protection imposes a special obligation on courts to examine critically claims that certain elements of a boycott are not constitutionally protected. 458 U.S. at 915-916.

> "When such [violent] conduct occurs in the context of constitutionally protected activity, however, 'precision of regulation' is demanded. [citation omitted] Specifically, the presence of activity protected by the First Amendment imposes restraints on the grounds that may give rise to damages liability and on the persons who may be held accountable for those damages. ...
>
> "While the State legitimately may impose damages for the consequences of violent conduct, it may not award compensation for the consequences of nonviolent, protected activity. Only those losses proximately caused by unlawful conduct may be recovered." 458 U.S. at 916-918.

The Supreme Court held that even the statement of Mr. Evers that "necks would be broken" was constitutionally privileged:

> "This Court has made clear, however, that mere advocacy of the use of force or violence does not remove speech from the protection of the First Amendment. ...
>
> "Strong and effective extemporaneous rhetoric cannot be nicely channeled in purely dulcet phrases. An advocate must be free to stimulate his audience with spontaneous and emotional appeals for unity and action in a common cause. When such appeals do not

incite lawless action, they must be regarded as protected speech." 458 U.S. at 927-928.

The Supreme Court in Claiborne Hardware concluded that Evers could not be held liable because "there is no evidence -- apart from the speeches themselves -- that Evers authorized, ratified, or directly threatened acts of violence." 458 U.S. at 929. The Court stated that liability could not be imposed on an individual solely because of his association with another. 458 U.S. at 918. The Court held that "The right to associate does not lose all constitutional protection merely because some members of the group may have participated in conduct or advocated doctrine that itself is not protected." 458 U.S. 908.

In Thornhill v. Alabama, 310 U.S. 88, 99, 60 S.Ct. 736, 84 L.Ed. 1093 (1940), the Supreme Court held that peaceful picketing was constitutionally protected, even if it was directed at inducing one party not to deal with another party.

In Organization for a Better Austin v. Keefe, 402 U.S. 415, 91 S.Ct. 1575, 29 L.Ed. 2d 1 (1971), petitioner, a racially integrated community organization, asked respondent, a real estate broker, to sign an agreement that he would not engage in blockbusting in their community. When he refused, petitioner distributed leaflets near respondent's home that were critical of his business practices. A state court enjoined petitioner from distributing the leaflets, and an appellate court affirmed on the ground that the alleged activities were coercive and intimidating, rather than informative, and therefore not entitled to First Amendment protection. The Supreme Court

reversed, holding that:

> "The claim that the expressions were intended to exercise a coercive impact on respondent does not remove them from the reach of the First Amendment. Petitioners plainly intended to influence respondent's conduct by their activities; this is not fundamentally different from the function of a newspaper." 402 U.S. at 419.

The Supreme Court, in Edwards v. South Carolina, 372 U.S. 229, 83 S.Ct. 680, 9 L.Ed.2d 697 (1963), held that a peaceful march and demonstration was protected by the rights of free speech, free assembly, and freedom to petition for a redress of grievances. See also Claiborne Hardware, supra, 458 U.S. at 909.

In Alliance to End Repression v. City of Chicago, 742 F.2d 1007 (7th Cir., en banc, 1984) the following examples of constitutionally protected speech were given:

> "If, therefore, a new sect of religious fanatics announced that unless Chicagoans renounced their sinful ways it may become necessary to poison the city's water supply, or a newly organized group of white supremacists vowed to take revenge on Chicago for electing a black mayor, these statements, made by groups with no 'track record' of violent acts, might well be privileged. ...
>
> "Or suppose the leaders of a newly formed organization of Puerto Rican separatists went around Chicago making speeches to the effect that, if the United States does not grant Puerto Rico independence

soon, it will be necessary to begin terrorist activities on the mainland United States." 742 F. 2d at 1014.

