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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

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SHAWN PRITCHETT,

Plaintiff,

v.

JAMES A. ORONOZ, et al.,

Defendants.

Case No. 2:15-cv-01805-APG-PAL

**ORDER ACCEPTING AND  
MODIFYING REPORT AND  
RECOMMENDATION**

(ECF No. 14)

10 On November 9, 2016, Magistrate Judge Leen entered a report and recommendation  
11 recommending that I dismiss plaintiff Shawn Pritchett's complaint with prejudice because  
12 Pritchett was asserting claims under 42 U.S.C. § 1983 against his former defense attorney, who is  
13 not a state actor. ECF No. 14. Magistrate Judge Leen granted an extension of time for Pritchett to  
14 file objections through December 26, 2016. ECF No. 17. Pritchett objects, arguing that his  
15 defense attorney conspired with government actors to secure his conviction. ECF No. 18.

16 I conducted a de novo review. 28 U.S.C. § 636(b)(1). Judge Leen correctly states that  
17 defendant Oronoz and his law firm are not state actors when acting as court-appointed defense  
18 counsel. *Miranda v. Clark Cnty., Nev.*, 319 F.3d 465, 466 (9th Cir. 2003) (citing *Polk Cnty. v.*  
19 *Dodson*, 454 U.S. 312 (1981)). However, there are circumstances when a private actor's conduct  
20 may be fairly attributable to the government, such as when "state officials and private parties  
21 have acted in concert in effecting a particular deprivation of constitutional rights." *Franklin v.*  
22 *Fox*, 312 F.3d 423, 445 (9th Cir. 2002). "A plaintiff may demonstrate joint action by proving the  
23 existence of a conspiracy or by showing that the private party was a willful participant in joint  
24 action with the State or its agents." *Id.* (quotation omitted).

25 Pritchett has alleged defendant James Oronoz and his law firm conspired with government  
26 agents, but the complaint's allegations are too conclusory to state a plausible conspiracy. ECF No.  
27 1-1. I therefore accept Judge Leen's recommendation that I dismiss the complaint.  
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1 Ordinarily, I would grant leave for Pritchett to amend to add sufficient factual allegations  
2 in support of his conspiracy theory. But doing so in this case would run into another bar to his  
3 federal claims. Under the rule announced in *Heck v. Humphrey*, if a judgment in the plaintiff's  
4 favor in a § 1983 case "would necessarily imply the invalidity of his conviction or sentence . . .  
5 the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or  
6 sentence has already been invalidated." 512 U.S. 477, 487 (1994).

7 Pritchett's allegations that his counsel and government agents conspired to fabricate cell  
8 phone data and maps necessarily challenge the evidence upon which his criminal conviction was  
9 based. ECF No. 1-1. In his objection, Pritchett argues that "the fabricated cell site track was the  
10 majority of the case" because "there wasn't any other evidence to tie petitioner to any crime."  
11 ECF No. 18. Pritchett does not indicate that his criminal conviction has been invalidated.  
12 According to Pritchett's complaint, his appeal from his conviction is still pending. ECF No. 1-1 at  
13 7. His objection does not indicate that any appeal or post-conviction relief has been resolved in  
14 his favor. ECF No. 18. Accordingly, I dismiss Pritchett's § 1983 claims without prejudice to  
15 Pritchett refiling his claims should his criminal conviction later be invalidated.

16 I also deny without prejudice any state law claims Pritchett seeks to assert. But without a  
17 viable § 1983 claim, Pritchett does not allege a basis for this court to exercise subject matter  
18 jurisdiction over any state law claims. From the face of the complaint, it appears diversity  
19 jurisdiction is lacking because both Pritchett and Oronoz are Nevada citizens.

20 IT IS THEREFORE ORDERED that Judge Leen's report and recommendation (**ECF No.**  
21 **14) is accepted and modified.** The complaint (ECF No. 1-1) is dismissed without prejudice.  
22 The clerk of court is directed to close this case.

23 DATED this 1st day of February, 2017.

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27 ANDREW P. GORDON  
28 UNITED STATES DISTRICT JUDGE