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5 UNITED STATES DISTRICT COURT  
6 NORTHERN DISTRICT OF CALIFORNIA  
7

8 MICHAEL J. HICKS,

No. C 08-1146 SI (pr)

9 Plaintiff,

**ORDER FOR AMENDED  
COMPLAINT**

10 v.

11 M. S. EVANS, warden,

12 Defendant.  
13 \_\_\_\_\_/

14 Michael J. Hicks, an inmate formerly at Salinas Valley State Prison and now at a  
15 California prison in Represa, California, filed a pro se civil rights action under 42 U.S.C. § 1983.  
16 The court dismissed the action because Hicks failed to exhaust administrative remedies before  
17 filing it. Hicks appealed, and the Ninth Circuit reversed and remanded the case. The complaint  
18 therefore was once again reviewed under 28 U.S.C. § 1915A, and dismissed with leave to  
19 amend. In the Order Of Dismissal With Leave To Amend, filed April 2, 2010, the court  
20 identified deficiencies that Hicks needed to cure by filing an amended complaint. The  
21 deficiencies included that Hicks had not stated a claim for denial of access to the courts because  
22 he had not identified an actual injury and he had not linked the lone defendant to his claim.

23 Hicks opted not to comply with the court's order and instead wrote a letter to the court.  
24 (Docket # 26.) In his letter, Hicks stated that he was a 3-strike plaintiff under the PLRA and did  
25 not think there was an exception to having his case screened out, see 28 U.S.C. § 1915(g). The  
26 court had not determined that § 1915(g) barred him from proceeding as a pauper, and in fact had  
27 granted him leave to proceed in forma pauperis in this action. The court will not revisit the in  
28 forma pauperis determination because it has not found three cases that predate the filing of this  
action that count as strike dismissals for purposes of § 1915(g), notwithstanding Hicks' lengthy

1 history of filing cases prematurely or abandoning them in a needless consumption of limited  
2 court resources.

3 In that same letter, Hicks stated that he filed the same complaint here and in Monterey  
4 County Superior Court, and requested that this court “transfer” the Monterey County court case  
5 to federal court “due to the fact that federal court’s are far more experienced in prisoner civil  
6 claim’s.” (Docket # 26 (errors in source).) The request is DENIED. Having commenced the  
7 action in state court, Hicks cannot remove it to federal court. The right to remove cases from  
8 state to federal court rests with the defendants in those actions. See 28 U.S.C. §§ 1441(a), 1443.


9 In his letter, Hicks argued that he could establish the actual injury requirement the court  
10 referred to in the order of dismissal with leave to amend. He wrote, “I sued my wife’s apartment  
11 complex (after she died) for her security deposit (\$5,000). I lost because I didn’t conduct  
12 research on landlord/tenet law. The plaintiff cannot appeal a small claims action. . . . There’s  
13 your harm element. There’s much more that I could present in a amended complaint.” (Docket  
14 # 26 (errors, emphasis and ellipses in source).) Because he thought that he was barred as a 3-  
15 strikes plaintiff, he apparently did not think it worth his time to describe his other actual injuries  
16 or “harm.” Hicks’ failure in a landlord/tenant action does not satisfy the actual injury  
17 requirement for purposes of a denial of access to the courts claim because it does not concern  
18 his conviction or conditions of confinement. See Lewis v. Casey, 518 U.S. 343, 355 (1996)  
19 (“Bounds does not guarantee inmates the wherewithal to transform themselves into litigating  
20 engines capable of filing everything from shareholder derivative actions to slip-and-fall claims.  
21 The tools it requires to be provided are those that the inmate need in order to attack their  
22 sentences, directly or collaterally, an in order to challenge the conditions of their confinement.”)  
23 Hicks’ statement that he had “much more” that he could present in an amended complaint was  
24 not enough to state a claim: he has to describe what that “much more” is because the other  
25 alleged injuries might, like the loss in the landlord/tenant action, not qualify as actual injuries  
26 for purposes of a denial of access to the courts claim.

27 In light of the possibility that Hicks thought sending the letter to the court instead of filing  
28 the amended complaint was acceptable, the court will grant him one more chance to file the

1 amended complaint. No later than **December 3, 2010**, Hicks must file an amended complaint  
2 that complies with the directions in the Order Of Dismissal With Leave To Amend filed April  
3 2, 2010. Failure to do will result in dismissal of this action. Hicks is further cautioned that the  
4 court will not read through exhibits to piece together a claim for him: he must write out his  
5 claim(s) in his amended complaint.

6 IT IS SO ORDERED.

7 Dated: November 1, 2010

  
SUSAN ILLSTON  
United States District Judge

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