

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

CLARK HAMER,)
)
Plaintiff,)
vs.)
)
STATE OF NEVADA BUREAU OF)
VOCATIONAL REHABILITATION)
EMPLOYMENT AND TRAINING,)
)
Defendant.)

Case No.: 2:15-cv-01036-GMN-GWF

ORDER

Pending before the Court is the Report and Recommendation of the Honorable United States Magistrate Judge George Foley, Jr., (ECF No. 30), which recommends that Clark Hamer’s (“Plaintiff”) discrimination claim against the Nevada Disability and Advocacy Law Center (“NDALC”) pursuant to 42 U.S.C. § 1983 be dismissed due to Plaintiff’s failure to allege a sufficient nexus between the State of Nevada and NDALC.

A party may file specific written objections to the findings and recommendations of a United States Magistrate Judge made pursuant to Local Rule IB 1-4. 28 U.S.C. § 636(b)(1)(B); D. Nev. R. IB 3-2. Upon the filing of such objections, the Court must make a de novo determination of those portions to which objections are made. Id. The Court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1); D. Nev. IB 3-2(b). Here, Plaintiff filed an Objection to the Report and Recommendation on June 8, 2017. (See ECF No. 32).

Judge Foley recommends dismissal of Plaintiff’s § 1983 claim against NDALC on the basis that Plaintiff fails to establish a nexus between the State of Nevada and NDALC sufficient to render NDALC a governmental actor for the purposes of his constitutional claims. (Report

1 and Recommendation 5:2–3, ECF No. 30). In accordance with 28 U.S.C. § 636(b)(1) and
2 Local Rule IB 3-2(b), the Court has reviewed the record in this case, including Plaintiff’s
3 Objection, (ECF No. 32), and agrees with Judge Foley’s recommendation.

4 The ultimate issue in determining whether a person or entity is subject to suit under §
5 1983 is whether the alleged violation of federal rights is fairly attributable to the government.
6 See *Sutton v. Providence St. Joseph Medical Center*, 192 F.3d 826, 835 (9th Cir. 1999). The
7 United States Supreme Court utilizes a two-part test to answer this inquiry. “First, the
8 deprivation must result from governmental policy[,]” such that the deprivation was “caused by
9 the exercise of some right or privilege created by the [government] or a rule of conduct
10 imposed by the [government].” *Id.* (quoting *Lugar v. Edmondson Oil Co., Inc.*, 457 U.S. 922,
11 937 (1982)). “Second, ‘the party charged with the deprivation must be a person who may fairly
12 be said to be a governmental actor.’” *Id.* (quoting *Lugar*, 457 U.S. at 937). The Ninth Circuit
13 “start[s] with the presumption that private conduct does not constitute governmental action.”
14 *Id.*; see also *Price v. State of Hawaii*, 939 F.2d 702, 707–708 (9th Cir. 1991) (“[P]rivate parties
15 are not generally acting under color of state law.”).

16 Further, the “Supreme Court has instructed that ‘state action may be found if, though
17 only if, there is such a close nexus between the State and the challenged action that seemingly
18 private behavior may be fairly treated as that of the State itself.’” *Florer v. Congregation*
19 *Pidyon Shevuyim, N.A.*, 639 F.3d 916, 924 (9th Cir. 2011) (quoting *Brentwood Acad. V. Tenn.*
20 *Secondary Sch. Athletic Ass’n*, 531 U.S. 288, 295 (2001)). The inquiry “begins by identifying
21 the specific conduct of which the plaintiff complains.” *Caviness v. Horizon Cmty. Learning*
22 *Ctr.*, 590 F.3d 806, 812 (9th Cir. 2010). “It is important to identify the function at issue
23 because an entity may be a State actor for some purposes but not for others.” *Id.* 812–13.

24 The Court finds that Plaintiff’s amended Complaint, (see Second Am. Compl. (“SAC”),
25 ECF No. 19), fails to plead facts from which the Court can conclude that NDALC’s conduct

1 can fairly constitute state action. Plaintiff alleges that NDALC and the Nevada Bureau of
2 Vocational Rehabilitation and Training (“BVR”) collaborated in approving Plaintiff’s
3 Individualized Plan for Employment (“IPE”), which allegedly violated federal compliance
4 regulations. (See *id.* at 1). Plaintiff further alleges that NDALC receives federal funding and
5 BVR contracted with NDALC to ensure federal compliance. (*Id.* at 1–2). Beyond these two
6 assertions, however, there are no specific allegations that NDALC’s actions resulted from
7 governmental policy, or that NDALC effectively served as a state agent with regard to the
8 alleged deprivation.


9 Moreover, it is well established that a private entities’ dependence on governmental
10 subsidies is insufficient to establish state action. See e.g., *Rendell-Baker v. Kohn*, 457 U.S. 830,
11 840–41 (1982)); see also *Caviness*, 590 F.3d at 815. Further, being subject to extensive
12 governmental regulation is also not enough to render private entities governmental actors for
13 the purposes of constitutional claims. See *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982).
14 Accordingly, Plaintiff’s allegations are insufficient to overcome the presumption that NDALC
15 is a private actor.

16 Accordingly,

17 **IT IS HEREBY ORDERED** that the Report and Recommendation, (ECF No. 30), is
18 **ACCEPTED and ADOPTED** in full.

19 **IT IS FURTHER ORDERED** that Plaintiff’s discrimination claim against NDALC
20 pursuant to 42 U.S.C. § 1983 is dismissed due to Plaintiff’s failure to allege that there is a
21 sufficient nexus between the State of Nevada and NDALC.

22 **DATED** this 7 day of March, 2018.

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Gloria M. Navarro, Chief Judge
United States District Court