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3 UNITED STATES DISTRICT COURT  
4 NORTHERN DISTRICT OF CALIFORNIA  
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8 WANXIA LIAO,  
9 Plaintiff,

No. C 08-2776 PJH

**ORDER GRANTING MOTION  
TO DISMISS**

10 v.

11 JOHN ASHCROFT, et al.,  
12 Defendants.

13 Before the court is a motion to dismiss filed by defendant California Deputy Attorney  
14 General Kay Yu ("Yu"), which plaintiff Wanxia Liao ("Liao") opposes. Because the court  
15 finds this matter suitable for decision without oral argument, the hearing date of May 20,  
16 2009 is VACATED pursuant to Civil Local Rule 7-1(b). For the reasons stated below, the  
17 court GRANTS Yu's motion to dismiss.

18 **BACKGROUND**

19 On June 4, 2008, Liao, in propria persona, filed the original complaint in this case,  
20 suing twenty-one defendants, including, among others, John Ashcroft, Judge Claudia  
21 Wilken, Yu, Bill Lockyer, Heather Fong, CNN and YouTube. See Compl. On September 9,  
22 2008, this case was reassigned to Judge Sandra B. Armstrong. Liao filed a first amended  
23 complaint ("FAC") on December 22, 2008, which, among other things, added Judge  
24 Armstrong as a defendant. See FAC. On February 4, 2009, Judge Armstrong recused  
25 herself from presiding over this case. The next day, this case was reassigned to the  
26 undersigned.

27 This case arises out of "racially motivated refusals by United States government  
28 officials and California state officials to investigate [Liao's] criminal complaints, and the  
conspiracy by federal justice administrative officials with the US major media to place a

1 secret prior restraint on [her] Internet free speech about [her] human rights case,” Liao v.  
2 Cahill, 03-2906-SBA, “without due process of law” for the purpose of covering up her  
3 human rights case. FAC ¶ 1. Liao alleges that the defendants, “acting under color of state  
4 law, violated [her] “rights to Equal Protection under the Fourteenth Amendment, to free  
5 speech under the First Amendment, [and] violated § 1985 of USC for Conspiracy to  
6 Interfere with Civil Rights.” Id. Through this action, Liao seeks “damages and declaratory  
7 relie[f] under Title 42, Section 1983 of the United States Code and other federal and  
8 California State statutes.” Id.

9 The facts underlying Liao’s “human rights case” are as follows. In 1991, as a  
10 masters student at the University of Toronto (“UT”), Liao had an academic dispute with  
11 David Waterhouse, a professor in the University’s East Asian Studies Department. FAC ¶  
12 28. Liao submitted a term paper in which she challenged Waterhouse’s previously  
13 published contention that “beautiful” is a European concept. Id. ¶¶ 28-29. Waterhouse  
14 then allegedly retaliated against her by interfering with her Ph.D application through a  
15 series of “fraud,” in violation of UT’s grading and academic regulations, including awarding  
16 Liao a “B” as her final grade while the course was still in progress, submitting Liao’s grade  
17 without having it reviewed by the Chair of the Department, providing a reference letter for  
18 Liao’s Ph.D application fraudulently identifying himself as her program supervisor, and  
19 objecting to Liao’s Ph.D application on an erroneous ground. Id. ¶ 30. According to Liao,  
20 Waterhouse’s fraud directly caused her application for the Ph.D program to be  
21 unsuccessful. Id. Liao subsequently lodged a formal complaint with the Ontario Human  
22 Rights Commission (“OHRC”). Id. ¶ 31.

23 Although unclear from the allegations in the FAC, James Cahill (“Cahill”), a professor  
24 at the University of California at Berkeley (“UCB”), allegedly became involved in a  
25 conspiracy with the Canadian government to cover up Waterhouse’s fraud and racial  
26 prejudice after learning of Liao’s complaint to the OHRC. FAC ¶ 31. In May 1995, before  
27 the OHRC dismissed Liao’s complaint, Cahill, the OHRC and the UT allegedly conspired to  
28 provoke Liao into engaging in behavior leading to her arrest and subsequent conviction for  
uttering a death threat to Waterhouse. Id. ¶¶ 31-33.

1 In April of 2002, Liao filed a civil rights case against Cahill in San Francisco Superior  
2 Court. FAC ¶ 34. After her case was dismissed, Liao re-filed it in the Northern District in  
3 June 2003. Id. In May 2005, while this case was pending, Liao filed another civil rights  
4 case in the Northern District, Liao v. Quidachay, et al., 05-1888-CW, against, among  
5 others, two San Francisco Superior Court judges. Id. ¶ 89. Yu represented the judges in  
6 that action. Id. Both of these cases were ultimately dismissed. Id. ¶¶ 35-36, 80.

