

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

3  
4 JIMMIE L. DOSS, JR.,  
5                                    Plaintiff,  
6                                    v.  
7 AMOS JOE JONES, SR.,  
8 UNIDENTIFIED ATTORNEY,  
9                                    Defendants.

Case No.: C 13-1905 CW (PR)

ORDER OF DISMISSAL AND DENYING  
PLAINTIFF'S MOTION FOR  
TEMPORARY RESTRAINING ORDER

(Docket no. 4)

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11                                    Plaintiff, a state prisoner incarcerated at San Quentin  
12 State Prison, has filed a pro se civil rights action pursuant to  
13 42 U.S.C. § 1983. He has been granted leave to proceed in forma  
14 pauperis.

15                                    A federal court must conduct a preliminary screening in any  
16 case in which a prisoner seeks redress from a governmental entity  
17 or officer or employee of a governmental entity. 28 U.S.C.  
18 § 1915A(a). In its review, the court must identify any  
19 cognizable claims and dismiss any claims that are frivolous,  
20 malicious, fail to state a claim upon which relief may be granted  
21 or seek monetary relief from a defendant who is immune from such  
22 relief. Id. § 1915A(b)(1), (2). Pro se pleadings must be  
23 liberally construed. Balistreri v. Pacifica Police Dep't, 901  
24 F.2d 696, 699 (9th Cir. 1988).

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26                                    To state a claim under 42 U.S.C. § 1983, a plaintiff must  
27 allege two essential elements: (1) that a right secured by the  
28 Constitution or laws of the United States was violated, and (2)

1 that the alleged violation was committed by a person acting under  
2 the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

3 Plaintiff alleges that Defendant Amos Joe Jones, Sr., "has  
4 attempted to commit theft and fraud" to gain illegal access to  
5 the home left to Plaintiff by his grandmother, and that an  
6 unidentified attorney, who was supposed to protect Plaintiff's  
7 property interest, has failed to do so. Compl. at 3, 5. He  
8 seeks return of the property to him and monetary damages.

9 Plaintiff's claim cannot proceed under 42 U.S.C. § 1983,  
10 because private individuals and entities do not act under color  
11 of state law, an essential element of a § 1983 action. See Gomez  
12 v. Toledo, 446 U.S. 635, 640 (1980). Purely private conduct, no  
13 matter how wrongful, is not covered under § 1983. See Ouzts v.  
14 Maryland Nat'l Ins. Co., 505 F.2d 547, 559 (9th Cir. 1974).  
15 There is no constitutional right to be free from the infliction  
16 of deprivations by private individuals. See Van Ort v. Estate of  
17 Stanewich, 92 F.3d 831, 835 (9th Cir. 1996).

18 Because the Defendants named in the complaint are private  
19 actors, Plaintiff's allegations against them do not state a  
20 cognizable claim for relief under 42 U.S.C. § 1983. Further,  
21 granting Plaintiff leave to amend the complaint to state a claim  
22 based on such allegations would be futile.

23 Accordingly, this action is DISMISSED with prejudice.<sup>1</sup>  
24 Further, because Plaintiff's motion for a temporary restraining  
25 order seeks the same relief as his complaint, that motion is  
26 DENIED.

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28 <sup>1</sup> The Court makes no determination as to whether Plaintiff  
may seek relief under state law in a state court action.

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The Clerk of the Court shall enter judgment and close the file.

This Order terminates Docket no. 4.

IT IS SO ORDERED.

Dated: 5/31/2013

  
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CLAUDIA WILKEN  
UNITED STATES DISTRICT JUDGE