In Redgrave v. Boston Symphony Orchestra, 855 F.2d 888 (1st Cir. en banc 1988), actress Vanessa Redgrave brought an action alleging breach of contract and civil rights violations against the Boston Symphony Orchestra, challenging the orchestra's cancellation of a contract with her. The orchestra had canceled her contract as a result of calls from subscribers and community members protesting the engagement, because of Redgrave's political support for the Palestine Liberation Organization and because of her views regarding Israel. 855 F.2d at 890-891. Redgrave did not sue any of the subscribers or community members who protested against her contract. Nevertheless, the majority of the en banc panel of the Court of Appeals stated the following:

> "Redgrave conceded at oral argument, and presumably the dissent would not disagree, that persons picketing a Redgrave performance would have a free expression defense to MCRA [Massachusetts Civil Rights Act] liability. This principle logically would extend as well to persons boycotting Redgrave performances. These are activities that are intended to coerce the exercise of others' speech by means of public approbation and economic pressure. Indeed, that is their animating purpose. Yet they are protected, for the simple reason that we have always

tolerated and encouraged private expression, rather than state compulsion, as the antidote to private speech with which we disagree." 855 F.2d at 906.

The dissent did not disagree with this analysis. 855 F.2d at 924 ("it could be argued that the audience has a first amendment right to object vociferously to an artistic performance.")

See also Brandenburg v. Ohio, 395 U.S. 444, 89 S.Ct. 1827, 23 L.Ed. 2d 430 (1969) (threats of revenge, and threats of use of force or violation of law, made by a Ku Klux Klan leader, are constitutionally protected, except where it is directed to inciting or producing imminent lawless action and is likely to incite or produce such action); Noto v. United States, 367 U.S. 290, 296, 81 S.Ct. 1517, 6 L.Ed. 2d 836 (1961) (First Amendment protects statement that "he was the kind of a guy they hoped to shoot some day" and "Sometime I will see the time we can stand a person like this S.O.B. against the wall and shoot him," and other "off hand remarks that certain individuals hostile to the [Communist] Party would one day be shot."); Wurtz v. Risley, 719 F. 2d 1438, 1442 (9th Cir. 1983) ("Threats of sit-ins, marches in the street, mass picketing and other such activities are frequently threats to commit acts prohibited by law. ... But to punish as a felony the mere communication of a threat to commit such a minor infraction when the purpose is to induce action -- any action -- by someone, is to chill the kind of 'uninhibited, robust, and wide-open' debate on public issues that lies at the core of the first amendment.")

Applying the above rules to the instant case, it is clear that all of the alleged acts of Rabbi Hier and the Simon

Wiesenthal Center were Constitutionally protected.

a. **The Alleged Act of Rabbi Hier and the Simon Wiesenthal Center of Threatening to Organize and Organizing a Demonstration was Protected under the First Amendment Rights of Freedom of Speech and Freedom of Assembly**

McCalden alleges, on information and belief, that Rabbi Hier, acting individually and as dean of the Simon Wiesenthal Center, threatened to organize and organized a demonstration against McCalden's program, in order to pressure the CLA into canceling its contracts with McCalden, and that Rabbi Hier knew and intended that the demonstration would create a reasonable probability of property damage and violence. (CR 53, Second Amended Complaint para. 32-33, McCalden E.R. p. 26.) There is no allegation that Rabbi Hier or the Simon Wiesenthal Center made any threats of property damage or violence to anyone. There is no allegation that the demonstration took place or that it caused any property damage or violence.

The holdings in Claiborne Hardware, Thornhill, Edwards, Brandenburg, and Organization for a Better Austin make clear that threatening to organize a demonstration and organizing a demonstration are Constitutionally protected. Just as the Supreme Court ruled in Claiborne, Edwards and Thornhill that demonstrating, marching, and picketing are protected activity, this Court must hold that organizing or threatening to organize a demonstration is also protected. If demonstrating or picketing is Constitutionally protected, even if its effect is

to coerce one party not to deal with another party, then "threatening" to organize a demonstration must clearly be Constitutionally protected.