7 Liao alleges that during the course of her civil rights cases, “in order to break the US  
8 media ban on [her case],” she tried to publicize her story about her civil rights case on the  
9 Internet. FAC ¶ 37. Liao further alleges that, in December 2005, she received a death  
10 threat in response to a posting she had made on Yahoo’s Message Board about her case.  
11 Id. Liao asserts that the individual who posted the threat “was undoubtedly speaking for  
12 the US and Canadian governments.” Id. Liao subsequently filed several criminal  
13 complaints related to the death threat and the facts giving rise to her civil rights case with  
14 various state and federal officials. She alleges that these officials racially discriminated  
15 against her by refusing to investigate these complaints. See generally id. ¶¶ 38-74. Liao  
16 further alleges that the United States media joined the government to cover up the facts of  
17 her human rights case by setting up automatic filters on their websites to filter out any  
18 information that contained her name and/or web page addresses where she posts  
19 information about her cases. Id. ¶¶ 93, 101.

20 Liao filed the instant action on June 4, 2008 suing, among others, Yu. As to Yu, the  
21 FAC alleges that she is being “sued in her individual capacity, under §1983, for violation of  
22 Fourteenth Amendment due process clause.” FAC ¶ 21. The FAC further alleges that Yu  
23 is being sued for damages for violation of § 6128 of California Business and Professions  
24 Code. Id. Specifically, the FAC alleges the following:

25 89. Kay Yu, in her official capacity as Deputy Attorney General of California,  
26 and Bill Lockry [sic], the Attorney General of California, acted as the counsel  
27 of record for California state Defendants of my civil rights case in California  
28 Superior Court. On or about October 19, 2004, I received a demurrer to my  
complaint from Yu. However, I checked with the court’s Action Register and  
found there was no such a demurrer filing recorded. I then telephoned the  
clerk’s office and was affirmed that no such a filing. On October 20, I left a  
message to Yu. Yu called me on October 21, repeatedly told me that she  
had already filed this demurrer on October 15 and she did so ‘personally’

1 with the clerk's office. Despite I repeatedly advised her that the action had  
2 been stayed so I could not filed any document, Yu threatened me that I had  
3 20 days to respond to the demurrer or my action would be dismissed. I  
4 asked her to give me something in writing to clarify that this action was not  
5 stayed so I could continue to proceed, for without such assurance, any move  
6 of me would constitute 'contempt of court'. But Yu never responded to my  
7 request.

8 90. I was overwhelmed about that the 'Deputy Attorney General of California'  
9 and the Attorney General of California had joined the oppression and  
10 committed deceit against my civil rights case, feared Yu's dismissal warning  
11 and the 'contempt of court' charge etc. prosecution, so on October 25, I filed  
12 a voluntary dismissal of my case.

13 Id. ¶¶ 89-90.

14 Liao asserts that Yu's conduct constitutes "deceit, an unlawful law practice, in  
15 violation of § 6128 of California Business and Profession Code." FAC ¶ 91. Liao further  
16 asserts that because Yu acted in her official position, under color of state law, "she  
17 damaged [Liao's] case by unlawfully interfer[ing] with [her] 14th Amendment due process  
18 right, in violation of §1983." Id.

19 On April 10, 2009, Yu filed a motion to dismiss. Liao filed an opposition on April 28,  
20 2009. A reply was filed on April 30, 2009.

## 21 **DISCUSSION**

### 22 A. Standard

23 "A Rule 12(b)(6) motion tests the legal sufficiency of a claim. A claim may be  
24 dismissed only 'if it appears beyond doubt that the plaintiff can prove no set of facts in  
25 support of his claim which would entitle him to relief.'" Navarro v. Block, 250 F.3d 729, 732  
26 (9th Cir. 2001). Dismissal pursuant to Rule 12(b)(6) is appropriate where there is no  
27 cognizable legal theory or there is an absence of sufficient facts alleged to support a  
28 cognizable legal theory. Id. When the plaintiff appears *pro se*, the court must construe the  
allegations of the complaint liberally and must afford the plaintiff the benefit of any doubt.  
See Karim-Panahi v. Los Angeles Police Dep't, 839 F.2d 621, 623 (9th Cir. 1988). This  
rule of liberal construction is particularly important in civil rights cases. Ferdik v. Bonzelet,  
963 F.2d 1258, 1261 (9th Cir. 1992). In giving liberal interpretation to a *pro se* civil rights  
complaint, however, the court is not permitted to "supply essential elements of the claim

1 that were not initially pled.” Ivey v. Bd. of Regents of the Univ. of Alaska, 673 F.2d 266,  
2 268 (9th Cir. 1982).

