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United States District Court  
Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

RON FREEMAN,  
Plaintiff,  
v.  
ED BORBEIAN, et al.,  
Defendants.

Case No. [16-cv-01848-JD](#)

**ORDER OF DISMISSAL WITH  
LEAVE TO AMEND**

Plaintiff, a detainee, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. The original complaint was dismissed with leave to amend and plaintiff has filed an amended complaint.

**DISCUSSION**

**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

1 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above  
2 the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations  
3 omitted). A complaint must proffer “enough facts to state a claim to relief that is plausible on its  
4 face.” *Id.* at 570. The United States Supreme Court has explained the “plausible on its face”  
5 standard of *Twombly*: “While legal conclusions can provide the framework of a complaint, they  
6 must be supported by factual allegations. When there are well-pleaded factual allegations, a court  
7 should assume their veracity and then determine whether they plausibly give rise to an entitlement  
8 to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

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

12 **LEGAL CLAIMS**

13 In the original complaint, plaintiff stated that he wrote a book about jury tampering and he  
14 was attacked by a drug dealer and others in retaliation for the book. He also alleged that various  
15 people, including his ex-wife, were impersonating federal agents and police officers to conspire  
16 against him. For relief, plaintiff sought to stop the impersonations, prevent witness tampering, and  
17 prevent murder attempts against him. The complaint was dismissed with leave to amend to  
18 provide more information and to identify a state actor in order to proceed under 42 U.S.C. § 1983.

19 In the amended complaint plaintiff seeks to disqualify the prosecutor in his ongoing  
20 criminal case. Under principles of comity and federalism, a federal court should not interfere with  
21 ongoing state criminal proceedings by granting injunctive or declaratory relief absent  
22 extraordinary circumstances. *See Younger v. Harris*, 401 U.S. 37, 43-54 (1971). Federal courts  
23 should not enjoin pending state criminal prosecutions absent a showing of the state’s bad faith or  
24 harassment, or a showing that the statute challenged is “flagrantly and patently violative of express  
25 constitutional prohibitions.” *Younger*, 401 U.S. at 46, 53-54 (cost, anxiety and inconvenience of  
26 criminal defense not kind of special circumstances or irreparable harm that would justify federal  
27 court intervention; statute must be unconstitutional in every “clause, sentence and paragraph, and  
28 in whatever manner” it is applied). The amended complaint is dismissed with leave to amend to

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address *Younger*.

**CONCLUSION**

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

2. It is the plaintiff’s responsibility to prosecute this case. Plaintiff must keep the Court informed of any change of address by filing a separate paper with the clerk headed “Notice of Change of Address,” and must comply with the Court’s orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

**IT IS SO ORDERED.**

Dated: August 31, 2016

  
\_\_\_\_\_  
JAMES DONATO  
United States District Judge

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA

3  
4 RON FREEMAN,  
5 Plaintiff,  
6 v.  
7 ED BORBEIAN, et al.,  
8 Defendants.

Case No. [16-cv-01848-JD](#)

**CERTIFICATE OF SERVICE**

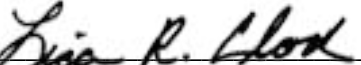
9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.  
10 District Court, Northern District of California.

11  
12 That on August 31, 2016, I SERVED a true and correct copy(ies) of the attached, by  
13 placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by  
14 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery  
15 receptacle located in the Clerk's office.

16  
17 Ron Freeman ID: 0144493  
18 Marin County Jail  
19 13 Peter Behr Drive  
20 San Rafael, CA 94903

21 Dated: August 31, 2016

22  
23 Susan Y. Soong  
24 Clerk, United States District Court

25  
26 By:   
27 LISA R. CLARK, Deputy Clerk to the  
28 Honorable JAMES DONATO