The only exception to this Constitutional protection afforded to demonstrations is if there are threats of violence directed to inciting or producing imminent lawless action, which are likely to incite or produce such action. Brandenburg, supra; Noto, supra. No such allegations are made in the Second Amended Complaint. McCalden's vague allegations that Rabbi Hier and the Simon Wiesenthal Center knew and intended that the demonstration would create a reasonable probability of property damage and violence do not even come close to removing the Constitutional protection accorded to "threats" to organize a demonstration or organizing a demonstration.

b. **The Alleged Act of Rabbi Hier and the Simon Wiesenthal Center of Informing Certain Groups of McCalden's Exhibit was Protected Under the First Amendment Rights of Freedom of Speech and Freedom of Assembly**

McCalden also alleges, on information and belief, that Rabbi Hier and/or the Simon Wiesenthal Center and/or the AJC allowed information concerning McCalden's exhibit and program to pass to members of certain militant, violence prone groups who thereupon made plans to attend and disrupt McCalden's program. (CR 53, Second Amended Complaint para. 34, McCalden E.R. p. 27.) There is no allegation that Rabbi Hier, the Simon Wiesenthal Center or the AJC requested anyone to perform any violent acts or that any

violence did in fact take place.

As the cases cited above demonstrate, everyone has a First Amendment right to inform others of matters of concern. Speech that informs is one of the most clearly protected forms of speech under the First Amendment. See Organization for a Better Austin v. Keefe, supra. Such speech loses its protection only if it is directed to inciting or producing imminent lawless action and is likely to incite or produce such action. Brandenburg v. Ohio, supra. There is no allegation, nor could there be, that the alleged statements of Rabbi Hier, the Simon Wiesenthal Center, and/or the AJC were directed toward inciting or producing imminent lawless action and that the statements were likely to incite or produce such action.

For that reason, Rabbi Hier and the Simon Wiesenthal Center had a First Amendment right to inform others that McCalden would have an exhibit and program at the CLA convention.

c. **The Alleged Act of Rabbi Hier and the Simon Wiesenthal Center of Urging the AJC to Make Certain Statements was Protected under the First Amendment Rights of Freedom of Speech and Freedom of Assembly**

McCalden further alleges, on information and belief, that Rabbi Hier and the Simon Wiesenthal Center urged, requested, knew and approved of the AJC telling the CLA that if McCalden's contracts were not canceled, the CLA conference would be disrupted, there would be damage to property, and the CLA would be "wiped out." (CR 53, Second Amended Complaint para. 24.) There is no allegation that Rabbi Hier or the Simon Wiesenthal

Center made any such statements to the CLA.

The statement attributed to the AJC is Constitutionally protected. The AJC's alleged statement does not even remotely resemble the threat made by Evers, which was found to be constitutionally protected in the Claiborne Hardware case, to break the necks of boycott violators. If a threat to break someone's neck in the context of organizing a boycott is Constitutionally protected, then vague statements that there would be disruptions or that the CLA would be "wiped out" must also be Constitutionally protected.

However, even if the AJC could be held liable for this statement, it is clear that Rabbi Hier and the Simon Wiesenthal Center cannot possibly be. McCalden has merely made vague allegations, on information and belief, that Rabbi Hier and the Simon Wiesenthal Center somehow urged, requested, knew or approved of AJC's statements that there could be demonstrations or disruptions. Claiborne Hardware and Franchise Realty make clear that such vague allegations cannot withstand a motion to dismiss. Liability cannot be imposed on Rabbi Hier and the Simon Wiesenthal Center based on vague allegations of their association with another organization which allegedly made statements that are constitutionally protected.

d. The Alleged Act of Rabbi Hier and the Simon Wiesenthal Center of Renting a Conference Room was Protected Under the First Amendment Rights of Freedom of Speech and Freedom of Assembly

