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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re ROB J. SIMMONS.

No. C 07-01205 CW

ORDER EXTENDING TIME  
TO FILE AMENDED  
PLEADING

On February 28, 2007, this case was opened when Plaintiff sent a letter to this Court while housed in the San Mateo County Jail. On November 13, 2007, the Court construed Plaintiff's letter as a civil rights complaint and issued an Order Granting In Forma Pauperis Status Under 28 U.S.C. § 1915, Dismissing Complaint with Leave to Amend and Addressing Pending Motions (Docket # 13). In the November 13, 2007 Order, the Court noted that, in his letter, Plaintiff claimed that a San Mateo judge improperly found that Plaintiff was incompetent to stand trial because the judge did not believe that Plaintiff was a member of the ministry of Cannabis and Rastari Inc. or that he had founded the Tree of Life Church. Plaintiff alleged that his religious rights had been violated and that he had been incarcerated since July 17, 2006 without being convicted of a crime.

In the November 13, 2007 Order, the Court noted that Plaintiff had not filed a complaint on the Court's civil rights form and that this would greatly assist the Court in clarifying the issues

1 Plaintiff presented. The Court dismissed the complaint with leave  
2 to file an amended complaint using the Court's civil rights form.  
3 The Clerk of the Court sent Plaintiff a blank civil rights form  
4 along with a copy of the Order.

5 Subsequently, Plaintiff filed three separate letters,  
6 apparently in response to the November 13, 2007 Order.

7 On December 10, 2007, Plaintiff filed the first letter which  
8 he indicates is a habeas action. He alleges that, on November 24,  
9 2007, he was driving in Santa Barbara when he almost ran out of  
10 gas. He was in possession of his church's "sacramental ganja."  
11 Plaintiff asked a University of California at Santa Barbara (UCSB)  
12 police officer for directions to a gas station. The officer asked  
13 Plaintiff if he was on probation. Plaintiff answered that he was.  
14 The officer then searched Plaintiff and arrested him. Plaintiff  
15 was prosecuted for possession of marijuana for sale and  
16 transportation of marijuana for sale. Plaintiff told the UCSB  
17 police to call his doctor because he has a prescription for  
18 marijuana, but the police refused to do so. Plaintiff claims that  
19 he was wrongfully arrested and that he has been "jailed, harassed,  
20 abused, tortured, kidnaped and robbed." He wants an injunction to  
21 protect members of the Tree of Life Church from wrongful arrest and  
22 prosecution and he wants \$200 million in damages. On the last page  
23 of the letter, Plaintiff alleges that Santa Barbara County Deputy  
24 Sheriff A. Kirsch improperly put Plaintiff into seclusion and  
25 isolation.

26 On December 26, 2007, Plaintiff filed his second letter in  
27 which he alleges that he is suing the San Mateo County Probation  
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1 Department for holding him in violation of the First Amendment of  
2 the United States Constitution and federal statutes. Plaintiff  
3 alleges that he was wrongfully sent to Napa State Hospital and is  
4 suing Mark Owens and Rafael Amezaga, Jr., the deputy public  
5 defenders who represented him and who, against his wishes, filed a  
6 motion alleging that he might be incompetent. Plaintiff also  
7 alleges that, while he was out of jail on his own recognizance  
8 (OR), he was remanded back to jail because he had a "dirty pee test  
9 for marijuana." He indicates that he wishes this case to be  
10 "applied" to another case pending in Santa Barbara. He also  
11 indicates that he is suing Judge Joseph Lodge and Dan Lieberman, an  
12 aide to State Senator Dr. Leland Yee, but doesn't state how these  
13 individuals violated his constitutional rights.

14 On January 4, 2008, Plaintiff filed a third letter in which he  
15 indicates that he is "requesting a habeas action" because UCSB  
16 police stole money from him, illegally impounded his car and  
17 illegally seized his "sacramental and medicinal marijuana." He  
18 requests an injunction for Multi-denominational Ministry of  
19 Cannabis and Rastafari Inc. and Tree of Life Church members because  
20 Defendants have repeatedly interfered with the church's ministry  
21 and members' freedom of religion. He requests "protection from  
22 arrest, persecution, incarceration and theft of sacrament, amnesty  
23 from sales, possession, transportation, growing, etc. to our sick  
24 patients and church members."

