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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DEMETRIUS COLEMAN,

No. C 12-2339 YGR (PR)

Plaintiff,

**ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND**

v.

S. BOYLE, et al.,

Defendants.

INTRODUCTION

This is a federal civil rights action filed pursuant to 42 U.S.C. § 1983 by a *pro se* state prisoner. The Court, after having reviewed the complaint pursuant to 28 U.S.C. § 1915(A), **DISMISSES** the complaint with leave to file an amended complaint. **Plaintiff shall file an amended complaint addressing the deficiencies detailed below on or before January 20, 2013.**

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. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and

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

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

17 **B. Legal Claims**

18 Plaintiff alleges that defendants, employees of the Contra Costa County Sheriff’s
19 Department, (1) impermissibly denied him access to a home detention program though he
20 had been admitted to such program as part of his sentence, and (2) “practice many civil rights
21 violations” at the place of his current detention. The first claim relates to the execution of his
22 sentence, and therefore must be brought as a habeas corpus action. Accordingly, the first
23 claim is DISMISSED without prejudice to plaintiff refiling it by way of a habeas petition.

24 The second claim does not contain sufficient factual matter to state a claim for relief.
25 Plaintiff must provide more specific details, such as which defendant denied his rights, the
26 specific rights that were allegedly violated, on what date, etc. For example, it is not
27 sufficient to say that he was not allowed to call his attorney. Plaintiff must allege the name
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1 of the defendant, on what date this occurred, why he was calling his attorney, and how
2 defendant's action violated a specific constitutional right, etc. **Plaintiff is given leave to file**
3 **an amended complaint including these specific details on or before January 31, 2013.**

4 The first amended complaint must include the caption and civil case number used in
5 this order (12-2339 YGR (PR)) and the words FIRST AMENDED COMPLAINT on the first
6 page. Because an amended complaint completely replaces the previous complaints, plaintiff
7 must include in his first amended complaint all the claims he wishes to present and all of the
8 defendants he wishes to sue. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992).
9 Plaintiff may not incorporate material from the prior complaint by reference. Failure to file
10 an amended complaint in accordance with this order will result in dismissal of this action
11 without further notice to plaintiff.

12 It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court
13 informed of any change of address by filing a separate paper with the clerk headed "Notice
14 of Change of Address." He must comply with the Court's orders in a timely fashion or ask
15 for an extension of time to do so. Failure to comply may result in the dismissal of this action
16 pursuant to Federal Rule of Civil Procedure 41(b).

17 **IT IS SO ORDERED.**

18 DATED: January 10, 2013


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

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