Finally, McCalden alleges, on information and belief, that

the Simon Wiesenthal Center, at the direction of Rabbi Hier, rented a conference room at the Bonaventure Hotel for the same evening that McCalden had rented a conference room for his presentation, allegedly to position itself to be able to disrupt McCalden's program. (CR 53, Second Amended Complaint para. 29, 30, McCalden E.R. p. 25.) There is no allegation that Rabbi Hier or the Simon Wiesenthal Center made any threat to anyone in connection with the renting of this conference room. There is no allegation that Rabbi Hier or the Simon Wiesenthal Center ever stated that they intended to disrupt any presentation. There is no allegation that Rabbi Hier or the Simon Wiesenthal Center used the conference room to cause any disruption, or that any disruption took place. In fact, there can be no such allegation, since McCalden's program did not take place.

The alleged renting of a conference room by Rabbi Hier or the Simon Wiesenthal Center cannot give rise to a claim by McCalden. In the same way meeting in a church to plan a boycott, as was done in Claiborne Hardware, 458 U.S. at 898-901, is constitutionally protected, so must be the renting of a conference room for the purpose of disseminating information. McCalden's vague allegations, that Rabbi Hier and the Simon Wiesenthal Center rented the conference room to be in a position to be able to disrupt McCalden's program, do not overcome the Constitutional protection. Franchise Realty, supra, Claiborne Hardware, supra. The alleged renting of a

conference room by Rabbi Hier or the Simon Wiesenthal Center is therefore constitutionally protected as an exercise of freedom of speech and assembly, and cannot form the basis for liability of Rabbi Hier or the Simon Wiesenthal Center. 7/

It is important for this Court to note that in the instant case, in contrast to Claiborne Hardware and some of the other cases cited above, there is no allegation that any acts of violence were committed. McCalden has not alleged that Rabbi Hier or the Simon Wiesenthal Center ever made a threat to

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7. McCalden alleges in the Second Amended Complaint that the Simon Wiesenthal Center rented the conference room directly from the Westin Bonaventure Hotel rather than from the CLA. (CR 53, Second Amended Complaint para. 29.) There is absolutely no allegation establishing a causal link between the alleged rental of the conference room by the Simon Wiesenthal Center from the Bonaventure Hotel and the alleged breach of contract between McCalden and the CLA. This precludes any claim for interference with contract, Augustine v. Trucco, 124 Cal. App. 2d 229, 246, 268 P.2d 780 (1954), or for violation of Civil Code Section 51.7, based on rental of the conference room.

The facts alleged merely establish, at most, that McCalden had two contracts with the CLA, and that the Wiesenthal Center had a separate contract with the Bonaventure Hotel for a separate consideration, to perform a separate act. The Simon Wiesenthal Center or anyone else had the right to rent that conference room, so long as the hotel was willing to rent it to them. The Simon Wiesenthal Center cannot be responsible for the impact of that rental on McCalden's separate contract with another party. Dryden v. Tri-Valley Growers, 65 Cal. App. 3d 990, 996, 135 Cal. Rptr. 720 (1977); Augustine v. Trucco, supra, 124 Cal. App. 3d at 244-45.

anyone. McCalden has not alleged that Rabbi Hier or the Simon Wiesenthal Center authorized or ratified any acts of violence.

For the reasons set forth above, it is clear that all of the alleged acts of Rabbi Hier and the Simon Wiesenthal Center were absolutely protected by the First Amendment.8/ The order of the District Court dismissing this lawsuit against Rabbi Hier and the Simon Wiesenthal Center should therefore be affirmed.

C. THE DISTRICT COURT'S DISMISSAL OF McCALDEN'S FOURTH CLAIM FOR DEPRIVATION OF RIGHTS MUST BE AFFIRMED, AND McCALDEN SHOULD NOT BE GIVEN LEAVE TO AMEND, BECAUSE THE FOURTH CLAIM ARISES UNDER 42 U.S.C. SECTION 1983 AND McCALDEN'S SECOND AMENDED COMPLAINT ESTABLISHES THAT RABBI HIER AND THE SIMON WIESENTHAL CENTER DID NOT ACT UNDER COLOR OF STATE LAW.