25 LEGAL STANDARD

26 Dismissal under 28 U.S.C. § 1915(d) for frivolousness prior to  
27 service is appropriate where no legal interest is implicated, i.e.,  
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1 where a claim is premised on an indisputably meritless legal theory  
2 or is clearly lacking any factual basis. Neitzke v. Williams, 490  
3 U.S. 319, 327 (1989); Cato v. United States, 70 F.3d 1103, 1106  
4 (9th Cir. 1995).

5 DISCUSSION

6 Plaintiff apparently wants to sue state officials in Santa  
7 Barbara for violating his civil rights. He also claims his  
8 constitutional rights were violated when he was found incompetent  
9 to stand trial and held in a state psychiatric hospital.

10 I. Civil Rights Claims

11 Title 42 U.S.C. § 1983 "provides a cause of action for the  
12 'deprivation of any rights, privileges, or immunities secured by  
13 the Constitution and laws' of the United States." Wilder v.  
14 Virginia Hosp. Ass'n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C.  
15 § 1983). Section 1983 is not itself a source of substantive  
16 rights, but merely provides a method for vindicating federal rights  
17 elsewhere conferred. Graham v. Connor, 490 U.S. 386, 393-94  
18 (1989). To state a claim under § 1983, a plaintiff must allege two  
19 essential elements: (1) that a right secured by the Constitution or  
20 laws of the United States was violated and (2) that the alleged  
21 violation was committed by a person acting under the color of state  
22 law. West v. Atkins, 487 U.S. 42, 48 (1988); Ketchum v. Alameda  
23 County, 811 F.2d 1243, 1245 (9th Cir. 1987).

24 Liability may be imposed on an individual defendant under  
25 section 1983 if the plaintiff can show that the defendant  
26 proximately caused the deprivation of a federally protected right.  
27 Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988); Harris v. City

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1 of Roseburg, 664 F.2d 1121, 1125 (9th Cir. 1981). A person  
2 deprives another of a constitutional right within the meaning of  
3 section 1983 if he does an affirmative act, participates in  
4 another's affirmative act or omits to perform an act which he is  
5 legally required to do, that causes the deprivation of which the  
6 plaintiff complains. Leer, 844 F.2d at 633; see, e.g., Robins v.  
7 Meecham, 60 F.3d 1436, 1442 (9th Cir. 1995) (prison official's  
8 failure to intervene to prevent Eighth Amendment violation may be  
9 basis for liability). Although the federal rules require brevity  
10 in pleading, a complaint must be sufficient to give the defendants  
11 "fair notice" of the claim and the "grounds upon which it rests."  
12 Erickson v. Pardus, 127 S. Ct. 2197, 2200 (2007) (citations  
13 omitted).

14 II. Heck v. Humphrey Requirement

15 In order to recover damages for an allegedly unconstitutional  
16 conviction or imprisonment, or for other harm caused by actions  
17 whose unlawfulness would render a conviction or sentence invalid, a  
18 42 U.S.C. § 1983 plaintiff must prove that the conviction or  
19 sentence has been reversed on direct appeal, expunged by executive  
20 order, declared invalid by a state tribunal authorized to make such  
21 determination, or called into question by a federal court's  
22 issuance of a writ of habeas corpus. Heck v. Humphrey, 512 U.S.  
23 477, 486-487 (1994). A claim for damages bearing that relationship  
24 to a conviction or sentence that has not been so invalidated is not  
25 cognizable under § 1983. Id. at 487. Heck v. Humphrey applies to  
26 detainees under an involuntary civil commitment. Huftile v.  
27 Miccio-Fonseca, 410 F.3d 1136, 1139-40 (9th Cir. 2005).

1 III. Habeas Petitions

2 A district court may entertain a petition for a writ of habeas  
3 corpus "in behalf of a person in custody pursuant to the judgment  
4 of a State court only on the ground that he is in custody in  
5 violation of the Constitution or laws or treaties of the United  
6 States." 28 U.S.C. § 2254(a); Rose v. Hodges, 423 U.S. 19, 21  
7 (1975).

