

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DEMETRIUS HOWARD,

Plaintiff,

v.

EDMUND G. BROWN, et al.,

Defendants.

Case No. [13-cv-03009-JD](#)

**ORDER OF DISMISSAL WITH LEAVE  
TO AMEND**

Plaintiff, a state prisoner, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis.

**DISCUSSION**

**I. STANDARD OF REVIEW**

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review, the Court must identify any cognizable claims, and dismiss any claims which 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. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” Although a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above

1 the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations  
2 omitted). A complaint must proffer “enough facts to state a claim to relief that is plausible on its  
3 face.” *Id.* at 570. The United States Supreme Court has explained the “plausible on its face”  
4 standard of *Twombly*: “While legal conclusions can provide the framework of a complaint, they  
5 must be supported by factual allegations. When there are well-pleaded factual allegations, a court  
6 should assume their veracity and then determine whether they plausibly give rise to an entitlement  
7 to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

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

12 **II. LEGAL CLAIMS**

13 Plaintiff, a condemned prisoner, states that the California capital case appellate process is  
14 invalid and denies due process. Plaintiff’s direct appeal was denied in *People v. Howard*, 51 Cal.  
15 4th 15 (2010), and he is currently seeking habeas relief in state court. For relief in this case,  
16 plaintiff seeks this Court to examine the current policies and practices of the state death penalty  
17 appeal process and determine whether they are in compliance with state and federal law. Named  
18 as defendants are the California Supreme Court Justices, various state agencies and officials and  
19 all certified death penalty attorneys in California.

20 The Court notes that plaintiff’s complaint is nearly identical to several “form” complaints  
21 that have been filed by other death row inmates, with a few minor differences. *See Theodore*  
22 *Shove v. Brown*, N. D. Cal. Case No. C 12-211 RMW (dismissed for failure to state a claim and  
23 affirmed on appeal); *Duff v. Brown*, N. D. Cal. Case No. C 12-529 EMC (dismissed for failure to  
24 state a claim and for *Younger* abstention); *Paul Bolin v. Brown*, N. D. Cal. Case No. C 12-637 PJH  
25 (transferred to Eastern District of California, who ultimately dismissed complaint under *Younger*  
26 and *Heck*, and for failure to state a claim); *Richard Vieira v. Brown*, E. D. Cal. Case No. 12-cv-  
27 0044-AWI-MJS (dismissed for failure to state a claim and pursuant to *Younger* and *Heck*); *Carlos*  
28 *Avena v. Brown*, C. D. Cal. Case No. 12-cv-00485-UA-DUTY (denying in forma pauperis

1 application because application was incomplete and the judicial officers had immunity from the  
2 suit); *Spencer Brasure v. Brown*, C. D. Cal. Case No. 12-CV-1027-UA-DUTY (denying in forma  
3 pauperis application because the court lacked jurisdiction; the complaint was frivolous, malicious  
4 or failed to state a claim; and the complaint sought monetary relief from a defendant immune from  
5 such relief).

6 As this is a form complaint, there are few facts or allegations specific to plaintiff, and the  
7 majority of the complaint is a rambling discussion of theories and legal concepts. Plaintiff has  
8 been represented by counsel in his state direct appeal proceedings, and his current represented  
9 state habeas petition, California Supreme Court case no. S196958, is pending. Under principles of  
10 comity and federalism, a federal court should not interfere with ongoing state criminal proceedings  
11 absent extraordinary circumstances. *See Younger v. Harris*, 401 U.S. 37, 43–54 (1971). The  
12 rationale of *Younger* also applies throughout appellate proceedings, requiring that state appellate  
13 review of a state court judgment be exhausted before federal court intervention is permitted. *See*  
14 *Dubinka v. Judges of the Superior Court*, 23 F.3d 218, 223 (9th Cir. 1994).

15 Plaintiff also fails to link any specific defendant to a legal claim, his request that the Court  
16 review state practices is far too broad, and the specific relief he seeks is not clear. The complaint  
17 will be dismissed with leave to amend so plaintiff may attempt to cure these deficiencies.

18 **CONCLUSION**

19 1. The complaint is **DISMISSED** with leave to amend in accordance with the  
20 standards set forth above. The amended complaint must be filed within **twenty-eight (28) days** of  
21 the date this order is filed and must include the caption and civil case number used in this order  
22 and the words AMENDED COMPLAINT on the first page. Because an amended complaint  
23 completely replaces the original complaint, plaintiff must include in it all the claims he wishes to  
24 present. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may not incorporate  
25 material from the original complaint by reference. Failure to amend within the designated time  
26 will result in the dismissal of this action.

27 2. It is the plaintiff’s responsibility to prosecute this case. Plaintiff must keep the  
28 Court informed of any change of address by filing a separate paper with the clerk headed “Notice

1 of Change of Address,” and must comply with the Court’s orders in a timely fashion. Failure to  
2 do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of  
3 Civil Procedure 41(b).

4 **IT IS SO ORDERED.**

5 Dated: May 6, 2014



---

6 JAMES DONATO  
7 United States District Judge

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28