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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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THOMAS DAVID WAITON,

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Plaintiff,

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v.

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KERRI POST, et al.,

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Defendants.

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Case No. 13-cv-02439-JST (PR)

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13 Plaintiff, an inmate at the Main Adult Detention Facility in Santa Rosa, California, filed
14 this pro se civil rights action under 42 U.S.C. § 1983. Plaintiff is granted leave to proceed in
15 forma pauperis in a separate order. His complaint is now before the Court for review under 28
16 U.S.C. § 1915A.

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DISCUSSION

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A. Standard of Review

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20 Federal courts must engage in a preliminary screening of cases in which prisoners seek
21 redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
22 § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion of
23 the complaint, if the complaint "is frivolous, malicious, or fails to state a claim upon which relief
24 may be granted," or "seeks monetary relief from a defendant who is immune from such relief." Id.
25 § 1915A(b). Pro se pleadings must be liberally construed, however. Balistreri v. Pacifica Police
Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

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27 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the
28 claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the
statement need only " 'give the defendant fair notice of what the . . . claim is and the grounds upon

which it rests.' " Erickson v. Pardus, 127 S. Ct. 2197, 2200 (2007) (citations omitted). Although in order to state a claim a complaint "does not need detailed factual allegations, . . . a plaintiff's obligation to provide the grounds of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above the speculative level." Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint must proffer "enough facts to state a claim for relief that is plausible on its face." Id. at 1974.

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

B. Legal Claims

Plaintiff alleges that defendant California Highway Patrol ("CHP") Officer Maxine Guyer purposefully ran over plaintiff with her car. Plaintiff was a pedestrian. Plaintiff does not provide the location or date of the incident. Plaintiff further alleges that defendant CHP Officer Brian Wood prepared a fraudulent report about the incident, and that CHP Supervisor Kerri Post failed to adequately investigate the incident. Plaintiff also alleges that defendant County of Sonoma failed to adequately provide a safe environment for its citizens insofar as the shoulder of the road he was walking on during the incident was "inadequate."

Although plaintiff's allegations are serious, they fail to state a claim upon which relief may be granted under § 1983. Specifically, plaintiff has not alleged how these alleged acts violated his federal constitutional or statutory rights. Plaintiff may be able to bring a claim for negligence or intentional torts against the named defendants in the state courts.

Plaintiff also names as a defendant Darcy Drew ("Drew"), whom plaintiff identifies as an insurance agent of the American Automobile Association. Plaintiff's claim against Drew cannot proceed under 42 U.S.C. § 1983, because private individuals and entities do not act under color of state law, an essential element of a § 1983 action. See Gomez v. Toledo, 446 U.S. 635, 640 (1980). Purely private conduct, no matter how wrongful, is not covered under § 1983. See Ouzts

¹ v. Maryland Nat'l Ins. Co., 505 F.2d 547, 559 (9th Cir. 1974).

CONCLUSION

3 For the foregoing reasons, the complaint is DISMISSED for failure to state a claim under
4 § 1983.

5 The Clerk shall enter judgment in accordance with this order, terminate all pending
6 motions as moot, and close the file.

IT IS SO ORDERED.

8 | Dated: August 26, 2013

JON S. TIGAR
United States District Judge