

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

3 TROY ANDERSON,

No. C 10-5558 CW (PR)

4 Plaintiff,

ORDER OF PARTIAL DISMISSAL AND
DISMISSAL WITH LEAVE TO AMEND;
DIRECTING CLERK OF COURT TO
PROVIDE PLAINTIFF WITH CIVIL
RIGHTS COMPLAINT FORM

5 v.

6 PITTSBURG POLICE DEPT, et al.,

7 Defendants.
8 _____/

9 INTRODUCTION

10 Plaintiff, a state prisoner currently incarcerated at the
11 Martinez Detention Facility (MDF), filed the instant pro se civil
12 action which he has titled as a "Complaint/Information/Tort
13 Action." Docket no. 15. He seeks injunctive relief and damages
14 from state officials involved in his arrest, parole revocation and
15 criminal prosecution, and from staff at the MDF. He also has filed
16 a request for removal of his state criminal prosecution to federal
17 court. Docket no. 19. He has been granted leave to proceed in
18 forma pauperis.

19 A federal court must conduct a preliminary screening in any
20 case in which a prisoner seeks redress from a governmental entity
21 or officer or employee of a governmental entity. See 28 U.S.C.
22 § 1915A(a). In its review, the court must identify any cognizable
23 claims and dismiss any claims that are frivolous, malicious, fail
24 to state a claim upon which relief may be granted or seek monetary
25 relief from a defendant who is immune from such relief. See id.
26 § 1915A(b)(1), (2). Pro se pleadings must, however, be liberally
27 construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696,
28 699 (9th Cir. 1988).

1 For the reasons discussed below, Plaintiff's complaint will be
2 dismissed with leave to amend.

3 DISCUSSION

4 I. Arrest, Parole Revocation and Criminal Prosecution Claims

5 Plaintiff seeks injunctive relief and monetary damages from
6 state officials involved in his arrest, parole revocation and
7 criminal prosecution. It appears from the allegations in the
8 complaint that Plaintiff's criminal proceedings are ongoing.

9 Heck v. Humphrey, 512 U.S. 477 (1994), holds that in order to
10 state a claim for damages for an allegedly unconstitutional
11 conviction or term of imprisonment, or for other harm caused by
12 actions whose unlawfulness would render a conviction or sentence
13 invalid, a plaintiff asserting a violation of 42 U.S.C. § 1983 must
14 prove that the conviction or sentence has been reversed or declared
15 invalid. Id. at 486-87. If success in the § 1983 lawsuit would
16 necessarily demonstrate the invalidity of the confinement or its
17 duration, the § 1983 lawsuit is barred, irrespective of
18 whether the plaintiff seeks monetary damages or equitable relief.

19 Wilkinson v. Dotson, 544 U.S. 74, 81 (2005). Consequently,
20 Plaintiff cannot seek injunctive relief or damages for alleged
21 violations pertaining to his parole revocation or his conviction
22 until those determinations have been set aside. A complaint that
23 is barred under Heck must be dismissed. Heck, 512 U.S. at 487.

24 Additionally, if Plaintiff has not yet been convicted his
25 claim for injunctive relief and damages pertaining to his
26 conviction will not be barred under Heck, but the claim cannot go
27 forward until criminal proceedings have concluded. See Wallace v.
28 Kato, 549 U.S. 384, 393 (2007).

1 Accordingly, Plaintiff's claims for injunctive relief and
2 damages stemming from his arrest, parole revocation and criminal
3 proceedings are DISMISSED without prejudice.

4 II. MDF Claims

5 Plaintiff alleges that while incarcerated at MDF he was
6 involved in an altercation that resulted in his suffering a broken
7 jaw, and that he received inadequate medical attention and care for
8 that injury. Plaintiff does not identify who caused the injury
9 that resulted in the broken jaw or the surrounding circumstances,
10 and also does not identify the individuals who denied him adequate
11 medical care, the exact nature of their actions, and the injury
12 Plaintiff suffered as a result.

13 The complaint is deficient under Rule 8(a) of the Federal
14 Rules of Civil Procedure, which requires that the complaint set
15 forth "a short and plain statement of the claim showing that the
16 pleader is entitled to relief." A complaint that fails to state
17 the specific acts of the defendant that violated the plaintiff's
18 rights fails to meet the notice requirements of Rule 8(a). See
19 Hutchinson v. United States, 677 F.2d 1322, 1328 n.5 (9th Cir.
20 1982). Additionally, Rule 8(e) requires that each averment of a
21 pleading be "simple, concise, and direct." See McHenry v. Renne,
22 84 F.3d 1172, 1179 (9th Cir. 1996). While the federal rules
23 require brevity in pleading, a complaint nevertheless must be
24 sufficient to give the defendants "fair notice" of the claim and
25 the "grounds upon which it rests." Erickson v. Pardus, 551 U.S.
26 89, 93 (2007) (quotation and citation omitted).