1. McCALDEN'S FOURTH CLAIM ARISES UNDER 42 U.S.C. SECTION 1983.

McCalden claims that the District Court erred when it dismissed his fourth claim, without prejudice, because McCalden failed to specifically state the Constitutional or statutory basis for the alleged wrong. (Appellant's Brief p. 46; Order entered February 11, 1987, McCalden E.R. p. 10.)

McCalden takes the position that the District Court should have construed his fourth claim in the Second Amended Complaint

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8. For the same reasons set forth above, the alleged acts of Rabbi Hier and the Simon Wiesenthal Center are also protected under the California Constitution, Article I Section 2 (freedom of speech) and Article I Section 3 (freedom of assembly and petition).

as arising under 42 U.S.C. Section 1983. (Appellant's Brief p. 49.) In his appeal brief, McCalden unequivocally states that his claim is for violation of 42 U.S.C. Section 1983. See Appellant's Brief pages 46-51.

If, as McCalden requests, this Court construes his fourth claim as arising under 42 U.S.C. Section 1983, it is clear that McCalden is unable to state a claim under 42 U.S.C. Section 1983 against Rabbi Hier and the Simon Wiesenthal Center, because it is clear that Rabbi Hier and the Simon Wiesenthal Center did not act under color of state law or authority.

As discussed previously, the alleged acts of the Simon Wiesenthal Center and Rabbi Hier set forth in the Second Amended Complaint are:

1. Rabbi Hier, acting individually and as dean of the Simon Wiesenthal Center, allegedly threatened to organize a demonstration against McCalden's program. (Second Amended Complaint para. 32-33.)

2. Rabbi Hier and/or the Simon Wiesenthal Center and/or the AJC allegedly allowed information concerning McCalden's exhibit and program to pass to other persons who were not government officials. (Second Amended Complaint para. 34.)

3. The Simon Wiesenthal Center and Rabbi Hier allegedly urged, requested, or knew that representatives of the AJC contacted a representative of the CLA in order to get the CLA to cancel McCalden's contracts. (Second Amended Complaint para. 24.)

4. The Simon Wiesenthal Center, at the direction of Rabbi Hier, allegedly rented a conference room at the Bonaventure

Hotel for the same evening that McCalden had rented a conference room for his presentation. (Second Amended Complaint para. 29.)

5. Rabbi Hier, acting individually and as dean of the Simon Wiesenthal Center, allegedly requested his City Councilman to introduce a City Council resolution regarding McCalden's participation in the CLA conference. In so doing, Rabbi Hier allegedly misrepresented to his City Councilman certain information relating to McCalden and his program. It is alleged that Rabbi Hier undertook this conduct at the request and urging, and with the knowledge, approval and cooperation of Mayor Tom Bradley and others. (Second Amended Complaint para. 27.)

6. Rabbi Hier and/or the Simon Wiesenthal Center and/or the AJC allegedly sought and obtained the cooperation of public officials, including Mayor Tom Bradley, Assembly Speaker Willie Brown, State Senate President David Roberti, and Assembly Majority Floor Leader Mike Roos, as part of a conspiracy to pressure the CLA to cancel its contracts with McCalden, and that in furtherance of the conspiracy each of these officials contacted the CLA for the purpose of inducing the CLA to cancel the contracts. It is also alleged that Mayor Bradley instructed members of the Los Angeles Library Commission to boycott the CLA conference. (Second Amended Complaint para. 36.)

7. The City of Los Angeles, through its Mayor, Police Department, City Council and others, knew and either tacitly approved or failed to prevent or deter the conduct of the Simon Wiesenthal Center and/or Rabbi Hier. (Second Amended

Complaint para. 39.)

2. AN ACTION UNDER SECTION 1983 REQUIRES THE PLAINTIFF TO ALLEGE FACTS WHICH SHOW THAT THE DEFENDANTS HAVE ACTED UNDER COLOR OF STATE LAW OR AUTHORITY.

