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E-Filed 1/11/16

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WAYNE SMITH,
Plaintiff,
v.

No. C 15-4405 RS (PR)

**ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND**

SAN FRANCISCO POLICE
DEPARTMENT and
DEBORAH MADDEN
Defendants.

United States District Court
For the Northern District of California

INTRODUCTION

Plaintiff, a state prisoner proceeding pro se, filed this federal civil rights action under 42 U.S.C. § 1983 in which he alleges that Deborah Madden, a former San Francisco crime laboratory technician, committed negligence. Upon review of his complaint under 28 U.S.C. § 1915A(a), the Court concludes that plaintiff fails to state a claim for relief. The complaint is DISMISSED with leave to file an amended complaint on or before February 22, 2016.

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.

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1 See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and
2 dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may
3 be granted or seek monetary relief from a defendant who is immune from such relief. *See id.*
4 § 1915A(b)(1),(2). *Pro se* pleadings must be liberally construed. *See Balistreri v. Pacifica*
5 *Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988).

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

18 **B. Legal Claims**

19 Plaintiff alleges that Deborah Madden is liable for negligence, but his allegations fail
20 to state a claim for relief. First, neither negligence nor gross negligence is actionable under
21 section 1983. *Farmer v. Brennan*, 511 U.S. 825, 835-36 & n.4 (1994); *County of*
22 *Sacramento v. Lewis*, 523 U.S. 833, 849 (1998). Second, his allegations are bare of any
23 factual allegations showing that Madden violated his constitutional rights. A plaintiff must
24 “set forth specific facts as to each individual defendant’s” actions which violated his or her
25 rights. *Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988). Even at the pleading stage, “[a]
26 plaintiff must allege facts, not simply conclusions, that show that an individual was
27 personally involved in the deprivation of his civil rights.” *Barren v. Harrington*, 152 F.3d
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1 1193, 1194 (9th Cir. 1998). “A person deprives another ‘of a constitutional right, within the
2 meaning of section 1983, if he does an affirmative act, participates in another’s affirmative
3 acts, or omits to perform an act which he is legally required to do that causes the deprivation
4 of which [the plaintiff complains].” *Leer*, 844 F.2d at 633 (quoting *Johnson v. Duffy*, 588
5 F.2d 740, 743 (9th Cir. 1978)). The inquiry into causation must be individualized and focus
6 on the duties and responsibilities of each individual defendant whose acts or omissions are
7 alleged to have caused a constitutional deprivation. *Id.*

8 **CONCLUSION**

9 Accordingly, the complaint is DISMISSED with leave to file an amended complaint
10 on or before February 22, 2016. The amended complaint must include the caption and civil
11 case number used in this order (15-4405 RS (PR)) and the words FIRST AMENDED
12 COMPLAINT on the first page. Because an amended complaint completely replaces the
13 previous complaints, plaintiff must include in his amended complaint all the claims he wishes
14 to present and all of the defendants he wishes to sue. *See Ferdik v. Bonzelet*, 963 F.2d 1258,
15 1262 (9th Cir. 1992). Any claims not raised in the amended complaint will be deemed
16 waived. Plaintiff may not incorporate material from the prior complaint by reference.
17 Failure to file an amended complaint in accordance with this order will result in dismissal of
18 this action without further notice to plaintiff.

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

24 **IT IS SO ORDERED.**

25 DATED: January 11, 2016


RICHARD SEEBORG
United States District Judge