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4 UNITED STATES DISTRICT COURT  
5 NORTHERN DISTRICT OF CALIFORNIA

6 SADAT FAWZI MOUSA,

7 Plaintiff,

8 v.

9 KAMALA D. HARRIS, et al.,

10 Defendants.  
11

Case No. [13-cv-00140-JST](#)

**ORDER GRANTING MOTIONS TO  
DISMISS WITH PREJUDICE**

Re: ECF No. 79, 82, 85

12 In this action for claims arising out of Plaintiff Mousa's trial and conviction for certain  
13 crimes in state court, Defendants the City and County of San Francisco, the State of California,  
14 Kamala Harris, and Murray Zisholz move to dismiss Mousa's amended complaint on the grounds  
15 that it fails to contain a short and plain statement of his claims, as required by Federal Rule of  
16 Civil Procedure 8(a)(2) and this court's November 26, 2013 order, ECF No. 72, and that it fails to  
17 state a claim under Rule 12(b)(6). Mousa, who represents himself, opposes the motions. For the  
18 reasons set forth below, the motions are GRANTED.

19 **I. BACKGROUND**

20 **A. The Parties and Claims**

21 Plaintiff Sadat Mousa brings this action against Murray Zisholz, the City and County of  
22 San Francisco, the State of California, and Kamala Harris for claims arising out of his conviction  
23 and subsequent incarceration in connection with two criminal charges. The first charge, a felony,  
24 was based on a death threat he made to his brother. The second charge, a misdemeanor, arose out  
25 of harassing telephone calls that Mousa allegedly made in 2009. A detailed factual and procedural  
26 background of this action can be found in this court's order of November 26, 2013. ECF No. 72.

27 The court previously granted a round of motions to dismiss. Id. The court dismissed the  
28 following claims with prejudice: (1) all claims asserted under § 1983 against the State of

1 California and Kamala Harris; (2) all claims asserted under § 1983 for an unconstitutional  
2 conviction; (3) all claims asserted under § 1983 based on allegations that the judgments made  
3 during Mousa’s state court trial were erroneous; and (4) all § 1983 claims asserted against Zisholz.

4 The court also dismissed all claims asserted against the City and County of San Francisco  
5 under Rule 12(b)(5) for insufficient service of process.

6 Additionally, the court dismissed the remainder of the claims without prejudice for failure  
7 to state a claim under Rule 12(b)(6) on the ground that Mousa failed to specify which of his  
8 allegations pertain to each cause of action and to each defendant. ECF No. 72 at 4.

9 Finally, the court refused to exercise supplemental jurisdiction over the remaining state law  
10 claims and dismissed them without prejudice.

11 The court permitted Mousa to file an amended complaint that:

12 [C]ures the deficiencies identified in this order with respect to his  
13 claims for constitutional violations under 42 U.S.C. § 1983.  
14 Specifically, Mousa must attribute specific allegations to each  
15 Defendant, must specify the claims that are asserted against each  
16 Defendant, and must plead each claim with sufficient specificity to  
17 give notice to each Defendant of the nature of the claims. Mousa  
18 may not re-assert any of the federal claims that have been dismissed  
19 with prejudice, but he may re-assert the state-law claims pleaded in  
the original complaint provided that he identifies the Defendant  
against whom each claim is asserted and pleads sufficient facts to  
give notice to each Defendant of the nature of the claims asserted  
against him. Any amended complaint must be served on each  
Defendant in accordance with Federal Rule of Civil Procedure 4. If  
Mousa does not file an amended complaint within 30 days, the  
action will be dismissed with prejudice.

