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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

TIMOTHY WAYNE ARNETT,	)	NO. CV 11-5896-JAK(E)
	)	
Plaintiff,	)	
	)	
v.	)	MEMORANDUM AND ORDER DISMISSING
	)	
UNKNOWN,	)	COMPLAINT WITH LEAVE TO AMEND
	)	
Defendant.	)	
	)	
_____	)	

For the reasons discussed below, the Complaint is dismissed with leave to amend. See 28 U.S.C. §§ 1915(e)(2)(B), 1915A(b).

**BACKGROUND**

On July 22, 2011, Timothy Wayne Arnett, a federal prisoner proceeding pro se, filed a document titled: "NOTICE AND REQUEST FOR UNITED STATES ATTORNEY TO INFORM GRAND JURY OF THE DEPRIVATION OF PETITIONER'S RIGHTS IN VIOLATION OF 18 U.S.C. § 242, HIS IDENTITY, AND SUCH U.S. ATTORNEY'S ACTION OR RECOMMENDATION PURSUANT TO 18 U.S.C. § 3332a; SUPPORTING DECLARATION, AND AFFIDAVIT TO PROCEED IN FORMA

1 PAUPERIS" ("Notice and Request"). Although the first two pages of the  
2 document request that the court issue a "summons" directing the United  
3 States Attorney to respond to the "Complaint" by informing the grand  
4 jury that Mr. Arnett purportedly has been deprived of his civil  
5 rights, page two of the Notice and Request contains the legend  
6 "COMPLAINT[;] DECLARATION OF TIMOTHY WAYNE ARNETT IN SUPPORT OF  
7 COMPLAINT" (see Notice and Request, p. 2). The Court construes the  
8 Notice and Request as a civil rights Complaint ("Complaint"), and  
9 deems Mr. Arnett to be the Plaintiff on the Complaint.

10  
11 Plaintiff alleges that "several Federal Bureau of Prisons senior  
12 staff at FCI Terminal Island" deprived Plaintiff of his alleged First  
13 Amendment rights to communicate with a family member and to file  
14 grievances, threatened to transfer Plaintiff for submitting  
15 grievances, and retaliated against Plaintiff for submitting a  
16 grievance by assigning Plaintiff to a job in the prison laundry  
17 (Complaint, p. 2). Although Plaintiff identifies certain prison  
18 officials by name in the body of the Complaint, Plaintiff does not  
19 name any Defendants. Plaintiff does not seek damages, but rather the  
20 issuance of a summons ordering the United States Attorney to inform  
21 the grand jury of Plaintiff's allegations (Complaint, p. 13).

22  
23 Plaintiff alleges that, commencing in 2006, Plaintiff  
24 participated in allegedly authorized stock market courses at the  
25 United States Penitentiary at Victorville, California (id., p. 2).  
26 During this time, a member of Plaintiff's family allegedly opened a  
27 personal electronic trading account (id., pp. 2-3). Plaintiff  
28 allegedly offered advice to this family member using principles he had

1 learned in the stock market courses (id., p. 3). Plaintiff allegedly  
2 used the prison's inmate telephone and email system to communicate his  
3 investment recommendations (id.). In February 2008, Plaintiff  
4 allegedly was transferred to the United States Penitentiary at Lompoc,  
5 California, where he assertedly participated in an advanced stock  
6 market class, persuaded the Supervisor of Education to invest in  
7 certain stock, and continued to make recommendations (id.).  
8

9 In June 2010, Plaintiff allegedly was transferred to FCI Terminal  
10 Island, where he assertedly "noticed" that the institution did not  
11 offer "CNBC on the prison's TV network" or courses such as "Forbes'  
12 Investment Course" (id.). Plaintiff allegedly submitted a proposal to  
13 the Supervisor of Education, Arnel Abril, requesting authorization to  
14 teach such a course and expressing a need for CNBC. Abril allegedly  
15 refused to approve such a course and threatened to transfer Plaintiff  
16 if he continued "to press for such a class through administrative  
17 remedies" (id., pp. 3-4). Thereafter, a senior prison employee  
18 allegedly told Plaintiff that staff members assertedly knew they could  
19 threaten inmates who submitted complaints or administrative grievances  
20 with transfer, loss of family visits or denial of the opportunity to  
21 participate in the Residential Drug Abuse Program (id., p. 4).  
22

23 Plaintiff allegedly submitted an informal resolution request  
24 ("BP-8") asking that the prison add CNBC to its television network  
25 (id.). Abril allegedly did not respond (id., pp. 4-5). Plaintiff  
26 allegedly submitted a similar request to the warden, along with the  
27 information that Abril assertedly had threatened Plaintiff, but  
28 allegedly received no response (id., p. 5). Plaintiff allegedly

1 discussed the matter with Assistant Warden Pete Spartz, who assertedly  
2 said he would add CNBC to the list of television channels (id.).  
3 Instead, however, Spartz reportedly added the Cartoon Network and the  
4 Animal Planet Channel (id.).  
5

6       Thereafter, on April 25, 2011, Disciplinary Hearing Officer  
7 Joe DeVore allegedly warned Plaintiff that Plaintiff was violating a  
8 policy of the federal Bureau of Prisons ("BOP") prohibiting inmates  
9 from conducting a business by using the prison email system to contact  
10 a family member with investment advice (id.). Plaintiff alleges that  
11 DeVore's conclusion that Plaintiff was conducting a business in  
12 violation of BOP policy was erroneous and inconsistent in light of the  
13 prison's alleged tolerance of other inmates who were "doing what  
14 [Plaintiff] had been doing" (id., p. 6). Plaintiff alleges that  
15 inmates are permitted to provide laundry services for other inmates in  
16 exchange for "stamps or commissary," yet assertedly are never  
17 disciplined for operating a business (id., p. 7).  
18

