APPENDIX

Appendix A

Decision of the United States Court of Appeals for the Ninth Circuit, dated July 17, 2025

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

FILED JUL 17 2025
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

No. 24-325 D.C.

No. 3:23-cv-00153-SLG

DUSTIN THOMAS HOUSE DARDEN, Plaintiff-Appellant,

v.

CROWD MANAGEMENT SERVICE,

Defendant-Appellee.

MEMORANDUM

Appeal from the United States District Court for the District of Alaska Sharon L. Gleason, Chief District Judge, Presiding Submitted July 14, 2025** Before: HAWKINS, S.R. THOMAS, and McKEOWN, Circuit Judges. Dustin Darden appeals pro se from the district court's judgment dismissing his action under 42 U.S.C. § 1983. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal for failure to state a claim under 12(b)(6). McKesson HBOC, Inc. v. New York State Common Ret. Fund, Inc., 339 F.3d 1087, 1090 (9th Cir. 2003). We review for abuse of discretion a denial of a request for oral argument. Spradlin v. Lear Siegler Mgmt. Servs. Co., 926 F.2d 865, 867 (9th Cir.1991). We affirm. In 2021, Darden was standing outside a COVID-19 vaccination site at the Alaska State Fair, warning people of the dangers of the vaccine and filming passersby. As alleged, employees of Crowd Management Services (CMS), a private security contractor, approached Darden, threw him to the ground, choked him, and took his property. Anchorage police officers subsequently arrived and told the CMS employees to get off Darden. The officers then handcuffed Darden. • This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Darden fails to adequately allege that CMS's conduct constituted state action. At the relevant

time, CMS was a contractor with the Alaska State Fair—a nonprofit, not a state entity. State licensing alone is not sufficient to show that the powers exercised here were endowed by the state; therefore, CMS's conduct does not constitute a public function. Cf. Wright v. SEIU Local 503, 48 F.4th 1112, 1124 (9th Cir. 2022). The police opposed CMS 's treatment of Darden as soon as practicable, undermining Darden's allegation of joint action. Cf. Tsao v. Desert Palace, Inc., 698 F.3d 1128, 1140 (9th Cir. 2012). The police's subsequent handcuffing, which goes unexplained, does not by itself suggest intertwinement or governmental nexus with CMS. Cf. Jensen v. Lane County, 222 F.3d 570, 575 (9th Cir. 2000). Darden's operative complaint contains no other allegation raising plausible state action. The absence of state action is fatal to his Section 1983 claim. Am. Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 50 (1999). The district court did not abuse its discretion in denying Darden's request for oral argument, which did not provide a "compelling reason" to grant. Spradlin, 926 F.2d at 867. Finally, the district court' s denial of access to a law library may be grounds for reversal only where the plaintiff has demonstrated prejudice to his ability to access the courts. See Jones v. Blanas, 393 F.3d 918, 936 (9th Cir. 2004). Darden, who could have accessed other law libraries, has not done so. AFFIRMED.

Appendix B

Order of the United States Court of Appeals for the Ninth Circuit denying petition for rehearing en banc, dated August 14, 2025*

Case: 24-325, 08/14/2025, DktEntry: 24.1, Page 1 of 1

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

FILED AUG 14 2025 MOLLY C. DWYER, CLERK U.S. COURT OF APPEALS

DUSTIN THOMAS HOUSE DARDEN, Plaintiff-Appellant, No. 24-325 v. D.C. No. 3:23-cv-00153-SLG District of Alaska, Anchorage CROWD MANAGEMENT SERVICE, ORDER Defendant-Appellee. Before: HAWKINS, S.R. THOMAS, and McKEOWN, Circuit Judges. The panel has unanimously voted to deny Darden's petition for rehearing. Judge Thomas has voted to deny the petition for rehearing en banc, and Judge Hawkins and Judge McKeown so recommend. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 40.

Appendix C

Order of the United States District Court for the District of Alaska dismissing complaint, dated January 5, 2024

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA

DUSTIN THOMAS HOUSE DARDEN, *Plaintiff,*

v.

