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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

STEVEN M. WARREN,

Plaintiff,

vs.

FELICIA REID, ALAMEDA ALLIANCE
FOR HEALTH, JETT STANSBURY,
MARIE BARRETT, and INGRID
LAMIRAULT,

Defendants.

Case No: C 10-3416 SBA

**ORDER GRANTING
DEFENDANTS' MOTION TO
DISMISS**

Plaintiff Steve Warren (“Plaintiff”) brings the instant action against Defendants Alameda Alliance for Health (“AAH”), its attorney Felicia Reid (“Reid”), its Chief Executive Office (“CEO”) Ingrid Lamirault, and two AAH employees, Jett Stansbury and Marie Barrett (collectively “Defendants”), alleging the denial of his civil rights and conspiracy to deny his civil rights, pursuant to 42 U.S.C. §§ 1983 and 1985(3). The parties are presently before the Court on Defendants’ motion to dismiss. Having read and considered the papers filed in connection with this matter and being fully informed, the Court hereby GRANTS the motion for the reasons set forth below. The Court, in its discretion, finds this matter suitable for resolution without oral argument. See Fed.R.Civ.P. 78(b); N.D. Cal. Civ. L.R. 7-1(b).

1 **I. BACKGROUND**

2 **A. FACTUAL SUMMARY**

3 AAH is public health authority established by the County of Alameda (“the
4 County”) to provide health care services to more than 94,500 low-income Alameda County
5 residents. Defs.’ Request for Judicial Notice (“RJN”), Ex. 2, Dkt. 18-2 at 14.¹ The County
6 created the AAH under the auspices of California Welfare & Institutions Code § 14087.35,
7 which authorized the County “to create a health authority separate and apart from the
8 County of Alameda as a means of establishing the local initiative component of the state-
9 mandated two-plan managed care model for the delivery of medical care and services to the
10 Medi-Cal populations.” Cal.Welf. & Inst. Code § 14087.5(a); RJN Ex. 1.

11 In or about 2005, Plaintiff was a member of the AAH’s Medi-Cal Managed Health
12 Plan. RJN, Ex. 2, Dkt. 18-2 at 6. Plaintiff, who is morbidly obese, became embroiled in a
13 dispute with AAH regarding the type of electric motor scooter that would be provided to
14 him under his medical plan. *Id.* at 14-15. Over the course of several months in 2005,
15 Plaintiff left hundreds of voicemail messages for AAH staff, the majority of which
16 contained abusive, profane, racist, sexist and homophobic language. *Id.* at 6. For example,
17 he routinely and angrily referred to staff members with terms such as “bitch,” “fucking
18 cunt,” “asshole,” “black nigger bitch,” “Dr. Ching Ching,” and repeatedly used expletives
19 such as “fuck” and “fucking” in his messages. *Id.* at 15, 18, 21, 24, 26. In addition, he left
20 a message for CEO Lamarault, in which he made implicit threats against staff member
21 Sabrina Tulley and Jett Stansbury. In particular, Plaintiff stated that he had a “large
22 network” of associates in prison who owed him “favors,” and that he would “go after you
23 folks.” *Id.* at 15. Plaintiff left a similarly threatening voicemail for Arthur Chen, Chief

24 _____
25 ¹ The Complaint provides virtually no factual information regarding his purported
26 dispute with AAH and the other individual defendants. However, Defendants have
27 proffered copies of various court documents from the underlying state court proceedings,
28 which details the events that precipitated the instant lawsuit. A court “may take notice of
proceedings in other courts, both within and without the federal judicial system, if those
proceedings have a direct relation to matters at issue.” *Bias v. Moynihan*, 508 F.3d 1212,
1225 (9th Cir. 2007) (quotation marks and citation omitted). Defendants’ request for
judicial notice is therefore granted.

