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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DANNY GARCIA,
Plaintiff,
v.
INSPECTOR GENERAL,
Defendant.

Case No. [17-cv-01516-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

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 the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations

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

7 **LEGAL CLAIMS**

8 Plaintiff seeks money damages and injunctive relief due to the failure of the state Inspector
9 General to investigate plaintiff’s claims. To state a claim under 42 U.S.C. § 1983, a plaintiff must
10 allege that: (1) a right secured by the Constitution or laws of the United States was violated, and
11 (2) the alleged deprivation was committed by a person acting under the color of state law. *West v.*
12 *Atkins*, 487 U.S. 42, 48 (1988).

13 Federal district courts are without power to issue mandamus to direct state courts, state
14 judicial officers, or other state officials in the performance of their duties. A petition for a writ of
15 mandamus to compel a state court or official to take or refrain from some action is frivolous as a
16 matter of law. *See Demos v. U.S. District Court*, 925 F.2d 1160, 1161-62 (9th Cir. 1991)
17 (imposing no filing in forma pauperis order); *Clark v. Washington*, 366 F.2d 678, 681 (9th Cir.
18 1966) (attorney contested disbarment and sought reinstatement); *Dunlap v. Corbin*, 532 F. Supp.
19 183, 187 (D. Ariz. 1981) (plaintiff sought order from federal court directing state court to provide
20 speedy trial), *aff’d* without opinion, 673 F.2d 1337 (9th Cir. 1982); *Newton v. Poindexter*, 578 F.
21 Supp. 277, 279 (C.D. Cal. 1984) (§ 1361 has no application to state officers or employees); *see*
22 *also In re Campbell*, 264 F.3d 730, 731-32 (7th Cir. 2001) (denying petition for writ of mandamus
23 that would order state trial court to give petitioner access to certain trial transcripts which he
24 sought in preparation for filing state post-conviction petition; federal court may not, as a general
25 rule, issue mandamus to a state judicial officer to control or interfere with state court litigation).

26 Plaintiff previously alleged in another case that certain prison doctors and nurses were
27 deliberately indifferent to his serious medical needs. *Garcia v. Kalisher*, 15-cv-0045 JD. The
28 Court granted summary judgment in that action and closed the case and the Ninth Circuit affirmed

1 the decision. Docket Nos. 31, 38 in *Garcia v. Kalisher*, 15-cv-0045 JD. Plaintiff submitted a
2 request to the Inspector General regarding his medical treatment in an effort to have the prison and
3 prison doctors investigated. The Inspector General responded that they cannot provide legal
4 advice or assistance. Plaintiff seeks money damages and an investigation.

5 This Court cannot compel the Inspector General to conduct an investigation and plaintiff
6 has failed to state a claim under 42 U.S.C. § 1983 to provide for money damages. He has not
7 alleged that a right secured by the Constitution or laws of the United States was violated. While
8 he has a right to medical care, that claim has already been litigated, and plaintiff has not identified
9 that he has a right for the Inspector General to investigate. The complaint is dismissed with leave
10 to amend for plaintiff to present a federal claim.

11 **CONCLUSION**

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

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

24 **IT IS SO ORDERED.**

25 Dated: April 7, 2017

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JAMES DONATO
United States District Judge

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 DANNY GARCIA,
4 Plaintiff,
5 v.
6 INSPECTOR GENERAL,
7 Defendant.
8

Case No. [17-cv-01516-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 April 7, 2017, I SERVED a true and correct copy(ies) of the attached, by placing
13 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 Danny Garcia ID: V-30568
18 C.T.F. Rainer "A" 112 Low
19 P.O. Box 705
20 Soledad, CA 93960

21 Dated: April 7, 2017

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

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