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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

MICHAEL HOLLINS,

Plaintiff,

No. C 14-0079 PJH (PR)

vs.

**ORDER OF DISMISSAL WITH
LEAVE TO AMEND**

ED POMEROY, et. al.,

Defendants.

Plaintiff, a pretrial detainee incarcerated at Maguire Correctional Facility 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

A. 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." "Specific facts are not necessary; the statement need only "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests."" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). Although in order to state a claim a complaint "does not need detailed factual

1 allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief'
2 requires more than labels and conclusions, and a formulaic recitation of the elements of a
3 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief
4 above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
5 (citations omitted). A complaint must proffer "enough facts to state a claim to relief that is
6 plausible on its face." *Id.* at 570. The United States Supreme Court has recently explained
7 the "plausible on its face" standard of *Twombly*: "While legal conclusions can provide the
8 framework of a complaint, they must be supported by factual allegations. When there are
9 well-pleaded factual allegations, a court should assume their veracity and then determine
10 whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 556 U.S. 662,
11 679 (2009).

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

16 **B. Legal Claims**

17 Plaintiff has filed a complaint, motion to amend with supplemental pleadings and a
18 separate amended complaint, though it is not exactly clear the relief that he seeks. In the
19 original complaint plaintiff stated he was being committed to a state hospital but the proper
20 procedures were not followed. Plaintiff then stated he only spent 12 days in a state hospital
21 was returned to the county jail where he is still awaiting trial for the underlying criminal
22 charges. The only defendants are plaintiff's prior court appointed attorney and his current
23 appointed attorney that was assigned after plaintiff requested a new counsel at a *Marsden*
24 hearing. Plaintiff's later filings discuss how his newly appointed attorney is not properly
25 representing him, but there is no more discussion of being improperly committed to the
26 state hospital. The only relief plaintiff seeks is monetary damages from the attorneys, and
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1 presumably a new court appointed attorney.¹

2 Under principles of comity and federalism, a federal court should not interfere with
3 ongoing state criminal proceedings by granting injunctive or declaratory relief absent
4 extraordinary circumstances. See *Younger v. Harris*, 401 U.S. 37, 43-54 (1971). Federal
5 courts should not enjoin pending state criminal prosecutions absent a showing of the state's
6 bad faith or harassment, or a showing that the statute challenged is "flagrantly and patently
7 violative of express constitutional prohibitions." *Younger*, 401 U.S. at 46, 53-54 (cost,
8 anxiety and inconvenience of criminal defense not kind of special circumstances or
9 irreparable harm that would justify federal court intervention; statute must be
10 unconstitutional in every "clause, sentence and paragraph, and in whatever manner" it is
11 applied). Abstention may be inappropriate in the "extraordinary circumstance" that (1) the
12 party seeking relief in federal court does not have an adequate remedy at law and will
13 suffer irreparable injury if denied equitable relief, see *Mockaitis v. Harcleroad*, 104 F.3d
14 1522, 1528 (9th Cir. 1997) (citing *Younger*, 401 U.S. at 43-44), or (2) the state tribunal is
15 incompetent by reason of bias, see *Gibson v. Berryhill*, 411 U.S. 564, 577-79 (1973). A
16 party who alleges bias must overcome a presumption of honesty and integrity in those
17 serving as adjudicators. See *Hirsh v. Justices of the Supreme Court of Cal.*, 67 F.3d 708,
18 713 (9th Cir. 1995) (citation omitted).

19 The complaint will be dismissed with leave to amend for plaintiff to more clearly
20 present his claims and to demonstrate why this case should not be dismissed pursuant to
21 *Younger*, as it appears that the state court has already once provided plaintiff a new
22 attorney when he was dissatisfied.

23 **CONCLUSION**

24 1. The complaint is **DISMISSED** with leave to amend in accordance with the
25 standards set forth above. The amended complaint must be filed no later than **May 9,**
26 **2014**, and must include the caption and civil case number used in this order and the words

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28 ¹ Plaintiff has filed fifteen other cases in this court in the last several months.

1 AMENDED COMPLAINT on the first page. Because an amended complaint completely
2 replaces the original complaint, plaintiff must include in it all the claims he wishes to
3 present. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may not
4 incorporate material from the original complaint by reference.

5 2. The motion to amend (Docket No. 3) is **GRANTED** and the court has considered
6 all of plaintiff's filings.

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

12 **IT IS SO ORDERED.**

13 Dated: April 7, 2014.



PHYLLIS J. HAMILTON
United States District Judge

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