1 Medical Officer of AAH, stating that “You (sic) life is going to be a big fucking
2 nightmare.” Id. at 18.

3 In October 2005, AAH filed in the Alameda County Superior Court an application
4 for a restraining order (using a California Judicial Council form styled as a Petition for
5 Employer Injunction Prohibiting Violence or Threats of Violence Against Employee)
6 against Plaintiff based on California’s workplace violence and civil harassment statutes,
7 Cal.Cod.Civ.P. §§ 527.6 and 527. Id. at 2. On November 18, 2005, the state court held an
8 evidentiary hearing on the application, at the conclusion of which the judge found by clear
9 and convincing evidence that Plaintiff had made credible threats of violence against AAH
10 personnel, and granted three civil harassment injunctions and two workplace violence
11 injunctions. Id. at 6. The restraining order required Plaintiff to stay away from AAH and
12 its employees and to avoid contact with them (except for two specifically identified
13 employees whom he could contact in writing only). Id. The court amended the injunctions
14 on December 29, 2005, to prevent Plaintiff from reclaiming his firearm, which he had place
15 on consignment. Id. at 30.

16 In December 2005, the California Department of Health Care Services granted
17 AAH’s request to disenroll Plaintiff from its Medi-Cal Managed Health Plan based on the
18 conduct that formed the basis of the restraining order. Id. at 7. Nonetheless, in December
19 2007, Plaintiff became a member of the Group Care Plan, another health plan administered
20 by AAH, as a result of his participation in a state program in which he provides in-home
21 support to his disabled parent. Id. Additionally, he has sought to reenroll in the Medi-Cal
22 Managed Health Plan, a request which AAH continues to oppose. Id.

23 Notwithstanding the prior injunctions, Plaintiff allegedly has continued in making
24 veiled threats of violence against AAH employees. Id. at 10. In an email, dated August 8,
25 2008, sent by Plaintiff to AAH employees Kim Rice and Christina Lopez, attorney Reid,
26 and Administrative Law Judge Patrick Cooney (who is presiding over Plaintiff’s State Fair
27 Hearing concerning his request to reenroll the Medi-Cal Managed Health Plan), Plaintiff
28 claimed that his brother had threatened to “shoot . . . those mother fuckers” at AAH. Id. at

1 11. In subsequent emails, Plaintiff continued his tirade against AAH personnel, referring to
2 them as “low life” and sending sexually explicit and profane photographs to a female AAH
3 employee and the entity’s counsel. In particular, Plaintiff sent AAH employee Kim Rice
4 and attorney Reid an email stating that he had just returned from New York City, where
5 had had seen comedian Lisa Lampanelli perform at Radio City Music Hall. Id., Dkt. 18-3
6 at 9. Attached to his email were pictures of Ms. Lampanelli holding a dildo, while another
7 shows a page of a guest book on which she apparently had written, “Radio City, I hope I
8 am your favorite C-U-N-T.” Id., Dkt. 18-3 at 109-12.

9 As a result of Plaintiff’s continued harassment, on or about October 23, 2008, AAH,
10 through attorney Reid, petitioned for renewal of the 2005 restraining order. Id. Ex. 2, Dkt.
11 18-2 at 2. On November 10, 2008, the parties, including Plaintiff, appeared for a hearing
12 on AAH’s renewed request. Id. Ex. 3, Dkt. 18-4 at 2. The court granted AAH’s request
13 and entered a new restraining order against Plaintiff on November 13, 2008. Id.; see also
14 Pl.’s Opp’n, Ex A., Pt. 2, Dkt. 26-2 at 5. On March 13, 2009, Plaintiff filed a notice of
15 appeal from the restraining order. RJN Ex. 6, Dkt. 18-7. However, upon motion of AAH,
16 the California Court of Appeal struck Plaintiff’s opening brief on appeal and dismissed the
17 appeal on February 10, 2010. Id., Dkt. 18-8.

18 In the meantime, Plaintiff allegedly violated the new restraining order by continuing
19 to engage in threatening and offensive communications, which prompted Reid to file an
20 application for an order to show cause re contempt on behalf of AAH on or about July 20,
21 2009. Id., Dkt. 18-5. On August 24, 2009, the court denied the application on the ground
22 that only the district attorney could pursue a criminal contempt citation. Id., Dkt. 18-6 at 2.

