

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

ZURI S. K. YOUNG,)	No. C 11-02825 EJD (PR)
)	
Plaintiff,)	ORDER OF DISMISSAL WITH
)	LEAVE TO AMEND; ADDRESSING
vs.)	PENDING MOTIONS
)	
MATTHEW CATE, et al.,)	
)	
Defendants.)	
_____)	(Docket Nos. 9, 10 & 12)

Plaintiff, an inmate currently incarcerated at the Pelican Bay State Prison (“PBSP”), in Crescent City, filed the instant civil rights action in pro se pursuant to 42 U.S.C. § 1983 against PBSP officials for unconstitutional acts. Plaintiff’s motion for leave to proceed in forma pauperis will be granted in a separate written order. Plaintiff has also filed motions for the U.S. Marshals to serve summons and complaint on Defendants, (Docket Nos. 9 & 12), and a motion for a temporary restraining order, (Docket No. 10).

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a

1 prisoner seeks redress from a governmental entity or officer or employee of a
2 governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify
3 any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a
4 claim upon which relief may be granted or seek monetary relief from a defendant who is
5 immune from such relief. See id. § 1915A(b)(1),(2). Pro se pleadings must, however, be
6 liberally construed. See Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir.
7 1988).

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

12 **B. Plaintiff’s Claims**

13 In his “statement of claim,” Plaintiff presents seven claims from separate incidents
14 that occurred or are ongoing from 1993 to current: (1) the denial of “single cell status” on
15 April 8, 2010, based on an alleged conspiracy by PBSP officials to harm or murder
16 Plaintiff, (Compl. at 5); (2) denial of outdoor exercise for 45 days, from July 12, 2010 to
17 August 27, 2010, (id. at 6-7); (3) the unlawful denial of inmate appeals for “non-
18 substantiated reasons” on May 15, 2008 and May 4, 2011, (id. at 7); (4) Defendants used
19 “falsified documents and records resulting in [Plaintiff’s] false imprisonment and
20 conviction for a crime [he] did not commit” by entering such information into the “prison
21 system” in January 2008, (id. at 8) ; (5) prison staff has been interfering with his mail
22 since his incarceration on December 27, 1993, (id. at 9); (6) as of June 30, 2010,
23 Defendants have been responsible for “prison overcrowdedness and the medical and
24 mental health deprivation,” (id. at 10); and (7) Defendants are liable “beginning on 8-29-
25 2007, up and continuing past May 29th, 2011” for “ongoing violations of [Plaintiff’s]
26 United State constitutional rights” in their individual and official capacities, (id. at 11).

27 Federal Rule of Civil Procedure 20 allows persons to be joined in one action as
28 defendants so long as: (1) the right to relief asserted against each defendant arises out of

1 or relates to the same transaction or occurrence, or series of transactions or occurrences;
2 and (2) a question of law or fact common to all defendants arises in the action. See Fed.
3 R. Civ. P. 20(a)(2).

4 On its face, Plaintiff's complaint appears to violate Federal Rule of Civil Procedure
5 20(a)(2) because he alleges unrelated claims that do not contain a question of law or fact
6 that is common to all Defendants. Furthermore, claim 7 is no more than a blanket
7 assertion that he has met the minimum pleading requirements under §§ 1915(A)(2) and
8 1915(A)(b)(1), which is not per se a separate claim. Lastly, with respect to claim 4,
9 Plaintiff is advised that he must raise any challenge regarding the fact or length of his
10 confinement separately in a petition for a writ of habeas corpus before he can move
11 forward with a claim for damages under § 1983. See Hill v. McDonough, 547 U.S. 573,
12 579 (2006); Butterfield v. Bail, 120 F.3d 1023, 1024 (9th Cir. 1997).¹

13 For the foregoing reasons, Plaintiff's Complaint is DISMISSED with LEAVE TO
14 AMEND within thirty (30) days of the date of this Order.

