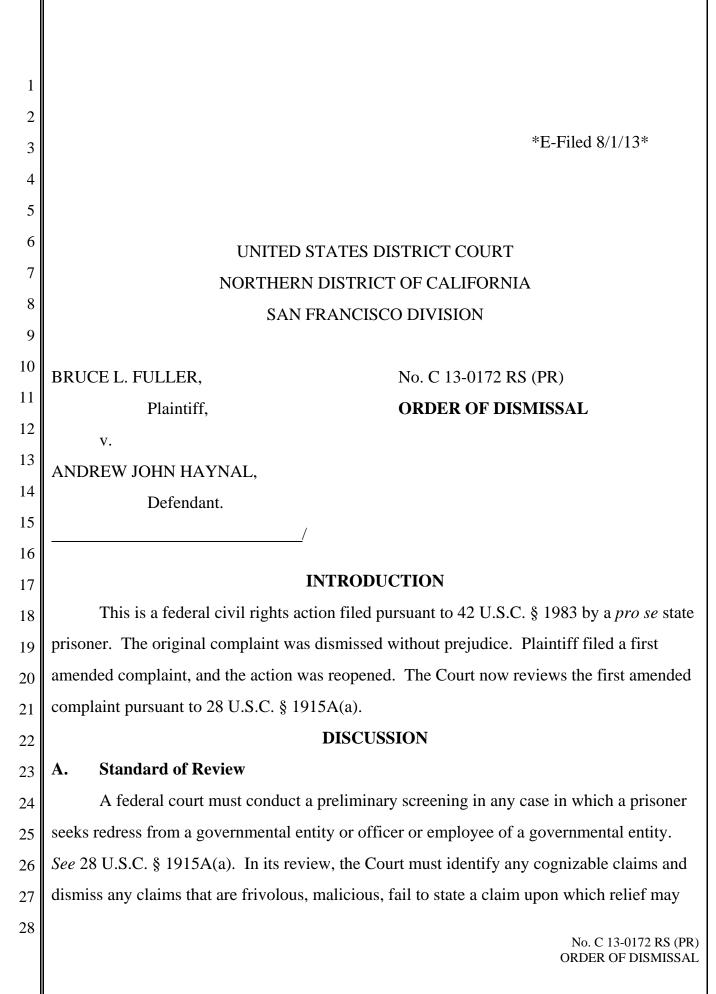
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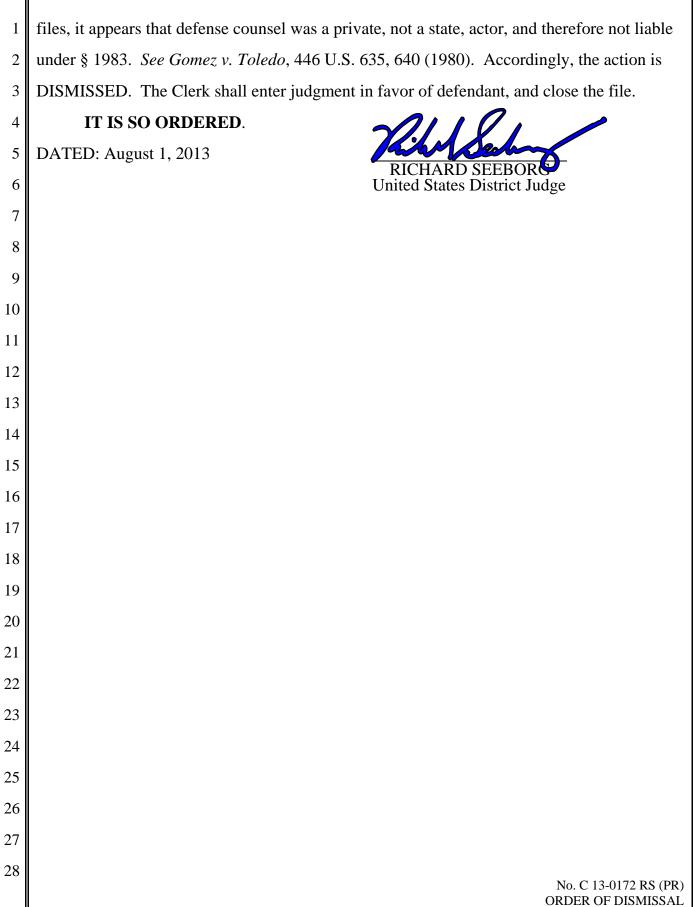
be granted or seek monetary relief from a defendant who is immune from such relief. *See id.* § 1915A(b)(1),(2). *Pro se* pleadings must be liberally construed. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

4 A "complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009) 5 (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)). "A claim has facial 6 7 plausibility when the plaintiff pleads factual content that allows the court to draw the 8 reasonable inference that the defendant is liable for the misconduct alleged." Id. (quoting 9 *Twombly*, 550 U.S. at 556). Furthermore, a court "is not required to accept legal conclusions" 10 cast in the form of factual allegations if those conclusions cannot reasonably be drawn from 11 the facts alleged." Clegg v. Cult Awareness Network, 18 F.3d 752, 754–55 (9th Cir. 1994). 12 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: 13 (1) that a right secured by the Constitution or laws of the United States was violated, and 14 (2) that the alleged violation was committed by a person acting under the color of state law. 15 See West v. Atkins, 487 U.S. 42, 48 (1988).

B. Legal Claims

17 Plaintiff alleges that his attorney violated his federal constitutional rights when he 18 destroyed without plaintiff's consent files related to plaintiff's legal proceedings. A state-19 appointed defense attorney "does not qualify as a state actor when engaged in his general 20 representation of a criminal defendant." Polk County v. Dodson, 454 U.S. 312, 321 (1981). 21 Polk County "noted, without deciding, that a public defender may act under color of state law 22 while performing certain administrative [such as making hiring and firing decisions], and 23 possibly investigative, functions." Georgia v. McCollum, 505 U.S. 42, 54 (1992) (citing 24 Polk County, 454 U.S. at 325.) Under this standard, plaintiff's allegations fail to state a 25 claim for relief under § 1983. As put forth in the complaint, counsel's destruction of certain 26 files was neither an administrative nor investigative function constituting action by a state 27 actor, as those functions are described by binding legal authority. In allegedly destroying his

> No. C 13-0172 RS (PR) ORDER OF DISMISSAL



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