23 **B. PROCEDURAL HISTORY**

24 On August 3, 2010, Plaintiff filed the instant pro se action against Defendants AAH,
25 attorney Reid, CEO Lamirault, and AAH employees Jett Stansbury and Marie Barrett. The
26 Complaint purports to allege six claims for relief: (1) retaliation for petitioning, 42 U.S.C.
27 § 1983; (2) conspiracy to interfere with his civil rights, 42 U.S.C. § 1985(3); (3) refusing or
28 neglecting to prevent the violation of his civil rights, 42 U.S.C. § 1983; (4) malicious

1 prosecution; (5) malicious abuse of prosecution; and (6) conspiracy. Without ascribing any
2 particular conduct to a specific person, Plaintiff alleges that Defendants violated his civil
3 rights by submitting “perjured” proofs of service showing that he was served with the
4 renewed application for a restraining order in October 2008 and the OSC re contempt in
5 August 2009 when “there was no evidence that [he] ever was served with any
6 pleadings” Compl. ¶ 2. He also complains that Defendants had no legal basis upon
7 which to seek to hold him in contempt, and that Defendants terminated his medical
8 coverage in retaliation for filing a notice of appeal from the superior court’s November
9 2008 restraining order.

10 Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendants now move to
11 dismiss all claims. Defendants argue that AAH is entitled to sovereign immunity under the
12 Eleventh Amendment and that Plaintiff’s various claims otherwise fail, as a matter of law.
13 On October 18, 2010, Plaintiff filed a “response and opposition” which does not
14 substantively address any of Defendants’ arguments, but instead, asserts that “[t]he motion
15 to dismiss is a delay tactic and is intended to cause delays, duress and test the legal analysis
16 of plaintiff.” Pl.’s Opp’n at 1, Dkt. 26. Despite Plaintiff’s accusation of delay, he also
17 requests that the Court “continue the case” until December 2010 or January 2011 due to
18 alleged injuries resulting from a household accident. In addition, he requests that the Court
19 reassign this case to a judge in San Francisco on the theory that Defendant Reid has
20 influence over all judges of Alameda County Superior Court, where the undersigned
21 previously served as a judge.

22 **II. LEGAL STANDARD**

23 A complaint may be dismissed under Rule 12(b)(6) for failure to state a claim if the
24 plaintiff fails to state a cognizable legal theory, or has not alleged sufficient facts to support
25 a cognizable legal theory. Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir.
26 1990). To survive a motion to dismiss, the plaintiff must allege “only enough facts to state
27 a claim to relief that is plausible on its face.” Bell Atl. Corp. v. Twombly, 550 U.S. 544,
28 570 (2007). The pleadings must “give the defendant fair notice of what ... the claim is and

1 the grounds upon which it rests.” Erickson v. Pardus, 551 U.S. 89, 93 (2007) (internal
2 quotation marks omitted).

3 When considering a motion to dismiss under Rule 12(b)(6), a court must take the
4 allegations as true and construe them in the light most favorable to plaintiff. See Knievel v.
5 ESPN, 393 F.3d 1068, 1072 (9th Cir. 2005). However, “the tenet that a court must accept
6 as true all of the allegations contained in a complaint is inapplicable to legal conclusions.
7 Threadbare recitals of the elements of a cause of action, supported by mere conclusory
8 statements, do not suffice.” Ashcroft v. Iqbal, --- U.S. ---, 129 S.Ct. 1937, 1949-50 (2009).
9 “While legal conclusions can provide the complaint’s framework, they must be supported
10 by factual allegations.” Id. at 1950. Those facts must be sufficient to push the claims
11 “across the line from conceivable to plausible[.]” Id. at 1951 (quoting Twombly, 550 U.S.
12 at 557). “If a complaint is dismissed for failure to state a claim, leave to amend should be
13 granted unless the court determines that the allegation of other facts consistent with the
14 challenged pleading could not possibly cure the deficiency.” Schreiber Distrib. Co. v. Serv-
15 Well Furniture Co., 806 F.2d 1393, 1401 (9th Cir. 1986).