27 Here, Plaintiff's claims fail to meet the requirements of Rule
28 8 because Plaintiff's conclusory allegations are not sufficient to

1 show that he is entitled to relief or to put a defendant on notice
2 of the claims against him or her.

3 When Plaintiff's allegations are liberally construed, it
4 appears that he may be attempting to state a claim for relief under
5 42 U.S.C. § 1983. To state a claim under 42 U.S.C. § 1983, a
6 plaintiff must allege two essential elements: (1) that a right
7 secured by the Constitution or laws of the United States was
8 violated, and (2) that the alleged violation was committed by a
9 person acting under the color of state law. See West v. Atkins,
10 487 U.S. 42, 48 (1988). As noted, however, Plaintiff has not
11 provided sufficient facts for the Court to make a determination
12 whether he has stated a cognizable claim for relief under § 1983.

13 Accordingly, Plaintiff's complaint is DISMISSED for failure to
14 state a cognizable claim for relief. Plaintiff may file an amended
15 complaint in which (1) he alleges sufficient facts for the Court to
16 determine whether he states a claim for the violation of his
17 constitutional rights, and (2) clearly names and links Defendants
18 to the alleged injury or injuries for which the Defendants are
19 alleged to be responsible.

20 III. Request for Removal

21 Plaintiff has filed a document titled "Notice for Stay of
22 State Court Proceedings In Support of Notice of Removal." Docket
23 no. 19. Therein, Plaintiff asks that his state criminal
24 proceedings be removed to federal court. Such a request is not
25 properly brought in a civil rights action. Rather, a state
26 criminal defendant seeking to remove a criminal prosecution to
27 federal court must comply with the procedural requirements of 28
28 U.S.C. § 1446, which include the filing of a verified petition for

1 removal with the federal district court in which the criminal
2 prosecution is located, attached to which are copies of all
3 pleadings in the criminal case. See id. at § 1446(a). Further,
4 the removal petitioner must meet the legal requirements for
5 removal. See Johnson v. Mississippi, 421 U.S. 213, 219-20 (1975).

6 Accordingly, Plaintiff's request for removal is DENIED without
7 prejudice. If Plaintiff has a good-faith belief that he can meet
8 both the procedural and legal requirements for removing his state
9 prosecution to federal court, he may file a separate action for
10 removal under 28 U.S.C. § 1446.

11 CONCLUSION

12 For the foregoing reasons, the Court orders as follows:

13 1. Plaintiff's claims concerning his arrest, parole
14 revocation and criminal prosecution are DISMISSED without
15 prejudice.

16 2. Plaintiff's claims concerning his broken jaw and
17 inadequate medical care at MDF are DISMISSED WITH LEAVE TO AMEND.

18 Within thirty (30) days from the date of this Order, Plaintiff
19 may file an amended complaint in order to cure the deficiencies
20 noted above with respect to these claims. Plaintiff shall use the
21 court's civil rights complaint form, a copy of which is provided
22 herewith, and include in the caption both the case number of this
23 action, No. C 10-5558 CW (PR), and the heading "AMENDED COMPLAINT."

24 If Plaintiff fails to timely file an amended complaint in
25 conformity with this Order, the case will be dismissed without
26 prejudice and will be closed.

27 3. Plaintiff's request for removal is DENIED without
28 prejudice.

1 4. It is Plaintiff's responsibility to prosecute this case.
2 Plaintiff must keep the Court informed of any change of address and
3 must comply with the Court's orders in a timely fashion. Failure
4 to do so may result in the dismissal of this action, pursuant to
5 Federal Rule of Civil Procedure 41(b), for failure to prosecute.

6 IT IS SO ORDERED.

7 Dated: 10/7/2011



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

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

4 ANDERSON et al,

Case Number: CV10-05558 CW

5 Plaintiff,

CERTIFICATE OF SERVICE

6 v.

7 PITTSBURG POLICE DEPARTMENT et al,

8 Defendant.
_____ /

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

11 That on October 7, 2011, I SERVED a true and correct copy(ies) of the attached and **CIVIL**
12 **RIGHTS COMPLAINT FORM**, by placing said copy(ies) in a postage paid envelope addressed
13 to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said
14 copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

15 Troy J. Anderson
16 West County Detention Facility
17 5555 Giant Hwy
18 #V57236
19 Richmond, CA 94806

20 Dated: October 7, 2011

21 Richard W. Wieking, Clerk
22 By: Nikki Riley, Deputy Clerk
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