

United States District Court
For the Northern District of California

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E-Filed 8/23/10

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MICHAEL DIXON,
Plaintiff,
v.

No. C 10-3296 RS (PR)

**ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND**

CITY AND COUNTY OF SAN
FRANCISCO, et al.,
Defendants.

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

DISCUSSION

A. Standard of Review

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*

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1 *Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

2 A “complaint must contain sufficient factual matter, accepted as true, to ‘state a claim
3 to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009)
4 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial
5 plausibility when the plaintiff pleads factual content that allows the court to draw the
6 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting
7 *Twombly*, 550 U.S. at 556). Furthermore, a court “is not required to accept legal
8 conclusions cast in the form of factual allegations if those conclusions cannot reasonably be
9 drawn from the facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55 (9th
10 Cir. 1994).

11 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
12 elements: (1) that a right secured by the Constitution or laws of the United States was
13 violated, and (2) that the alleged violation was committed by a person acting under the color
14 of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

15 **B. Legal Claims**

16 Plaintiff alleges that defendants, officers and employees of San Francisco Sheriff’s
17 Department, violated his right to equal protection by providing inadequate access to the law
18 library.

19 Prisoners have a constitutional right of access to the courts. *See Lewis v. Casey*, 518
20 U.S. 343, 350 (1996); *Bounds v. Smith*, 430 U.S. 817, 821 (1977). To establish a claim for
21 any violation of the right of access to the courts, the prisoner must prove that there was an
22 inadequacy in the prison’s legal access program that caused him an “actual injury.” *See*
23 *Lewis*, 518 U.S. at 350–55. To prove an actual injury, the prisoner must show that the
24 inadequacy in the prison’s program hindered his efforts to pursue a non-frivolous claim
25 concerning his conviction or conditions of confinement. *See id.* at 354–55.

26 Plaintiff’s complaint does not contain sufficient factual matter to state a claim to relief
27 that is plausible on its face. Specifically, plaintiff has not alleged specific facts regarding an
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1 actual injury, that the alleged lack of adequate access to the law library hindered his efforts to
2 perfect and pursue a specific legal action. Rather, he alleges only that his lack of access to
3 the law library has made it difficult or impossible to respond to court orders in various
4 unnamed court actions. This is insufficient to show actual injury. Plaintiff must allege
5 specific facts detailing how his efforts to pursue a specific legal action or actions were
6 hindered by defendants. Accordingly, the complaint is DISMISSED with leave to amend.
7 Plaintiff shall file an amended complaint within 30 days from the date this order is filed.
8 Failure to file an amended complaint by such time will result in dismissal of the action
9 without further notice to plaintiff.

10 The first amended complaint must include the caption and civil case number used in
11 this order (10-3296 RS (PR)) and the words FIRST AMENDED COMPLAINT on the first
12 page. Because an amended complaint completely replaces the previous complaints, plaintiff
13 must include in his first amended complaint all the claims he wishes to present and all of the
14 defendants he wishes to sue. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992).
15 Plaintiff may not incorporate material from the prior complaint by reference. Failure to file
16 an amended complaint in accordance with this order will result in dismissal of this action
17 without further notice to plaintiff.

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

23 **IT IS SO ORDERED.**

24 DATED: August 23, 2010


RICHARD SEEBORG
United States District Judge