15 **C. Motion for Temporary Restraining Order**

16 Plaintiff has filed a motion for a temporary restraining order ("TRO"). (Docket
17 No. 10.) A request for TRO may be granted without written or oral notice to the adverse
18 party or that party's attorney only if: (1) it clearly appears from specific facts shown by
19 affidavit or by the verified complaint that immediate and irreparable injury, loss or
20 damage will result to the applicant before the adverse party or the party's attorney can be
21 heard in opposition, and (2) the applicant's attorney certifies in writing the efforts, if any,
22 which have been made to give notice and the reasons supporting the claim that notice
23 should not be required. See Fed. R. Civ. P. 65(b).

24
25 ¹ In addition, Plaintiff must prove that the conviction or sentence has been reversed on
26 direct appeal, expunged by executive order, declared invalid by a state tribunal authorized
27 to make such determination, or called into question by a federal court's issuance of a writ
28 of habeas corpus. Heck v. Humphrey, 512 U.S. 477, 486-487 (1994). A claim for
damages bearing that relationship to a conviction or sentence that has not been so
invalidated is not cognizable under § 1983. Id. at 487.

1 Although Plaintiff swears under penalty of perjury that the information contained
2 in his pleadings is true and correct, and thus the pleadings may be deemed affidavits, it
3 does not clearly appear from the pleadings that Plaintiff will suffer immediate injury
4 before the Defendants can be given an opportunity to respond. In light of these
5 circumstances, the Court DENIES Plaintiff's request for a TRO, (Docket No. 10), as
6 premature.

8 CONCLUSION

9 For the reasons stated above, the Court orders as follows:

10 1. The complaint is DISMISSED WITH LEAVE TO FILE AN AMENDED
11 COMPLAINT **within thirty (30) days** from the date this order is filed, containing all
12 related claims against all Defendants that Plaintiff wishes to proceed against in this
13 action. See Fed. R. Civ. P. 20(a)(2). The pleading must be simple, concise and direct and
14 must state clearly and succinctly how each and every Defendant is alleged to have
15 violated Plaintiff's federally-protected rights. See Fed. R. Civ. P. 8(a)(2). The amended
16 complaint must include the caption and civil case number used in this order (11-02825
17 EJD (PR)) and the words FIRST AMENDED COMPLAINT on the first page. Because
18 an amended complaint completely replaces the previous complaints, Plaintiff must
19 include in his amended complaint all the claims he wishes to present and all of the
20 defendants he wishes to sue. See Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir.
21 1992). Plaintiff may not incorporate material from the prior complaint by reference.
22 Claims and defendants not included in the First Amended Complaint will not be
23 considered by the Court. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987).

24 Plaintiff is advised that he may only allege claims in a single action that (a) arise
25 out of the same transaction, occurrence, or series of transactions or occurrences and (b)
26 present questions of law or fact common to all defendants named therein. See Fed. R.
27 Civ. P. 20(a)(2). Plaintiff must file individual actions for unrelated claims against
28 unrelated Defendants. He also must either pay the \$ 350.00 filing fee, or file a completed

1 court- approved in forma pauperis application, for each separately-filed action. See 28
2 U.S.C. § 1915.

3 **Failure to file a proper amended complaint in the time provided will result in**
4 **the dismissal of this action without further notice to Plaintiff.**

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

10 3. Plaintiff's motion for a TRO, (Docket No. 10), is DENIED.

11 4. Plaintiff's motions for service of his complaint, (Docket Nos. 9 & 12), are
12 DENIED as premature. The Court will order service after determining whether his first
13 amended complaint states cognizable claims.

14 The Clerk shall enclose two copies of the court's form complaint with a copy of
15 this order to Plaintiff.

16 This order terminates Docket Nos. 9, 10.

17
18 DATED: 11/8/2011


EDWARD J. DAVILA
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ZURI SANAKABISA YOUNG,
Plaintiff,

Case Number: CV11-02825 EJD

CERTIFICATE OF SERVICE

v.

MATTHEW CATE, et al.,
Defendants.

_____/

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

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

Zuri S.K. Young J-03193
Pelican Bay State Prison
5905 lake Earl Drive
PO Box 7500
B3 2246
Crescent City, CA 95532

Dated: 11/14/2011

Richard W. Wieking, Clerk
/s/By: Elizabeth Garcia, Deputy Clerk