

DEC 28 2007

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CHARLES A. STANLEY,

Plaintiff - Appellant,

v.

SCOTT GOODWIN; et al.,

Defendants - Appellees.

No. 06-16622

D.C. No. CV-05-00716-ACK/LEK

MEMORANDUM*

Appeal from the United States District Court
for the District of Hawaii
Alan C. Kay, District Judge, Presiding

Submitted December 20, 2007**

Before: GOODWIN, WALLACE, and HAWKINS, Circuit Judges.

Charles A. Stanley appeals pro se from the district court's judgment dismissing without prejudice, for failure to properly serve defendants, his 42 U.S.C. § 1983 action alleging that various Sears & Roebuck employees used

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

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

excessive force in apprehending him for shoplifting. We have jurisdiction under 28 U.S.C. § 1291. We may affirm on any ground supported by the record. *See, e.g., Cardenas v. Anzai*, 311 F.3d 929, 938 (9th Cir. 2002).

Dismissal was proper because Stanley's amended complaint failed to allege state action, a necessary requirement for stating a claim for relief under section 1983. *See Jensen v. Lane County*, 222 F.3d 570, 574 (9th Cir. 2000) (holding section 1983 supports a claim only when the alleged injury is caused by state action and not by a merely private actor). The dismissal is with prejudice. *See Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (holding dismissal with prejudice is appropriate only when the complaint could not be saved by amendment).

Stanley's remaining contentions are unpersuasive.

AFFIRMED.