20 ECF No. 72 at 8.

21 Mousa filed an amended complaint on February 24, 2014, in which he asserts the  
22 following sixteen claims: (1) a claim for violations of his Sixth and Fourteenth Amendment rights  
23 based on the trial court’s removal of Mousa from the court room during his trial; (2) a claim for  
24 violations of his First Amendment rights based on the trial court’s prosecution of Mousa based on  
25 Mousa’s attempt to “redress grievances in court” and “exercising his right to challenge a TRO”;  
26 (3) a claim for violations of his Fifth Amendment rights based on the criminal charges that were  
27 brought against him in state court and his subsequent convictions; (4) a claim for violation of his  
28 Fourteenth Amendment rights based on “defendants’ wrongful and conspiratorial acts”; (5) a

1 claim for violations of his Eighth Amendment rights based on his false imprisonment and the cruel  
2 and unusual punishment he suffered; (6) a claim for violations of his Fourteenth Amendment  
3 rights based on “Defendants’ wrongful and conspiratorial acts”; (7) a claim based on “Defendants’  
4 wrongful and judicial conspiratorial acts” related to “illegal, unsigned, altered transcripts” that  
5 were “used to convict” Mousa; (8) a claim based on the trial court’s alteration of the “jury’s  
6 question to secure conviction”; (9) a claim under 42 U.S.C. § 1983 and § 1985 based on  
7 Defendants’ “multiple corrupt acts and conspiracies . . . for self gains or unjust rewards”; (10) a  
8 claim under 18 U.S.C. §§ 1961 and 1962 based on Defendants’ “multiple corrupt conspiracies and  
9 acts”; (11) a claim alleging that “Defendants’ wrongful and conspiratorial acts violated Bivens  
10 claims”; (12) a claim under the Federal Tort Claims Act based on Defendants’ “knowledge and  
11 approval of the judges that presided in Plaintiffs case”; (13) a claim for violations of his Fifth and  
12 Fourteenth Amendment rights based on “Defendants’ wrongful and conspiratorial acts”; (14) a  
13 claim for violations of his “state and federal rights” based on Defendants’ wrongful and  
14 conspiratorial acts”; (15) a claim under 28 U.S.C. § 1343 based on Defendants’ failure to “report  
15 to the proper authorities” the violations of Mousa’s civil and constitutional rights; and (16) and a  
16 claim based on Defendants’ attempts to “assassinate plaintiff while in custody through poisoning  
17 his food with cyanide or rat poisoning.” ECF No. 78 at 14-20.

18 Mousa seeks, among other things, compensatory and punitive damages, as well as the  
19 reversal of his conviction.

20 **B. Jurisdiction**

21 The Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1367.

22 **II. LEGAL STANDARDS**

23 **A. Rule 41(b)**

24 “Pursuant to Federal Rule of Civil Procedure 41(b), the district court may dismiss an action  
25 for failure to comply with any order of the court.” Eldridge v. Block, 832 F.2d 1132, 1136 (9th  
26 Cir. 1987).

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1           **B.       Rule 12(b)(6)**

2           A pleading must contain a “short and plain statement of the claim showing that the pleader  
3 is entitled to relief.” Fed. R. Civ. P. 8(a)(2). A motion to dismiss under Federal Rule of Civil  
4 Procedure 12(b)(6) tests the legal sufficiency of the claims in the complaint. “To survive a motion  
5 to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to  
6 relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual  
7 content that allows the court to draw the reasonable inference that the defendant is liable for the  
8 misconduct alleged.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citation and internal quotation  
9 marks omitted). “Threadbare recitals of the elements of a cause of action, supported by mere  
10 conclusory statements, do not suffice.” Id. When dismissing a complaint, the court must grant  
11 leave to amend unless it is clear that the complaint’s deficiencies cannot be cured by amendment.  
12 Lucas v. Dep’t of Corrections, 66 F.3d 245, 248 (9th Cir. 1995). The district court, however, has  
13 “broad” discretion to deny leave to amend “where plaintiff has previously amended the  
14 complaint.” Ascon Properties, Inc. v. Mobil Oil Co., 866 F.2d 1149, 1160 (9th Cir. 1989).