CROWD MANAGEMENT SERVICES, *Defendant.*

Case No. 3:23-cv-00153-SLG

ORDER RE MOTION TO DISMISS Before the Court at Docket 60 is Defendant Crowd Management Services' ("CMS") Motion to Dismiss Plaintiff's Second Amended Complaint for Failure to State a Claim Pursuant to Federal Rule of Civil Procedure 12(b)(6). Plaintiff, Dustin Thomas House Darden, responded at Docket 62, and CMS filed a reply at Docket 67. Mr. Darden requested oral argument but oral argument is not necessary for the Court's determination. The Court has jurisdiction under 28 U.S.C. § 1331 and § 1343(a)(3) because Mr. Darden asserts causes of action arising under 42 U.S.C. § 1983. BACKGROUND Mr. Darden sued CMS after CMS employees allegedly confronted him at the Palmer, Alaska fairgrounds, took a bag he was holding, grabbed his arm, and threw him to the ground. CMS filed a motion to dismiss Mr. Darden's initial complaints, which the Court granted. In that order, the Court accorded Mr. Darden leave to

amend his complaint as to his First and Fourth Amendment claims. Mr. Darden filed an amended complaint at Docket 58, after which CMS again moved to dismiss, which motion is now before the Court. LEGAL STANDARD I. Rule 12(b)(6) Under Rule 12(b)(6), a defendant may move to dismiss a complaint for failure to state a claim upon which relief can be granted. To determine whether a complaint states a valid claim for relief, a court considers whether the complaint contains sufficient factual matter that, if accepted as true, "state[s] a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)). In conducting its review, a court must liberally construe a self-represented plaintiff's complaint and give the plaintiff the benefit of the doubt. See Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010) (citing Bretz v. Kelman, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985) (en banc)). In making this determination, a court may consider "materials that are submitted with and attached to the Complaint." United States v. Corinthian Colleges, 655 F.3d 984, 999 (9th Cir. 2011) (citing Lee v. L.A., 250 F.3d 668, 688 (9th Cir. 2001)). Moreover, when granting a motion to dismiss, a court is generally required to grant the plaintiff leave to amend, unless amendment would be futile. Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv. Inc., 911 F.2d 242, 247 (9th Cir. 1990). In determining whether amendment would be futile, a court examines whether the complaint could be amended to cure the defect requiring dismissal "without contradicting any of the allegations of [the] original complaint." Reddy v. Litton Indus., Inc., 912 F.2d 291, 296 (9th

Cir. 1990). II. 42 U.S.C. § 1983 To state a claim for relief under 42 U.S.C. § 1983, a plaintiff must allege plausible facts that, if proven, would establish (1) the defendant acting under color of state law (2) deprived the plaintiff of rights secured by the federal Constitution or federal statutes. Wright v. Serv. Emps. Int'l Union Loc. 503, 48 F.4th 1112, 1121 (9th Cir. 2022) (holding union for state employees not a state actor when it provided list of employees who had authorized union dues deductions from their paychecks). The state action requirement generally excludes recovery under Section 1983 for "merely private conduct, no matter how discriminatory or wrongful." Caviness v. Horizon Cmty. Learning Ctr., Inc., 590 F.3d 806, 812 (9th Cir. 2010) (citation omitted). To state that a defendant acted under color of state law, a complaint must allege facts that, if proven, would demonstrate that the defendant acted with state authority as a state actor. Wright, 48 F.4th at 1121. It is generally presumed that private individuals do not act "'under color of state law" within the meaning of Section 1983. Florer v. Congregation Pidyon Shevuyim, N.A., 639 F.3d 916, 922 (9th Cir. 2011) (citation omitted). When a plaintiff asserts that a private actor qualifies as a state actor under § 1983, a court looks to two requirements that the plaintiff must show that the private actor meets: (1) the state policy requirement; and (2) the state actor requirement. Wright, 48 F.4th at 1121. Under the first requirement, the question is whether the claimed constitutional deprivation resulted from the exercise of some right or privilege created by the state or by a rule of conduct imposed by the state or by a person for whom the state is responsible. Id. at 1121-22. Under the second

