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E-Filed 8/1/13

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

BRUCE L. FULLER,
Plaintiff,

No. C 13-0172 RS (PR)

ORDER OF DISMISSAL

v.

ANDREW JOHN HAYNAL,
Defendant.

INTRODUCTION

This is a federal civil rights action filed pursuant to 42 U.S.C. § 1983 by a *pro se* state prisoner. The original complaint was dismissed without prejudice. Plaintiff filed a first amended complaint, and the action was reopened. The Court now reviews the first amended 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

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1 be granted or seek monetary relief from a defendant who is immune from such relief. *See id.*
2 § 1915A(b)(1),(2). *Pro se* pleadings must be liberally construed. *See Balistreri v. Pacifica*
3 *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
5 to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009)
6 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial
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).

16 **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
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1 files, it appears that defense counsel was a private, not a state, actor, and therefore not liable
2 under § 1983. *See Gomez v. Toledo*, 446 U.S. 635, 640 (1980). Accordingly, the action is
3 DISMISSED. The Clerk shall enter judgment in favor of defendant, and close the file.

4 **IT IS SO ORDERED.**

5 DATED: August 1, 2013


6 RICHARD SEEBORG
United States District Judge

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