"[A]n action under Section 1983 requires the plaintiff to allege facts which show (1) That the defendants have acted under color of state law or authority; (2) that the defendants have deprived the plaintiff of a right, privilege, or immunity secured by the Constitution and laws of the United States." Sykes v. State of California, 497 F.2d 197, 200 (9th Cir. 1974). See also Parratt v. Taylor, 451 U.S. 527, 535, 101 S.Ct. 1908, 1913, 68 L.Ed. 2d 420 (1981); Canlis v. San Joaquin Sheriff's Posse Comatatus, 641 F.2d 711, 716 (9th Cir. 1981), cert. denied, 454 U.S. 967 (1981).

The Supreme Court, in National Collegiate Athletic Association v. Tarkanian, ___ U.S. ___, 88 Daily Journal 15518, 15521 (No. 87-1061, December 12, 1988), recently reaffirmed the importance of the state action requirement, stating the following:

> "'Careful adherence to the 'state action' requirement preserves an area of individual freedom by limiting the reach of federal law' and avoids the imposition of responsibility on a State for conduct it could not control. Lugar, 457 U.S., at 936-937. When Congress enacted Section 1983 as the statutory remedy for violations of the Constitution, it specified that the conduct at issue must have occurred

'under color of' state law; thus liability attaches only to those wrongdoers 'who carry a badge of authority of a State and represent it in some capacity, whether they act in accordance with their authority or misuse it.' Monroe v. Pape, 365 U.S. 167, 172 (1961)."

This Court, in Sykes, set forth the requirements for an allegation of state action, as follows:

"In order to show that the defendants were acting 'under color of state law' it is not necessary to allege that the action taken was authorized by the state; however, facts must be stated showing that the defendants were clothed with the authority of the state and were purporting to act thereunder. [Citations omitted] In order for private persons to be held liable under the Civil Rights Statutes, the plaintiff must show that the private defendants are willful participants in joint activity with the state or its agents." 497 F. 2d at 200, n. 2.

See also Canlis v. San Joaquin Sheriff's Posse Comatatus, 641 F.2d 711, 716 (9th Cir. 1981), cert. denied, 454 U.S. 967 (1981) ("Mere state action is insufficient to support a Section 1983 cause of action. There must be a sufficient nexus between the state action and the private discrimination."), quoting Life Insurance Company of North America v. Reichardt, 591 F.2d 499, 501-502 (9th Cir. 1979).

a. Petitioning of Government Officials By A Private Individual Does Not Constitute Action Under Color of State Law, and Therefore Cannot Give Rise to Liability under 42 U.S.C. Section 1983.

This Court has also held that petitioning of government officials cannot give rise to liability under 42 U.S.C. Section 1983. Sykes v. State of California, supra, 497 F.2d at 200. In Sykes, this Court affirmed the dismissal of a Section 1983 claim against several private individuals who had complained about plaintiff's business practices to various public officials. Rejecting plaintiff's allegation that the private individuals acted under color of state law, this Court, citing Schatte v. International Alliance of Theatrical Stage Employees, 182 F.2d 158 (9th Cir.), cert. denied, 340 U.S. 828 (1950), held that "a private person who makes a representation to a state official, even in a report required by law, is not acting 'under color of law' within the meaning of the Civil Rights Statutes." 497 F.2d at 202 n.3.

Scott v. Greenville County, 716 F.2d 1409, 1424 (4th Cir. 1983) held that "even overtly biased citizens who write letters, speak up at public meetings, or even express their prejudices in private meetings with public officials without formulating a joint plan of action are not 'conspiring' with those officials in a way that subjects them to Section 1983 liability." See also Annunziato v. The Gan, 744 F.2d 244, 250-251 (2d Cir. 1984); County of Butte v. Bach, 172 Cal.App. 3d 848, 870, 218 Cal.Rptr. 613 (1985).

b. In a Claim for Violation of 42 U.S.C. Section 1983, Allegations of Conspiracy Between Private Parties and the State Actor Must Be Specific and Factual.

