISMISS WITH PREJUDICE**

v.

THE DENTAL BOARD OF CALIFORNIA,
et al.,

Defendants.

This case was brought by Plaintiff Shiyu Wang, a dentist who claims that the State of California, through various officials, prosecuted a baseless criminal action against him. It comes before the Court again on a Motion to Dismiss.¹ Dkt. 57. The Motion to Dismiss is GRANTED with prejudice, and this case is dismissed.

I. BACKGROUND

This Court granted a Motion to Dismiss in this case on June 22, 2010, dismissing Plaintiff's claims and nearly identical claims brought by Faruk Cenap Yetek arising out of their prosecutions for alleged Denti-Cal fraud. June 22, 2010 Order (Dkt. 53); see also 09-cv-03702-CRB. Both individuals were granted leave to amend, and Plaintiff filed an amended complaint (now proceeding *pro se*) on July 8, 2010.

¹ The parties agree that this matter is ripe for disposition without oral argument. October 8, 2010 Letter from Plaintiff to the Court (Dkt. 59); Defendants' Reply (Dkt. 61).

1 Plaintiff is a dentist who worked as an independent contractor for Hatch Dental for a
2 short period in 2003.² Second Amended Complaint (“SAC”) (Dkt. 56) ¶ 14. Hatch Dental
3 was believed by the government to have engaged in fraudulent and illegal conduct related to
4 billing Denti-Cal, a state agency. *Id.* ¶ 15. In 2004, Defendants initiated criminal
5 proceedings against Hatch Dental, and Plaintiff was arrested and charged with fraudulent
6 billing and performance of unnecessary dental procedures. *Id.* ¶ 17. Defendants
7 “intentionally collected, sorted and organized the clinical data in a way that these data could
8 be wrongfully interpreted or explained by defendant in order to be justified as evidence to
9 prosecute plaintiff.” *Id.* ¶ 19. In addition, Defendants misused the expert witness system,
10 and the State’s witness’s testimony was “contrary to standard of practice and commonly
11 accepted professional principles, practices, and publications, and the evidence in the case.”
12 *Id.* ¶ 26. Defendants maintained this baseless prosecution because Plaintiff and several
13 others tangentially involved with Hatch Dental “were immigrants and unfamiliar with the
14 legal system, and more susceptible to Defendants pressuring them to plead guilty and accept
15 the settlement offers, and were less able to defend themselves and fight for their rights.” *Id.*
16 ¶ 24, 28. The charges against Plaintiff were dismissed, at the preliminary hearing stage, on
17 August 13, 2008. *Id.* ¶ 24. In sum, “Defendants participated in and supported the fabrication
18 of false evidence, announcing a false statement in front of media, misusing expert witness
19 system, [and] filing a prosecution of false accusations against plaintiff” *Id.* ¶ 32.

20 **II. LEGAL STANDARD**

21 Under Rule 12(b)(6), a party may move to dismiss a cause of action that fails to state a
22 claim upon which relief can be granted. On a motion to dismiss, all well-pleaded allegations
23 of material fact are taken as true and construed in the light most favorable to the non-moving
24 party. *Wyler-Summit Partnership v. Turner Broadcasting System, Inc.*, 135 F.3d 658, 661
25 (9th Cir. 1998). To survive a Rule 12(b)(6) motion to dismiss, the complaint must state a
26 claim to relief that is “plausible on its face.” *Ashcroft v. Iqbal*, --- U.S. ----, ----, 129 S. Ct.

27
28 ² Because this matter comes before the Court on a motion to dismiss, the facts presented here
are in the light most favorable to Plaintiff.

1 1937, 1949, 173 L.Ed.2d 868 (2009). A claim has “facial plausibility” when the pleaded
2 factual allegations “allow the court to draw the reasonable inference that the defendant is
3 liable for the misconduct alleged.” Id. Moreover, “threadbare recitals of the elements of a
4 cause of action, supported by mere conclusory statements, do not suffice.” Id. Despite the
5 requirement that factual allegations in the complaint be taken as true, a legal conclusion
6 “couched as a factual allegation” need not be accepted. Id.

7 **III. DISCUSSION**

8 Plaintiff asserts that he is suing the individual defendants in their individual capacities.
9 Opp’n to Defs.’ Mot. to Dismiss (Dkt. 58) at 1. These individual Defendants fall into two
10 categories: (1) prosecutors; and (2) witnesses.

11 **A. Prosecutors**

12 As this Court pointed out in the Order dismissing the First Amended Complaint
13 (“FAC”), prosecutors are absolutely immune from suits relating to their performance of
14 prosecutorial functions. See Butz v. Economou, 438 U.S. 478 (1978); Imbler v. Patchman,
15 424 U.S. 409, 430 (1976).

