

United States District Court
For the Northern District of California

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E-Filed 9/20/10

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

BRYAN DAVIS,

No. C 09-0717 RS (PR)

Plaintiff,

**ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND**

v.

M.S. EVANS, et al.,

Defendants.

INTRODUCTION

This is a federal civil rights action filed by a *pro se* state prisoner pursuant to 42 U.S.C. § 1983. The Court now reviews the complaint pursuant to 28 U.S.C. § 1915A(a).

BACKGROUND

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *See id.* § 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

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ORDER DISMISSING COMPLAINT

1 A “complaint must contain sufficient factual matter, accepted as true, to ‘state a claim
2 to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009)
3 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial
4 plausibility when the plaintiff pleads factual content that allows the court to draw the
5 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting
6 *Twombly*, 550 U.S. at 556). Furthermore, a court “is not required to accept legal
7 conclusions cast in the form of factual allegations if those conclusions cannot reasonably be
8 drawn from the facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55 (9th
9 Cir. 1994). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
10 elements: (1) that a right secured by the Constitution or laws of the United States was
11 violated, and (2) that the alleged violation was committed by a person acting under the color
12 of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

13 The complaint is long, rambling, and very difficult to read. Plaintiff must make a
14 short and plain statement of the facts, alleging specific claims against specific defendants.
15 Accordingly, the complaint is DISMISSED with leave to amend within thirty (30) days from
16 the date this order is filed. In his amended complaint, plaintiff must include a separate
17 section which gives a brief list of the claims against named defendants. In the statement of
18 facts, plaintiff must organize his narrative by claim, with a header naming the claim and
19 placing the relevant facts under that heading. Plaintiff is encouraged to double-space his
20 statement of facts so as to make it easier to read.

21 The first amended complaint must include the caption and civil case number used in
22 this order (09-0717 RS (PR)) and the words FIRST AMENDED COMPLAINT on the first
23 page. Because an amended complaint completely replaces the previous complaints, plaintiff
24 must include in his first amended complaint all the claims he wishes to present and all of the
25 defendants he wishes to sue. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992).
26 Plaintiff may not incorporate material from the prior complaint by reference. Failure to file
27 an amended complaint in accordance with this order will result in dismissal of this action
28 without further notice to plaintiff.

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It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court informed of any change of address by filing a separate paper with the clerk headed "Notice of Change of Address." He must comply with the Court's orders in a timely fashion or ask for an extension of time to do so. Failure to comply may result in the dismissal of this action pursuant to Federal Rule of Civil Procedure 41(b).

IT IS SO ORDERED.

DATED: September 20, 2010


RICHARD SEEBORG
United States District Judge