In order to meet the state action requirement, it is not sufficient for a plaintiff in a Section 1983 claim to merely make general and vague allegations that a conspiracy between private parties and government officials existed. As stated in Tarkowski v. Robert Bartlett Realty Co., 644 F.2d 1204 (7th Cir. 1980):

> "Private parties may be liable under 42 U.S.C. Section 1983 where they have been jointly engaged with public officers in the denial of civil rights. [Citation omitted.] We have recently stated, however, that
>
> > 'It is not sufficient to allege that the [private and state] defendants merely acted in concert or with a common goal. There must be allegations that the defendants had directed themselves toward an unconstitutional action by virtue of a mutual understanding. Even were such allegations to be made, they must further be supported by some factual allegations suggesting such a 'meeting of the minds.''"

See also Schucker v. Rockwood, 846 F.2d 1202, 1205 (9th Cir. 1988) ("conclusory allegations [of conspiracy] ... are insufficient to support his section 1983 claim"); Aldabe v.

Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980) (conclusory allegations of conspiracy are insufficient to support a Section 1983 claim); Finley v. Rittenhouse, 416 F.2d 1186, 1187 (9th Cir. 1969) ("conclusory allegations, unsupported by any underlying factual details, were insufficient to state a claim for relief under 42 U.S.C. Section 1983."); Sparks v. Duval County Ranch Co., 604 F.2d 976, 978 (5th Cir. 1979) (en banc), cert. denied, 449 U.S. 1021 (1980) ("mere conclusory allegations of conspiracy cannot, absent reference to material facts, survive a motion to dismiss."); Ostrer v. Aronwald, 567 F.2d 551, 553 (2d Cir. 1977) ("This court has repeatedly held that complaints containing only 'conclusory,' 'vague,' or 'general allegations' of a conspiracy to deprive a person of constitutional rights will be dismissed.").

In Lebbos v. State Bar, 165 Cal.App.3d 656, 211 Cal.Rptr. 847 (1985), the California Court of Appeal held that the trial court properly sustained a demurrer to a claim under 42 U.S.C. Section 1983, for failure to sufficiently allege the existence of a conspiracy between a private entity and a governmental entity. The Court of Appeal stated the following:

> "'With special reference to the Civil Rights Act, the courts have established precise requirements of conspiracy pleadings. Much more than vague and conclusionary allegations is required. A plaintiff must allege with particularity facts in the form of specific overt acts.' [Citations omitted.]
>
> "Here Lebbos does not fulfill the requirements for conspiracy ... She does not allege any 'specific

facts showing meetings, communications, correspondence, or any indicia of conspiracy to commit acts designed and intended to deprive plaintiffs of any rights.' ... A private entity or individual does not conspire with a state official merely by asking a state official to take some action." 165 Cal.App. 3d at 664 (emphasis added).

In Mirshak v. Joyce, 652 F.Supp. 359 (N.D. Ill. 1987), plaintiff, a liquor licensee, brought an action against a city alderman, Joyce, and others for depriving him of his rights to a liquor license at The Keyes, in violation of Section 1983. The District Court dismissed the Section 1983 claim against the Foxes, who were private individuals. The court stated:

"Aside from conclusory allegations calling the Foxes 'conspirators' with Joyce and the other defendants, the plaintiff makes only two factual allegations regarding the Foxes. The first concerns Thomas J. Fox's threat to the plaintiff on June 30, 1977. The plaintiff alleges that Fox told the plaintiff that Fox was against the opening of The Keyes, and that if Fox told this to Joyce, The Keyes would never open. ... The plaintiff alleges Fox made this statement, then urged Joyce not to open The Keyes. Nowhere does the plaintiff allege facts which support his allegation that a 'meeting of the minds' existed between Thomas J. Fox and Joyce or any other defendant.