16 **III. DISCUSSION**

17 **A. PRELIMINARY MATTERS**

18 **1. Plaintiff’s Request for Continuance**

19 In his opposition, Plaintiff makes a cursory request to “continue the case to
20 December 2010 after 12/22/2010 or early January 2011.” Pl.’s Opp’n at 4. Requests to
21 enlarge a deadline or continue a hearing requires the submission of a motion to change time
22 under Civil Local Rule 6-3(a). The motion must include the specific reasons for the
23 request, the efforts the moving party has made to seek a stipulation to change time, the
24 harm or prejudice that would result if the Court does not change time, a specification of any
25 prior time modifications, and a description of the impact the requested time change would
26 have on the schedule for the case. Civ. L.R. 6-3(a). A court’s decision to grant or deny a
27 request for continuance is a matter of the court’s discretion. See United States v. Moreland,
28 604 F.3d 1058, 1069 (9th Cir. 2010).

1 Here, Plaintiff has complied with none of the requirements of Civil Local Rule 6-3.
2 A motion that fails to comply with the Court's Local Rules need not be considered by the
3 Court. See Grove v. Wells Fargo Fin. Cal., Inc., 606 F.3d 577, 582 (9th Cir. 2010)
4 (upholding district court's denial of motion to tax costs which was not in compliance with
5 the court's local rules). The fact that Plaintiff is pro se does not alter that analysis, as he
6 remains obligated to comply with the same rules as a represented party. See Ghazali v.
7 Moran, 46 F.3d 52, 54 (9th Cir. 1995) ("Although we construe pleadings liberally in their
8 favor, pro se litigants are bound by the rules of procedure.") (per curiam); Swimmer v.
9 I.R.S., 811 F.2d 1343, 1344 (9th Cir. 1987) ("[i]gnorance of court rules does not constitute
10 excusable neglect, even if the litigant appears pro se.") (citation omitted).

11 Even if the Court were to consider Plaintiff's request on the merits, the Court finds
12 that Plaintiff's justification for the proposed enlargement is unsubstantiated and
13 unpersuasive. Defendants' motion to dismiss has been on file since September 16, 2010,
14 and Plaintiff has had over six weeks to prepare his opposition brief. As such, Plaintiff has
15 had more than ample opportunity to prepare his response to the motion. In any event, given
16 the facts alleged in the pleadings and information provided through Defendant's request for
17 judicial notice, it is readily apparent that delaying this case further would not alter the
18 outcome of the instant motion.² Plaintiff's request for a continuance is therefore denied.

19 2. Plaintiff's Request for Recusal

20 Plaintiff states in his opposition brief the district court should recuse itself in
21 accordance 28 U.S.C. § 455(a). In particular, Plaintiff asserts that Defendant Reid has
22 previously represented that she has "over powering (sic) influence over any Alameda
23 County Court Judge." Pl.'s Opp'n at 4. Apparently believing that Reid possesses such
24 influence, Plaintiff is concerned that the undersigned's prior appointment to the Alameda
25 County Superior Court bench will impact the outcome of this matter.

26
27 ² To the extent that Plaintiff is seeking to continue the hearing on the motion, such
28 request is moot, since the Court is exercising its discretion and resolving the motion based
on the papers submitted.

1 Section 455(a) provides that “[a]ny justice, judge, or magistrate judge of the United
2 States shall disqualify himself in any proceeding in which his impartiality might reasonably
3 be questioned.” 28 U.S.C. § 455(a). In analyzing motion for disqualification, the test is an
4 objective one: “whether a reasonable person with knowledge of all the facts would
5 conclude that the judge’s impartiality might reasonably be questioned.” Clemens v. U.S.
6 Dist. Court for Cent. Dist. of Cal., 428 F.3d 1175, 1178 (9th Cir. 2005) (per curiam)
7 (internal quotation marks omitted). Here, Plaintiff provides no evidentiary support for his
8 assertions. In any event, no reasonable person would question the Court’s impartiality in
9 this matter under the circumstances presented. See In re United States, 666 F.2d 690, 694
10 (1st Cir. 1981) (“a judge ... should not recuse himself on a unsupported, irrational, or
11 highly tenuous speculation”). Plaintiff’s motion for recusal is denied.