15           **III.     DISCUSSION**

16           Defendants Zisholz, the State of California, Kamala Harris, and the City and County of  
17 San Francisco move to dismiss Mousa’s amended complaint on the grounds that it fails to comply  
18 with this court’s order, which permitted the filing of an amended complaint only if it (1) did not  
19 reassert any claims that the court dismissed with prejudice; and (2) provided sufficient notice to  
20 Defendants by stating with specificity which allegations pertain to each cause of action and to  
21 each Defendant. See ECF No. 72. Defendants also move to dismiss the complaint with prejudice  
22 under Rule 12(b)(6) on the ground that the amended complaint continues to be legally insufficient  
23 and that the complaint’s deficiencies cannot be cured by amendment.

24           The opposition that Mousa filed largely is incomprehensible and does not appear to  
25 address any of the arguments made in the motions to dismiss. See ECF No. 87.

26           The motions to dismiss are well-taken. The claims in Mousa’s amended complaint are  
27 based on the same theories and allegations that the court previously determined fail as a matter of  
28 law. He reasserts claims that were dismissed with prejudice. And, to the extent that the amended

1 complaint asserts claims that were not previously dismissed with prejudice, those claims are not  
2 pleaded with sufficient specificity so as to give adequate notice to Defendants. Moussa’s claims  
3 fail to meet even the minimal standards of Rule 8, which require only “a short and plain statement  
4 of the claim showing that the pleader is entitled to relief,” Fed. R. Civ. P. 8(a)(2). “[A] basic  
5 objective of [Rule 8] is . . . to require that the pleading discharge the function of giving the  
6 opposing party fair notice of the nature and basis or grounds of the pleader's claim and a general  
7 indication of the type of litigation that is involved; indeed, as the Supreme Court and every court  
8 of appeals have clearly stated, it is this notice function that represents the core of the pleading  
9 process under the federal rules.” 5 Fed. Prac. & Proc. Civ. § 1215 (3d ed.) (citing Erickson v.  
10 Pardus, 551 U.S. 89, 93 (2007)). Indeed, the allegations in Mousa’s amended complaint are even  
11 more nebulous than the ones in the original complaint; it is impossible to determine from the face  
12 of the amended complaint which allegations pertain to each claim and to each Defendant. The  
13 amended complaint’s iteration of claims that have been dismissed with prejudice and its utter lack  
14 of specificity clearly violate this court’s prior order.

15           Given that the court has already explained to Mousa in detail the nature of his claims’  
16 deficiencies, provided him with an opportunity to cure these deficiencies, and advised him at least  
17 twice to seek the assistance of the Legal Help Center in prosecuting his claims, the court can only  
18 conclude that further leave to amend would be futile. See Ascon Properties, Inc. v. Mobil Oil Co.,  
19 866 F.2d 1149, 1160 (9th Cir. 1989) (holding that the district court has “broad” discretion to deny  
20 leave to amend “where plaintiff has previously amended the complaint”); see also Nevijel v. N.  
21 Coast Life Ins. Co., 651 F.2d 671, 674 (9th Cir. 1981) (“Though there are a wide variety of  
22 sanctions short of dismissal available, the district court need not exhaust them all before finally  
23 dismissing a case.”). The court will dismiss Mousa’s claims with prejudice.

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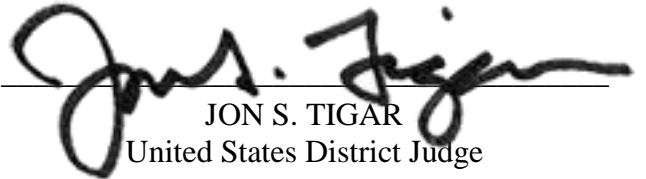
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**IV. CONCLUSION**

Defendants' motions to dismiss Mousa's amended complaint with prejudice for failure to comply with a court order and for failure to state a claim are GRANTED. The claims in the amended complaint are DISMISSED WITH PREJUDICE. The Clerk shall terminate this action.

**IT IS SO ORDERED.**

Dated: June 12, 2014

  
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JON S. TIGAR  
United States District Judge