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NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DAVID GAWF,

No. C12-00220 HRL

Plaintiff,

**ORDER DENYING PLAINTIFF’S
MOTION FOR LEAVE TO AMEND THE
COMPLAINT**

v.

[Re: Docket Nos. 67, 77]

COUNTY OF SAN BENITO in its corporate
and municipal capacity; SAN BENITO
COUNTY SHERIFF DEPARTMENT in its
official and municipal capacity; SHERIFF
JASON LEIST in his official and individual
capacity; SHERIFF TOM KEYLON in his
official and individual capacity; SHERIFF KIP
BOWEN in his official and individual capacity;
and DOES 1-25,

Defendants.

Plaintiff moves for leave to amend his First Amended Complaint (FAC). Defendants oppose the motion. The matter is deemed suitable for determination without oral argument, and the April 9, 2013 hearing is vacated. Civ. L.R. 7-1(b). Upon consideration of the moving and responding papers, the motion is denied.¹

Plaintiff’s motion for leave to amend to include a claim for alleged violation of 18 U.S.C. § 1001 is denied as futile. That is a criminal statute for which there is no private right of action. Rundgren v. Bank of New York Mellon, 777 F. Supp.2d 1224, 1233 (D. Hawai’i 2011)

¹ Pursuant to 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73, all parties have expressly consented that all proceedings in this matter may be heard and finally adjudicated by the undersigned.

1 (citing cases); Dowdell v. Sacramento Housing & Redevelopment Agency, No. 2:11-cv-00409,
2 2011 WL 837046 at *2 (E.D. Cal., Mar. 8, 2011) (citing cases). His motion for leave to amend
3 to include a claim under 18 U.S.C. § 1983 is denied as futile because there is no such statute.

4 Plaintiff's motion for leave to amend to include a claim for alleged violation of his Sixth
5 Amendment right to obtain favorable witnesses (Jeske) is denied as futile. The Compulsory
6 Process Clause of the Sixth Amendment preserves the right of a defendant in a criminal trial to
7 use the court's process to obtain favorable witnesses to testify on his behalf. Washington v.
8 Texas, 388 U.S. 14, 19, 87 S.Ct. 1920, 18 L.Ed.2d 1019 (1967). Here, the charges against
9 plaintiff were dropped short of trial.

10 Plaintiff's motion for leave to amend to include a claim for alleged violation of 18
11 U.S.C. § 1346 is denied as futile. That is a criminal statute for which there is no private right of
12 action. See Taylor v. United States Patent & Trademark Office, No. C12-03851WHA, 2012
13 WL 5873685 at *1 (N.D. Cal., Nov. 20, 2012) (citing cases); Estate of Mohammed ex rel.
14 Wideman v. City of Morgan Hill, No. 10-cv-05630 EJD, 2012 WL 2150309 at * 6 (N.D. Cal.,
15 June 12, 2012) (same).

16 Plaintiff's motion for leave to amend to include a claim for alleged violation of 18
17 U.S.C. § 1951 is denied as futile. That is a criminal statute for which there is no private right of
18 action. Wisdom v. First Midwest Bank of Poplar Bluff, 167 F.3d 402, 409 (8th Cir. 1999).

19 Plaintiff's motion for leave to amend to include a claim for alleged violation of the False
20 Claims Act (FCA) is denied as futile because a party cannot proceed pro se on behalf of the
21 government in a such an action. United States ex rel Stoner v. Santa Clara County Office of
22 Education, 502 F.3d 1116, 1126-27 (9th Cir. 2007) ("Because qui tam relators are not
23 prosecuting only their 'own case' but also representing the United States and binding it to any
24 adverse judgment the relators may obtain, we cannot interpret [28 U.S.C.] § 1654 as authorizing
25 qui tam relators to proceed pro se in FCA actions.").


26 Plaintiff's motion to amend as to his other proposed claims for relief is denied as
27 premature and for the reasons stated in this court's order granting defendants' motion to dismiss
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the FAC.

SO ORDERED.

Dated: April 4, 2013



HOWARD R. LLOYD
UNITED STATES MAGISTRATE JUDGE

1 5:12-cv-00220-HRL Notice has been electronically mailed to:

2 Michael C. Serverian mserverian@rllss.com

3

4 5:12-cv-00220-HRL Notice sent by U.S. Mail to:

5 David Gawf
6 307 Bishop Avenue
7 Pacific Grove, CA 93950-9998

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