16 In the Order dismissing the FAC, the Court directed Plaintiff to include in any
17 subsequent complaint “facts relating [] to the investigative conduct of the prosecutors,”
18 because such conduct is not subject to absolute immunity. June 22, 2010 Order (Dkt. 50) at
19 6. Morton v. City of Ellensburg, No. CV-09-3092-EFS, 2010 WL 3938207, at *2 (E.D.
20 Wash. Oct. 4, 2010) (“[A]bsolute immunity does not extend to all actions taken by a
21 prosecutor: a prosecutor enjoys only qualified immunity when performing investigatory or
22 administrative functions.”) (citing Broam v. Bogan, 320 F.3d 1023, 1028-29 (9th Cir. 2003);
23 Imbler, 424 U.S. at 431 n.33). In response to the Court’s direction, Plaintiff alleges in the
24 SAC that “[d]uring investigation defendants intentionally collected, sorted and organized the
25 clinical data in a way that these data could be wrongfully interpreted or explained by
26 defendant in order to be justified as evidence to prosecute plaintiff” and “collect[ed], sort[ed]
27 and organiz[ed] the false negative x-rays from the pile of patients’ records so that they look
28

1 like evidence of no-decay teeth.” SAC (Dkt. 56) ¶ 19. Later, Plaintiff alleges that
2 Defendants “fabricated” “false evidence.” Id. ¶ 32.

3 This is not enough to survive a motion to dismiss because it does not state a plausible
4 claim that any individual Defendant fabricated evidence during the investigation before
5 charges were filed. See Buckley v. Fitzsimmons, 509 U.S. 259, 273 (1993); Eclectic
6 Properties East, LLC v. Marcus & Millichap Co., No. C-09-0511 RMW, 2010 WL 384736,
7 at *2 (N.D. Cal. Jan. 29, 2010) (“[T]he complaint nevertheless fails to adequately plead facts
8 sufficient to inform each defendant of the specific allegations against it under each asserted
9 cause of action, and many of the allegations simply lump all of the defendants together in a
10 group.”). Indeed, neither of the two non-conclusory allegations regarding claimed evidence
11 fabrication even allege that fabrication took place. Instead, the allegations simply assert that
12 the prosecutors organized the actual evidence in such a way as to support their theory that
13 Plaintiff acted unlawfully. But the mere organization of evidence in a persuasive way is not
14 unconstitutional conduct on the part of a prosecutor. See generally U.S. v. McVeigh, 954 F.
15 Supp. 1441, 1449-50 (D. Colo. 1997) (“There is no requirement that the government present
16 all of the information known to it that can meet the requirements for admissible evidence.
17 The prosecutors may be selective and use only that which they believe will have persuasive
18 effect on the jury.”).

19 Thus, the Motion to Dismiss is granted with prejudice as to the prosecutor Defendants.

20 **B. Witnesses**

21 Plaintiff once again names Dr. Susan Jane Quon as a Defendant. She is once again
22 alleged to have been hired as a dental expert by the prosecuting Defendants, and her
23 assertions “were the basis of the case against Plaintiff, were contrary to standard of practice
24 and commonly accepted professional principles, practices, and publications, and the evidence
25 in the case.” SAC (Dkt. 56) ¶ 26.

26 When this Court dismissed the claims against Defendant Quon last time it noted two
27 failings as to those claims. First, that the allegations did not support the conclusion that
28 Defendant Quon was a state actor. See June 22, 2010 Order (Dkt. 50) at 7. Second, that

1 even if Defendant Quon was a state actor, she was protected by qualified immunity because
2 the complaint failed to identify any constitutional right that she infringed. Id. Both of these
3 shortcomings still exist. The SAC continues to allege that Defendant Quon was “hired and
4 paid to make the accusations,” revealing that she was simply a private expert witness retained
5 by the prosecution. SAC (Dkt. 56) ¶ 26. Moreover, her alleged misconduct – making
6 assertions that “were contrary to standard of practice and commonly accepted professional
7 principles, practices, and publications, and the evidence in the case” – does not rise to the
8 level of a constitutional violation even if Defendant Quon were considered to be a state
9 actor.³ SAC (Dkt. 56) ¶ 26. Accordingly, the claims against Defendant Quon are dismissed
10 with prejudice.

11 **C. Supervisory Liability**

12 If Plaintiff is making a distinct claim against any supervising Defendant in his role as
13 a supervisor such claim fails because it is pleaded, if at all, in an entirely conclusory fashion.
14 There is no respondeat superior liability in section 1983 cases, so it is not enough for Plaintiff
15 to allege a violation of a constitutional right and then name the perpetrator’s supervisors as
16 additional Defendants. Mortimer v. Baca, 594 F.3d 714, 722 (9th Cir. 2010). The SAC is
17 simply devoid of the allegations necessary to state a plausible claims for supervisory liability
18 under section 1983.

19 **IV. CONCLUSION**

20 Defendants’ Motion to Dismiss (Dkt. 57) is GRANTED with prejudice.

21 **IT IS SO ORDERED.**

22
23


24 CHARLES R. BREYER
25 UNITED STATES DISTRICT JUDGE

24 Dated: October 26, 2010

27
28 ³ To the extent Plaintiff has alleged that Defendant Quon violated his rights through knowingly providing false testimony in-court, see SAC (Dkt. 56) ¶ 27, she is entitled to absolute immunity. Paine v. City of Lompoc, 265 F.3d 975 (2001).