8 Under the Antiterrorism and Effective Death Penalty Act  
9 (AEDPA), a district court may grant a petition challenging a state  
10 conviction or commitment on the basis of a claim that was  
11 "adjudicated on the merits" in state court only if the state  
12 court's adjudication of the claim: "(1) resulted in a decision that  
13 was contrary to, or involved an unreasonable application of,  
14 clearly established Federal law, as determined by the Supreme Court  
15 of the United States; or (2) resulted in a decision that was based  
16 on an unreasonable determination of the facts in light of the  
17 evidence presented in the State court proceeding." 28 U.S.C.  
18 § 2254(d). The AEDPA requires a district court to presume correct  
19 any determination of a factual issue made by a state court unless  
20 the petitioner rebuts the presumption of correctness by clear and  
21 convincing evidence. 28 U.S.C. § 2254(e)(1).

22 Individuals in state custody who wish to challenge  
23 collaterally in federal habeas proceedings either the fact or  
24 length of their confinement are first required to exhaust state  
25 judicial remedies, either on direct appeal or through collateral  
26 proceedings, by presenting the highest state court available with a  
27 fair opportunity to rule on the merits of each and every claim they  
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1 seek to raise in federal court. 28 U.S.C. § 2254(b), (c); Rose v.  
2 Lundy, 455 U.S. 509, 515-16 (1982). The State's highest court must  
3 be given an opportunity to rule on the claims even if review is  
4 discretionary. O'Sullivan v. Boerckel, 526 U.S. 838, 845 (1999).

5 Plaintiff's three letters, which the Court assumes are his  
6 attempts to file a first amended complaint, are not a proper  
7 response to the Court's order. Plaintiff's letters about events in  
8 Santa Barbara are not relevant. Santa Barbara is in the Central  
9 District of California and any action related to occurrences in  
10 Santa Barbara must be brought in the Central District of  
11 California.

12 If Plaintiff wishes to file a civil rights complaint about the  
13 events in San Mateo or Napa County, he must file a complaint on the  
14 civil rights complaint form the Clerk of the Court will send him  
15 with this order. In the caption of the complaint, Plaintiff must  
16 list each individual he wishes to sue. In the body of the  
17 complaint, Plaintiff must specifically state the actions of each  
18 individual Defendant who violated Plaintiff's civil rights.  
19 Plaintiff must also indicate which constitutional right was  
20 violated by the actions of each Defendant. Plaintiff is advised to  
21 write separate paragraphs for each Defendant indicating in each  
22 paragraph that individual's actions and which constitutional rights  
23 he or she violated.

24 Plaintiff is cautioned that under Heck v. Humphrey, discussed  
25 above, the Court lacks jurisdiction over any civil rights complaint  
26 that would render his incompetence commitment invalid until the  
27 commitment has been reversed on appeal or vacated pursuant to a  
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1 petition for writ of habeas corpus. If this was done, he must  
2 explain that in his complaint.

3 If Plaintiff is able to file a civil rights complaint in this  
4 Court that complies with this order, he must do so within thirty  
5 days of the date of this order. If he does not do so within this  
6 time, his complaint will be dismissed for failure to prosecute.

7 The Clerk of the Court shall send Plaintiff a blank civil  
8 rights form along with a copy of this order.

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10 IT IS SO ORDERED.

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12 Dated: 2/7/08

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CLAUDIA WILKEN  
United States District Judge

1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

4 IN RE: ROB J SIMMONS,

Case Number: CV07-01205 CW

5 \_\_\_\_\_/ **CERTIFICATE OF SERVICE**

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

8 That on February 7, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said  
9 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
10 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located  
11 in the Clerk's office.

12 Rob J. Simmons 697962 (with prisoner civil right complaint form)  
13 4436 Callereal  
14 Santa Barbara, CA 93110

15 Dated: February 7, 2008

Richard W. Wiekling, Clerk  
By: Sheilah Cahill, Deputy Clerk