3 To survive a motion to dismiss for failure to state a claim, a complaint generally must  
4 satisfy only the minimal notice pleading requirements of Federal Rule of Civil Procedure 8.  
5 Rule 8 requires only that the complaint include a “short and plain statement of the claim  
6 showing that the pleader is entitled to relief.” Fed.R.Civ.P 8(a)(2). Specific facts are  
7 unnecessary - the statement need only give the defendant “fair notice of the claim and the  
8 grounds upon which it rests.” Erickson v. Pardus, 127 S.Ct. 2197, 2200 (2007) (citing Bell  
9 Atlantic Corp. v. Twombly, 127 S.Ct. 1955, 1964 (2007)). In order to survive a dismissal  
10 motion, a plaintiff must allege facts that are enough to raise her right to relief “above the  
11 speculative level.” Twombly, 127 S.Ct. at 1965. While the complaint “does not need  
12 detailed factual allegations,” it is nonetheless “a plaintiff’s obligation to provide the ‘grounds’  
13 of his ‘entitlement to relief’ [which] requires more than labels and conclusions, and a  
14 formulaic recitation of the elements of a cause of action will not do.” Id. at 1964-65. In  
15 short, a plaintiff must allege “enough facts to state a claim to relief that is plausible on its  
16 face,” not just conceivable. Id. at 1974.

17 B. Analysis

18 1. 42 U.S.C. § 1983

19 Yu argues that dismissal of this claim is appropriate because she is absolutely  
20 immune from liability arising out of the prior state court action. The court agrees.

21 Although the allegations against Yu are largely incoherent, because it is clear that  
22 the allegations are based entirely upon Yu’s official conduct in representing the government  
23 in a prior state court action, Yu is entitled to absolute immunity from liability arising out of  
24 that action. See Fry v. Melaragno, 939 F.2d 832, 836-37 (9th Cir. 1991) (stating that if a  
25 government attorney is performing acts intimately associated with the judicial phase of  
26 litigation, the attorney is entitled to absolute immunity from liability for damages).

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1 Accordingly, this claim is dismissed for failure to state a claim upon which relief may be  
2 granted.<sup>1</sup>

3 2. Business and Professions Code § 6128

4 To the extent that Liao attempts to state a claim for relief based on Yu's alleged  
5 violation of Business and Professions Code § 6128, the court finds that this claim fails as a  
6 matter of law. Section 6128 provides, in pertinent part: "Every attorney is guilty of a  
7 misdemeanor who . . . (a) Is guilty of any deceit or collusion, or consents to any deceit or  
8 collusion, with intent to deceive the court or any party." Cal. Bus. & Prof.Code § 6128(a).  
9 A violation of § 6128(a) "is punishable by imprisonment in the county jail not exceeding six  
10 months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both."  
11 Cal. Bus. & Prof.Code § 6128(c).<sup>2</sup>

12 A private right of action under a criminal statute has rarely been implied. Chrysler  
13 Corp. v. Brown, 441 U.S. 281, 316 (1979). Where a private right of action has been  
14 implied, " 'there was at least a statutory basis for inferring that a civil cause of action of  
15 some sort lay in favor of someone.' " Id. (quoting Cort v. Ash, 422 U.S. 66, 79 (1975)).  
16 The court has reviewed the statute and there is no indication that civil enforcement of any  
17 kind is available to Liao. Cort, 422 U.S. at 79-80; Keaukaha-Panaewa Cmty. Ass'n v.  
18 Hawaiian Homes Comm'n, 739 F.2d 1467, 1469-70 (9th Cir. 1984). In short, neither the  
19 statute, nor any authority of which this court is aware, authorizes Liao to bring a civil cause  
20 of action based on an alleged violation of § 6128. Accordingly, this claim is dismissed for  
21 failure to state a claim upon which relief may be granted.

22 **CONCLUSION**

23 For the reasons stated above, the court GRANTS Yu's motion to dismiss. Because  
24 it is absolutely clear to the court that the deficiencies of the FAC are incapable of being

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25 <sup>1</sup> Because the court finds that dismissal on this basis is appropriate, it need not reach  
26 Yu's alternative argument for dismissal.

27 <sup>2</sup> An attorney's conduct in violation of § 6128 is a crime for which a criminal prosecution  
28 may be brought. See Action Apartment Ass'n, Inc. v. City of Santa Action Apartment Ass'n,  
Inc. v. City of Santa Monica, 41 Cal.4th 1232, 1246 (2007); Kashian v. Harriman, 98  
Cal.App.4th 892, 919-20 (2002).

1 cured by amendment, the claims asserted against Yu are DISMISSED WITH PREJUDICE.  
2 See Karim-Panahi, 839 F.2d at 623 (A court must give a *pro se* litigant leave to amend his  
3 or her complaint unless it is “absolutely clear that the deficiencies of the complaint could not  
4 be cured by amendment.”). As the claims against all of the defendants have been  
5 dismissed with prejudice, the Clerk shall close the file.

6 **IT IS SO ORDERED.**

7 Dated: May 15, 2009



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PHYLLIS J. HAMILTON  
United States District Judge

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