12 **B. MOTION TO DISMISS**

13 **1. Sovereign Immunity as to AAH**

14 Title 42 U.S.C. § 1983 provides, in relevant part, that “[e]very *person* who, under
15 color of any statute, ordinance, regulation, custom, or usage ... subjects ... any citizen of the
16 United States ... to the deprivation of any rights, privileges or immunities secured by the
17 Constitution and laws, shall be liable to the party.” 42 U.S.C. § 1983 (emphasis added).
18 However, under the Eleventh Amendment, an “arm of the state” is entitled to sovereign
19 immunity against § 1983 claims for damages. See Pittman v. Oregon, Emp’t Dept., 509
20 F.3d 1065, 1072 (9th Cir. 2007). In order to determine whether an entity is entitled to
21 Eleventh Amendment immunity, the Court must analyze the entity’s status based upon
22 consideration of the following five factors: (1) whether a money judgment would be
23 satisfied out of state funds; (2) whether the entity performs central governmental functions;
24 (3) whether the entity may sue or be sued; (4) whether the entity has the power to take
25 property in its own name or only the name of the state; and (5) the corporate status of the
26 entity. Belanger v. Madera Unified School Dist., 963 F.2d 248, 250 (9th Cir. 1992).
27 Though not dispositive, the first factor is the “most important.” Id. at 251.

1 Defendants contend that AAH is immune from suit under the Eleventh Amendment.
2 Relying entirely on § 14087.35(o), Defendants contend that “the great majority of AAH’s
3 funding is derived from the State of California through its Department of Health Services,
4 to be used for the purpose of carrying out the State’s Medi-Cal program of health care for
5 low income populations.” Defs.’ Mot. at 8.³ That subsection states that the “liabilities or
6 obligations of the health authority . . . shall not become the liabilities or obligations of the
7 county” Cal.Welf. & Inst. Code § 14087.5(o) (emphasis added). That provision does
8 not state, however, that such obligations necessarily will be satisfied through the payment
9 of state funds. The mere fact that AAH’s Medi-Cal Managed Health Plan is funded by
10 California does not ipso facto establish that a judgment rendered against AAH necessarily
11 would be funded by the state. But even if Defendants had made a sufficient showing under
12 the first Belanger factor, they make no attempt to address any of the remaining factors. As
13 such, the Court cannot resolve the issue of whether AAH is entitled to sovereign immunity
14 based on the briefing presented.

15 2. Claims under 42 U.S.C. § 1983

16 To establish a § 1983 claim, a plaintiff must prove: (1) that a defendant acted under
17 color of state law; and (2) the conduct deprived the plaintiff of a right secured by the
18 Constitution or laws of the United States. See Nurre v. Whitehead, 580 F.3d 1087, 1092
19 (9th Cir. 2009). Section 1983 is not itself a source of substantive rights, but a jurisdictional
20 vehicle for vindicating federal rights elsewhere conferred. See Thornton v. City of St.
21 Helens, 425 F.3d 1158, 1164 (9th Cir. 2008) (citations omitted). “The purpose of § 1983 is
22 to deter state actors from using the badge of their authority to deprive individuals of their
23 federally guaranteed rights.” McDade v. West, 223 F.3d 1135, 1139 (9th Cir. 2000).

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26 ³ Although Defendants bring their motion under Rule 12(b)(6), issues concerning
27 sovereign immunity under the Eleventh Amendment generally are reviewed under Rule
28 12(b)(1) because they relate to the subject matter jurisdiction of the Court. See Savage v.
Glendale Union High Sch., Dist. No. 205, Maricopa County, 343 F.3d 1036, 1039-40 (9th
Cir. 2003).