requirement, courts generally use one of four tests outlined by the Supreme Court to examine "whether the party charged with the deprivation could be described in all fairness as a 'state actor.'" Id. at 1122 (quoting Ohno v. Yasuma, 723 F.3d 984, 994 (9th Cir. 2013)). Those tests are the public function test, the joint action test, the state compulsion test, and the governmental nexus test. Id. See also Rawson v. Recovery Innovations, Inc., 975 F.3d 742 (9th Cir. 2020). The plaintiff "bears the burden of establishing that [d]efendants were state actors." Florer, 639 F.3d at 922 (citing Flagg Bros. v. Brooks, 436 U.S. 149, 156 (1978)). DISCUSSION CMS argues that Mr. Darden 's amended complaint fails to state a claim because he has not "allege[d] any facts to suggest that the CMS employees would meet the public function, the joint action, the governmental compulsion or coercion, or governmental nexus test to be considered a state actor" as required to state a § 1983 claim. The amended complaint alleges that the "Alaska State Fair contracted CMS to provide licensed security guards" and, "[u]nder Alaska law, licensed security guards have limited police powers." Mr. Darden asserts that "[b]y contracting to provide licensed security at the State Fair, CMS and its guards acted under color of state law and were authorized to exercise police powers under Alaska law." As such, when the CMS employees "aggressively confronted" him, "assaulted [him] by grabbing, shoving, choking, and throwing him to the ground," and "seized his personal bag," Mr. Darden maintains that they "were acting under color of state law by exercising police-like powers beyond normal private security functions." The amended complaint alleges that

"Alaska Admin. Code tit. 13, § 60.110(b) (2023) (requiring security guards to complete training on the law of arrest and law of search and seizure). " Mr. Darden cites Jensen v. Lane County, 222 F.3d 570 (9th Cir. 2000); and Villegas v. Gilroy Garlic Festival Ass'n, 541 F.3d 950 (9th Cir. 2008). Further, the amended complaint alleges that "Anchorage Police officers arrived and instructed the [CMS employees] to release [Mr. Darden], but [they] also handcuffed [him]." Mr. Darden claims that the officers' involvement demonstrates "coordination" between the CMS employees and the Anchorage Police Department, which "shows joint action making [the CMS employees'] conduct attributable to the state." Accordingly, Mr. Darden's amended complaint asserts that CMS is a state actor under both the public function theory and the joint action theory. The Court addresses each in turn. I. Public Function "Under the public function test, when private individuals or groups are endowed by the State with powers or functions governmental in nature, they become agencies or instrumentalities of the State and subject to its constitutional limitations." Wright, 48 F.4th at 1124 (quoting Kirtley v. Rainey, 326 F.3d 1088, 1093 (9th Cir. 2003)). "The public function test is satisfied only on a showing that the function at issue is both traditionally and exclusively governmental." Kirtley, 326 F.3d at 1093. Mr. Darden relies on Alaska Administrative Code Title 13, § 60.110(b)—which requires security guards seeking licensure to complete training on, among other things, the law of arrest and the law of search and seizure—to demonstrate that private security guards, such as CMS's employees, are state actors. However, the

state regulation Mr. Darden identifies does not authorize a private security guard to exercise the plenary police powers that are traditionally and exclusively governmental functions. Rather, under Alaska law, private citizens, including but not limited to security guards, have the limited right to effectuate a citizen's arrest in certain circumstances. See Moxie v. State, 662 P.2d 990 (Alaska Ct. App. 1983). The state's regulation that requires security guards to be trained in the laws of arrest and search and seizure in order to obtain licensure does not convey police powers to private security guards. Mr. Darden fails to point to any state statute or regulation that otherwise delegates the traditionally and exclusively governmental police powers to security guards. See AS § 18.65.490(2) (defining " security guard " as " a person in the business of being a private watchman, providing patrol services, or providing other services designed to prevent the theft, misappropriation, or concealment of goods, money, or valuable documents"). Accordingly, Mr. Darden's amended complaint fails to allege plausible facts that, if proven, would establish that CMS is a state actor under the public function test. See Rabieh v. Paragon Sys., 316 F.

Supp. 3d 1103, 1111 (N.D. Cal. 2018) (granting motion to dismiss complaint alleging that employees of private contractor to provide security services at government office building were state actors under public function test where complaint failed to allege that employees "were endowed with the type of plenary police power that is traditionally and exclusively governmental," made "almost no allegations regarding the scope of their power at all,"

