

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

RICHARD M. WANDA,

Plaintiff,

vs.

UAA OFFICE OF FINANCIAL AID,
et al.,

Defendants.

Case No. 3:08-cv-00116-TMB

ORDER GRANTING ACS's
MOTION TO DISMISS

I. MOTION PRESENTED

On May 16, 2008, Richard M. Wanda, representing himself, filed a complaint claiming that the defendants violated his civil rights.¹ Defendant, ACS Education Services, Inc. (ACS),² has moved to dismiss under Federal Rule of Civil Procedure 12(b)(6), Mr. Wanda has filed an opposition, and ACS has filed a reply.³ Oral argument was not requested and would not assist the court.

II. STANDARD OF REVIEW

¹ See Docket No. 1.

² ACS, in a footnote to its motion to dismiss, explains that "[t]he proper name for this entity is ACS Education Services, Inc." Docket No. 13 at 1, n. 1.

³ See Docket Nos. 13, 22, 25 - 27, 29.

Under Federal Rule of Civil Procedure 12(b)(6), "a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts [pled] is improbable, and 'that a recovery is very remote and unlikely.'"⁴ However, the complaint must allege at least "enough facts to state a claim to relief that is plausible on its face."⁵

In addition, as a federal court, this Court is a court of limited, as opposed to general, jurisdiction; it has authority to hear only specified classes of cases. It is Mr. Wanda's burden, as the plaintiff, to show that this Court has jurisdiction to hear the claims.⁶ "To sustain a claim under § 1983, a plaintiff must show (1) that the conduct complained of was committed by a person acting under color of state law; and (2) that the conduct deprived the plaintiff of a constitutional right."⁷ As explained by the

⁴ *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955, 1965-66 (2007) (citations omitted).

⁵ *Twombly*, 127 S.Ct. 15 1974 ("Because the plaintiffs here have not nudged their claims across the line from conceivable to plausible, their complaint must be dismissed.").

⁶ See *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994); *Lowdermilk v. U.S. Bank National Ass'n*, 479 F.3d 994, 998-99 (9th Cir. 2007) ("[I]t is well established that the plaintiff is the 'master of her complaint'" (citations omitted); *Hunter v. Kalt*, 66 F.3d 1002, 1005 (9th Cir. 1995).

⁷ *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990) (citations omitted).

United States Supreme Court, Section 1983 "is not itself a source of substantive rights, but a method for vindicating federal rights elsewhere conferred."⁸

III. FACTS

The facts, as presented by the plaintiff, and as pertain to ACS, appear to be as follows: ACS is requiring Mr. Wanda to repay his student loan, knowing that the other defendants either stole, or allowed to be stolen or wrongfully secured by other than Mr. Wanda, portions of the loan.⁹ In addition, Mr. Wanda alleges that the other defendants sent \$5,202.75 of stolen loan monies to ACS.¹⁰ In the Spring of 2008, "ACS only receive[d] \$2,125.00," of a \$2,567 loan. "There [is] \$442 missing. ... The amount missing is likely stolen by UAA Financial Aid and Accounting Services again."¹¹

IV. DISCUSSION

A. Color of Law

ACS moves to dismiss on the basis that it is not a "state actor" acting under color of law. Private actors cannot be sued under 42 U.S.C. § 1983. Although Mr. Wanda alleges that ACS somehow deprived him of his federal rights,¹² in order to assert a claim

⁸ *Baker v. McCollan*, 443 U.S. 137, 144 n. 3 (1979)

⁹ See Docket No. 1 at 2-3.

¹⁰ See *id.* at 4.

¹¹ See *id.* at 4-5.

¹² Although Mr. Wanda claims that ACS has required repayment of his loan(s), he alleges that the others stole or otherwise wrongfully secured

under the federal Civil Rights Act, the wrong he alleges must have been committed under "color of state law".¹³ Mr. Wanda has not alleged actions taken by ACS under color of law. Mr. Wanda has not disputed that ACS is privately - not government - owned.¹⁴ As explained by the United States Supreme Court, "§ 1983 excludes from its reach merely private conduct, no matter how discriminatory or wrong."¹⁵

B. Violation of Constitutional Right

Further, as early explained,¹⁶ although Mr. Wanda complains that his civil rights were violated, he has not indicated that a specific Constitutional right was

his loan monies.