1 a) *State Action*

2 As a threshold matter, Defendants argue that Plaintiff has failed to allege that they
3 were acting under color of state law. The defendant in a § 1983 must have exercised power
4 “possessed by virtue of state law and made possible only because the wrongdoer is clothed
5 with the authority of state law.” United States v. Classic, 313 U.S. 299, 326 (1941). A
6 state actor acts under color of state law when he abuses the position given to him by the
7 state. West v. Atkins, 487 U.S. 42, 49-50 (1988). The “under color of state law”
8 requirement is an essential element of a § 1983 case, and it is the plaintiff’s burden to
9 establish this element. See Lee v. Katz, 276 F.3d 550, 553-54 (9th Cir. 2002).

10 Plaintiff does not allege that any of the Defendants were acting under color of state
11 law—nor could he legitimately do so. An entity may be a public actor in certain contexts
12 but still function as a private actor in others. Caviness v. Horizon Cmty. Learning Ctr.,
13 Inc., 590 F.3d 806, 814-15 (9th Cir. 2010) (holding that a charter school was acting as a
14 private actor in connection with employment decisions involving plaintiff). Assuming
15 arguendo that AAH is a quasi-public entity, it is clear that AAH was not acting under color
16 of state law in connection with the underlying course of events. Rather, AAH merely
17 exercised its right *as an employer* to seek an injunction to protect its employees in the
18 workplace. See Cal.Code Civ.P. § 527.8(a) (“Any employer, whose employee has suffered
19 unlawful violence or a credible threat of violence from any individual, that can reasonably
20 be construed to be carried out or to have been carried out at the workplace, may seek a
21 temporary restraining order and an injunction on behalf [its employees]”). Purely private
22 conduct, no matter how wrongful, is not covered under § 1983. See Ouzts v. Maryland
23 Nat’l Ins. Co., 505 F.2d 547, 559 (9th Cir. 1974). Thus, AAH cannot be held liable under §
24 1983 for pursuing an injunction against Plaintiff under California Code of Civil Procedure
25 § 527.8.

26 Nor has Plaintiff alleged that any individual Defendants were acting under color of
27 state law. As an initial matter, Plaintiff neglects to allege each individual’s role in the
28 alleged constitutional deprivation. Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989)

1 (“Liability under section 1983 arises only upon a showing of personal participation by the
2 defendant”). To the extent that Plaintiff is attempting to hold AAH’s employees liable for
3 submitting declarations or testifying in support of AAH’s application for a restraining
4 order, such claim fails on the ground that such employees were acting as private
5 individuals. See Price v. Hawaii, 939 F.2d 702, 707-08 (9th Cir. 1991) (explaining that
6 “private parties are not generally acting under color of state law” and that conclusory
7 allegations that there was action under color of state law, unsupported by facts, will be
8 rejected as insufficient to state a § 1983 claim). As for Reid, the record confirms that she
9 was acting in her capacity as counsel for AAH, which does not implicate state action. See
10 Polk County v. Dodson, 454 U.S. 312, 318 n.7 (1981) (noting that a private attorney, even
11 if court-appointed, does not act under the color of state law for purposes of 42 U.S.C.
12 § 1983 when engaged in the traditional role of an attorney). Plaintiff’s failure to allege any
13 facts demonstrating that Defendants were acting under color of state law is fatal to his
14 claims under § 1983.

15 ***b) Constitutional Deprivation***

16 Even if Plaintiff had alleged facts demonstrating that Defendants were acting under
17 color of state law, he cannot show that any of it constitutional or federal rights were
18 violated. As noted, Plaintiff contends that Defendants violated his civil rights by filing
19 “false and perjured” proofs of service showing that he had been served with the application
20 for a restraining order in October 2008 and the application to have him held in contempt in
21 August 2009. The Court is unaware of any authority holding that the submission of a false
22 proof of service, standing alone, is sufficient to state a claim under § 1983. To the contrary,
23 such conduct is not actionable under the Noerr-Pennington doctrine. See Freeman v.
24 Lasky, Haas & Cohler, 410 F.3d 1180, 1186 (9th Cir. 2005) (holding that defendants
25 accused of suborning perjury and intimidating witnesses were immune from liability).