19       Allegedly believing DeVore was mistaken, Plaintiff assertedly  
20 submitted a BP-8 to DeVore, which DeVore reportedly denied in a  
21 written response (id.). Plaintiff submitted a formal grievance ("BP-  
22 9") to his housing unit counselor, D. Egeonuigwe, who alerted the Unit  
23 Manager, Mark Colangelo (id., p. 8). On May 3, 2011, Colangelo  
24 allegedly directed Plaintiff into a private area, told Plaintiff that  
25 he, Colangelo, agreed with DeVore, and asked Plaintiff to tear up the  
26 BP-9 (id.). When Plaintiff assertedly refused, Colangelo allegedly  
27 said he was going to assign Plaintiff to a job that would keep  
28 Plaintiff tied up all day because Plaintiff assertedly had too much

1 free time on his hands (id.). Colangelo allegedly advised Egeonuigwe  
2 of this plan, and a few minutes later Egeonuigwe assertedly laughingly  
3 told Plaintiff that Plaintiff was being transferred to another job  
4 (id.). Plaintiff allegedly was transferred to a job in the laundry,  
5 effective the next morning (id., pp. 8-9). Plaintiff alleges that he  
6 is a 58-year-old man with chronic back and hip pain who assertedly  
7 cannot sit or stand without pain for short periods of time, and that  
8 in the laundry Plaintiff is forced "to sit for painfully long periods  
9 of time doing nothing" (id., p. 11). Plaintiff alleges that the  
10 laundry did not need another worker, such that the only reason for the  
11 transfer assertedly was to punish Plaintiff for submitting a BP-9  
12 challenging DeVore's policy interpretation (id., pp. 11-12).

13  
14 Plaintiff also alleges that Colangelo interfered with the  
15 grievance process, assertedly by: (1) holding for seventeen days a  
16 notice from the BOP Regional Director advising Plaintiff to file a  
17 BP-9 instead of a BP-10; and (2) intercepting and holding for three  
18 months the BOP Central Office's response and threatening to transfer  
19 Plaintiff to a higher level prison after Plaintiff allegedly asked the  
20 warden for maximum halfway house time (id., pp. 9 n.2, 10).

21  
22 Plaintiff alleges that, as a result of the asserted First  
23 Amendment violations by Colangelo, Egeonuigwe and DeVore, Plaintiff  
24 was forced to seek psychiatric treatment (id., p. 12). Plaintiff  
25 allegedly fears now to use the prison administrative remedy process  
26 for fear of further retaliation (id.). Plaintiff alleges that  
27 Colangelo, Egeonuigwe, DeVore and Spartz have conspired to deprive  
28 Plaintiff of his First Amendment rights (id., p. 13).



1 cannot determine from the complaint who is being sued, [and] for what  
2 relief . . .” McHenry v. Renne, 84 F.3d 1172, 1178 (9th Cir. 1996);  
3 see also F. R. Civ. P. 10(a) (title of complaint “must name all the  
4 parties”).

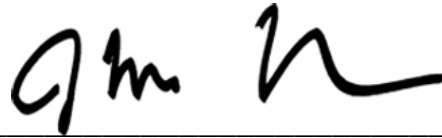
5  
6 **CONCLUSION AND ORDER**  
7

8 The Complaint is dismissed with leave to amend. If Plaintiff  
9 still wishes to pursue this action, he is granted thirty (30) days  
10 from the date of this Order within which to file a First Amended  
11 Complaint. The First Amended Complaint shall be complete in itself.  
12 It shall not refer in any manner to any prior complaint. Any First  
13 Amended Complaint must identify all Defendants whom Plaintiff wishes  
14 to sue in this action, and shall not seek the remedy of the  
15 prosecution of any other person. Failure to file timely a First  
16 Amended Complaint in conformity with this Order may result in the  
17 dismissal of this action. See Pagtalunan v. Galaza, 291 F.3d 639,  
18 642-43 (9th Cir. 2002), cert. denied, 538 U.S. 909 (2003) (court may  
19 dismiss action for failure to follow court order); Simon v. Value  
20 Behavioral Health, Inc., 208 F.3d 1073, 1084 (9th Cir.), amended, 234  
21 F.3d 428 (9th Cir. 2000), cert. denied, 531 U.S. 1104 (2001),  
22 overruled on other grounds, Odom v. Microsoft Corp., 486 F.3d 541 (9th  
23 Cir.), cert. denied, 552 U.S. 985 (2007) (affirming dismissal without  
24 leave to amend where plaintiff failed to correct deficiencies in  
25 complaint, where court had afforded plaintiff opportunities to do so,  
26 and where court had given plaintiff notice of the substantive problems  
27 with his claims); Plumeau v. School District #40, County of Yamhill,  
28 ///

1 130 F.3d 432, 439 (9th Cir. 1997) (denial of leave to amend  
2 appropriate where further amendment would be futile).<sup>1</sup>

3  
4 IT IS SO ORDERED.

5  
6 DATED: August 4, 2011.

7  
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9  
10 \_\_\_\_\_  
11 JOHN A. KRONSTADT  
12 UNITED STATES DISTRICT JUDGE

13  
14 PRESENTED this 2nd day of  
15 August, 2011, by:

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17 \_\_\_\_\_/S/\_\_\_\_\_  
18 CHARLES F. EICK  
19 UNITED STATES MAGISTRATE JUDGE

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26 \_\_\_\_\_  
27 <sup>1</sup> In view of this disposition, the Court need not and  
28 does not determine at this time whether Plaintiff can state a  
civil rights claim for retaliation.