¹³ See *McDade v. West*, 223 F.3d 1135, 1139-40 (9th Cir. 2000) ("The traditional definition of acting under color of state law requires that the defendant in a § 1983 action have exercised power 'possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.'") (quoting *West v. Atkins*, 487 U.S. 42, 48 (1988); *Gorenc v. Salt River Project Agr. Imp. and Power Dist.*, 869 F.2d 503 (9th Cir.), *cert. denied*, 493 U.S. 899 (1989) (defendant, which was privately owned, privately run, and not financed by the state, acted as a private company). See also *Collins v. Womancare*, 878 F.2d 1145 (9th Cir. 1989), *cert. denied* 493 U.S. 1056 (1990) ("execution by a private party of a sworn complaint which forms the basis of an arrest" is not enough to convert the private party's acts into state action for purposes of § 1983); *Boykin v. Bloomsburg University of Pennsylvania*, 893 F. Supp. 409, 417 (M.D. Pa. 1995), *aff'd*, 91 F.3d 122 (3rd Cir. 1996), *cert. denied* 117 S. Ct. 739 (1997) (providing false information to police officer is not, by itself, sufficient to state a claim against a private party under § 1983).

¹⁴ See Docket No. 27.

¹⁵ *American Mfrs. Mut. Ins. Co. v. Sullivan*, 119 S. Ct. 977, 985 (1999).

¹⁶ See Docket No. 9 at 2-3.

violated. Mr. Wanda states that his “equal education rights” were violated.¹⁷ As the Court cautioned Mr. Wanda, however, there is no constitutionally protected right to education.¹⁸ The Supreme Court has explained that “[e]ducation, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor [is there] any basis for saying it is implicitly so protected”.¹⁹ Any claims based upon a constitution right to education must, therefore, be dismissed.

C. Other Claims and Defenses

If Mr. Wanda has any claim against ACS, therefore, it is not an action under federal civil rights law, but *may* be a claim he could file in the state courts.²⁰ Even

¹⁷ See Docket No. 1 at 3.

¹⁸ See Docket No. 9 at 2-3.

¹⁹ *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1 (1973); see also *Lewis v. Casey*, 518 U.S. 343, 374 (1996) (“Because the respondents in *Rodriguez* had not shown that ‘the children in districts having relatively low assessable property values are receiving *no* public education,’ but rather claimed only that ‘they are receiving a poorer quality education than that available to children in districts having more assessable wealth,’ [*Rodriguez* at 28] (emphasis added) we held that the ‘Texas system does not operate to the peculiar disadvantage of any suspect class.’ *id.* at 29. ... and that, ‘at least where wealth is involved, the Equal Protection Clause does not require absolute equality or precisely equal advantages.’ *id.* at 24.”).

²⁰ See *O'Neill Investigations, Inc. v. Illinois Employers Ins. of Wausau*, 636 P.2d 1170, 1172 n. 1 (Alaska 1981) (“[T]he Alaska Unfair Trade Practices and Consumer Protection Act, AS 45.50.451- .561, is not unconstitutionally vague as applied to third party debt collection agencies.”) (citing *State v. O'Neill Investigations, Inc.*, 609 P.2d 520 (Alaska 1980) (An independent debt collector is “a person in a business the principal purpose of which is the collection of debts owed or due or asserted to be owed or due.” *Id.* at 523 n. 1). And although the Alaska statute, AS 45.50.531(f)

then, however, Mr. Wanda must be able to allege facts showing that ACS *itself* did something legally wrong which resulted in an injury to him.

The Court need not reach the issue of the statute of limitations, or any other issues raised by ACS in its motion to dismiss.

V. CONCLUSION

Defendant ACS's motion to dismiss, at docket number 13, is GRANTED.

DATED this 9th day of September, 2008, at Anchorage, Alaska.

/s/ TIMOTHY M. BURGESS
United States District Judge

bars "damages claims filed more than two years 'after the person discovers or reasonably should have discovered that the loss or practice resulted from an act or practice declared unlawful,'" there is no such time bar for "claims for declaratory or injunctive relief." *Smallwood v. Central Peninsula General Hosp.*, 151 P.3d 319, 329 (Alaska 2006).