26 “The Noerr-Pennington doctrine derives from the Petition Clause of the First
27 Amendment and provides that those who petition any department of the government for
28 redress are generally immune from statutory liability for their petitioning conduct.”

1 Kearney v. Foley & Lardner, LLP, 590 F.3d 638, 643-644 (9th Cir. 2009) (internal
2 quotations and citation omitted). Under this doctrine, a party cannot be sued under § 1983
3 for filing suit or any litigation-related activities. See Empress LLC v. City and County of
4 San Francisco, 419 F.3d 1052, 1056 (9th Cir. 2005) (holding that Noerr-Pennington
5 doctrine applies to claim brought pursuant to § 1983 alleging a conspiracy between private
6 individuals and government actors); Manistee Town Center v. City of Glendale, 227 F.3d
7 1090, 1092-93 (9th Cir. 2000) (applying Noerr-Pennington doctrine to § 1983 claim). As
8 such, any alleged conduct relating to Defendants’ application for a restraining order fails to
9 state a constitutional violation, as a matter of law.

10 The above notwithstanding, to the extent that Plaintiff is attempting to allege that
11 Defendants’ alleged conduct was intended to deny him due process, such claim is
12 undermined by the underlying court records. With regard to the Defendants’ application
13 for restraining order filed in October 2008, the record shows that Plaintiff was, in fact,
14 present for the evidentiary hearing conducted on November 10, 2008. RJN Ex. 3, Dkt. 18-4
15 at 2; Pl.’s Opp’n, Ex. A, Pt. 2, Dkt. 25-2 at 6 (transcript of 11/10/08 hearing). As to the
16 application to hold Plaintiff in contempt, the record demonstrates that the trial court denied
17 Defendants’ request. RJN Ex. 3, Dkt. 18-6 at 2. Accordingly, even if Defendants
18 misrepresented that Plaintiff had been served with the application, he cannot show that he
19 was denied due process as a result of such alleged conduct.

20 Aside from the above, Plaintiff’s § 1983 claims impermissibly challenge the
21 propriety of the state court restraining orders. It is well-settled that federal district courts do
22 not have jurisdiction to review state court rulings. D.C. Court of Appeals v. Feldman, 460
23 U.S. 462, 482 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 415-16 (1923). Rooker-
24 Feldman bars federal district courts “from exercising subject matter jurisdiction over a suit
25 that is a de facto appeal from a state court judgment.” Kougasian v. TMSL, Inc., 359 F.3d
26 1136, 1139 (9th Cir. 2004). Federal claims amounting “to nothing more than an
27 impermissible collateral attack on prior state court decisions” are impermissible especially
28

1 when “[s]uch an order would implicitly reverse the state trial court’s findings.” Branson v.
2 Nott, 62 F.3d 287, 291-92 (9th Cir.1995).

3 Here, implicit in Plaintiff’s § 1983 claims is the notion that Defendants had no
4 legitimate basis for seeking a restraining order against him. However, the state court
5 disagreed with Plaintiff and granted Defendants’ various requests for a restraining order. In
6 order for Plaintiff to prevail in *this* action, the Court necessarily would have to conclude
7 that the trial court had no basis upon which to enter the restraining orders in the first
8 instance. Plaintiff had the opportunity to appeal the November 2008 restraining order to
9 the California Court of Appeal, but failed to do so properly. As a result, the state appellate
10 court dismissed his appeal. Having lost in state court, Plaintiff cannot repackage his claims
11 under § 1983 and collaterally attack the state court’s decision in this Court. See Noel v.
12 Hall, 341 F.3d 1148, 1158 (9th Cir. 2003) (“Once a federal plaintiff seeks to bring a
13 forbidden de facto appeal, ... that federal plaintiff may not seek to litigate an issue that is
14 ‘inextricably intertwined’ with the state court judicial decision from which the forbidden de
15 facto appeal is brought.”).