and, "[a]t most, . . . suggest[ed] that the security guards had some power to detain a person on the premises, temporarily confiscate personal property . . . , and place a person in handcuffs" as "this small collection of abilities, by itself, is not exclusively governmental and, as such, is insufficient under the public function test"). II. Joint Action "The joint action test asks 'whether state officials and private parties have acted in concert in effecting a particular deprivation of constitutional rights.'" Tsao v. Desert Palace, Inc., 698 F.3d 1128, 1140 (9th Cir. 2012) (quoting Franklin v. Fox, 312 F.3d 423, 445 (9th Cir. 2002)). " This requirement can be satisfied either 'by proving the existence of a conspiracy or by showing that the private party was a willful participant in joint action with the State or its agents.'" Id. "Ultimately, joint action exists when the state has 'so far insinuated itself into a position of interdependence with [the private entity] that it must be recognized as a joint participant in the challenged activity.'" Id. (quoting Gorenc v. Salt River Project Agric. Improvement & Power Dist., 869 F.2d 503, 507 (9th Cir. 1989) (alteration in original)). Here, the arrival of Anchorage Police Department officers, their order to CMS employees to release Mr. Darden, and their alleged subsequent handcuffing of Mr. Darden do not show a conspiracy between the officers and CMS employees. According to the amended complaint, the officers were not acting jointly with CMS employees; to the contrary, the officers opposed the course of action taken by the CMS employees, as the officers ordered the CMS employees to release Mr. Darden. Mr. Darden cites Jensen v. Lane County, which is a Ninth Circuit case that reversed the district court's ruling on

summary judgment that a doctor was not a state actor for § 1983 purposes under the "close nexus/joint action test" because there, the doctor and the county undertook "a complex and deeply intertwined process of evaluating and detaining individuals who are believed to be mentally ill and a danger to themselves or others." Jensen, 222 F.3d at 574-75. As noted above, the amended complaint alleges elsewhere that the contract was between CMS and the Alaska State Fair. The circumstances here as alleged by Mr. Darden are very different. In his amended complaint, Mr. Darden vaguely alleges that CMS contracted with "Alaska" to provide security services at the Alaska State Fair. And yet, as this Court previously noted, the Alaska State Fair is a non-profit corporation. The amended complaint does not allege plausible facts that, if proven, would demonstrate that the State of Alaska entered into a "complex and deeply intertwined" agreement with CMS to provide security services at a fairground operated by a non-profit corporation. Mr. Darden also relies on Villegas v. Gilroy Garlic Festival Ass'n, another Ninth Circuit case that

applied the "close nexus" test. Villegas, 541 F.3d at 955. In that case, an association hosted a festival at a public park after securing a city permit. Id. The city provided the association with police officers for festival security; the city billed the festival for the cost of using the police officers for security; and the head of security for the festival was a city police officer. Id. Even with these direct links between the city, its police officers, and the festival association, the Ninth Circuit concluded that the festival association was not a state actor. Id. at 956. Here, as

compared to Villegas, Mr. Darden's amended complaint contains far fewer facts linking the conduct of the CMS employees with any government entity. Mr. Darden only alleges that police officers arrived on the scene, told the CMS employees to release him, and, at some point, handcuffed him. Accordingly, Mr. Darden's amended complaint fails to allege facts that, if proven, would establish that CMS is a state actor under the joint action test. In sum, Mr. Darden fails to carry his burden to allege plausible facts that the CMS employees or CMS were state actors as required for 42 U.S.C. § 1983 claims. The Court also finds that according Mr. Darden leave to file another amended complaint would be futile at this point, as it is clear that "the complaint could not be saved by any amendment." Ctr. for Bio. Diversity v. United States Forest Serv., 80 F.4th 943, 956 (9th Cir. 2016) (quoting Armstrong v. Reynolds, 22 F.4th 1058, 1071 (9th Cir. 2022). Further, a "district court's discretion in denying amendment is 'particularly broad' when it has previously given leave to amend." Gonzalez v. Planned Parenthood of L.A., 759 F.3d 1112, 1116 (9th Cir. 2014) (quoting Miller v. Yokohama Tire Corp., 358 F.3d 616, 622 (9th Cir. 2004)). Accordingly, Mr. Darden's motion for oral argument at Docket 65 is DENIED, CMS's Motion to Dismiss at Docket 60 is GRANTED, and this case is DISMISSED WITH PREJUDICE. The Clerk of Court shall enter a final judgment accordingly.
DATED this 5th day of January 2024, at Anchorage, Alaska.
/s/ Sharon L. Gleason
UNITED STATES DISTRICT JUDGE

Appendix D

Relevant Constitutional and Statutory Provisions

U.S. CONST. amend. I: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

U.S. CONST. amend. XIV, § 1: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." **42 U.S.C. § 1983:** "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."