16 3. Claims under 42 U.S.C. § 1985(3)

17 To state a claim under § 1985(3), a plaintiff must prove three elements: “(1) the
18 existence of a conspiracy to deprive the plaintiff of equal protection of the laws; (2) an act
19 in furtherance of the conspiracy and (3) a resulting injury.” Addisu v. Fred Meyer, Inc.,
20 198 F.3d 1130, 1141 (9th Cir. 2000). In addition, the plaintiff must identify the
21 deprivation of a legally protected right motivated by “some racial, or perhaps otherwise
22 class-based, invidiously discriminatory animus behind the conspirators’ action.” Griffith v.
23 Breckenridge, 403 U.S. 88, 102 (1971). A plaintiff asserting a claim under § 1985(3) must
24 be a member of the class discriminated against. RK Ventures, Inc. v. City of Seattle, 307
25 F.3d 1045, 1055-56 (9th Cir. 2002). “A mere allegation of conspiracy without factual
26 specificity is insufficient.” Johnson v. Cal., 207 F.3d 650, 655 (9th Cir. 2000) (citation and
27 quotation omitted).

28

1 In his Complaint, Plaintiff alleges that Defendants’ actions were motivated by their
2 desire to terminate him from AAH’s medical insurance program, and as retaliation for his
3 decision to appeal the court’s ruling on their application for a restraining order. However,
4 the Complaint is devoid of any facts establishing that Defendants’ conduct was in any way
5 motivated by discriminatory animus against a particular class in which Plaintiff is a
6 member. The lack of such allegations are fatal to Plaintiff’s § 1985(3) claim. See Manistee
7 Town Center v. City of Glendale, 227 F.3d 1090, 1095 (9th Cir. 2000) (“A cause of action
8 under the first clause of § 1985(3) cannot survive a motion to dismiss absent an allegation
9 of class-based animus.”).

10 **4. Supplemental State Law Causes of Action**

11 Plaintiff’s remaining claims for malicious prosecution, malicious abuse of
12 prosecution and conspiracy are based on state law. When the federal claims that served as
13 the basis for jurisdiction are eliminated, either through dismissal by the court or by a
14 plaintiff amending his or her complaint, federal courts may decline to assert supplemental
15 jurisdiction over the remaining state law causes of action. See 28 U.S.C. § 1367(c)(3); Acri
16 v. Varian Assocs., Inc., 114 F.3d 999, 1000 (9th Cir. 1997) (court may sua sponte exercise
17 discretion and dismiss state law claims under 28 U.S.C. § 1367(c)). Given the lack of any
18 remaining federal claims, coupled with the early stage of the litigation, the Court exercises
19 its discretion and declines to assert supplemental jurisdiction over Plaintiff’s state law
20 causes of action. See Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 351(1988) (“When
21 the single federal-law claim in the action was eliminated at an early stage of the litigation,
22 the District Court had a powerful reason to choose not to continue to exercise
23 jurisdiction.”).

24 **IV. CONCLUSION**

25 For the reasons set forth above, the Court finds that Plaintiff has failed to state any
26 viable claims under § 1983 or § 1985(3), and that such deficiencies cannot be cured by
27 amendment to the pleadings. Accordingly,
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IT IS HEREBY ORDERED THAT:

1. Defendants' motion to dismiss is GRANTED as to Plaintiff's federal claims under 42 U.S.C. §§ 1983 and 1985(3). Because amendment to the Complaint would be futile, those claims are dismissed without leave to amend. The Court declines to assert supplemental jurisdiction over Plaintiff's remaining state law causes of action, which are dismissed without prejudice.

2. The Clerk shall close the file and terminate any pending matters.

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IT IS SO ORDERED.

Dated: November 4, 2010


SAUNDRA BROWN ARMSTRONG
United States District Judge

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

WARREN et al,
Plaintiff,

v.

REID et al,
Defendant.

_____ /

Case Number: CV10-03416 SBA

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on November 8, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Steven M. Warren
P.O. Box 57080
Hayward, CA 94545

Dated: November 8, 2010

Richard W. Wieking, Clerk

By: LISA R CLARK, Deputy Clerk