

United States District Court  
For the Northern District of California

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**FILED**

JAN 08 2013

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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

ROB JOSEPH SIMMONS,  
Plaintiff,  
vs.  
BELMONT POLICE DEPT., et al.,  
Defendants.

No. C 12-01716 EJD (PR)  
ORDER OF DISMISSAL WITH  
LEAVE TO AMEND

Plaintiff, a county jail inmate, filed a pro se civil rights complaint under 42 U.S.C. § 1983, challenging the conditions of his confinement. On July 25, 2012, the Court dismissed the complaint with leave to amend. (Docket No. 7.) Plaintiff has filed an amended complaint. (Docket No. 8.)

**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 dismiss any claims that are frivolous, malicious, fail to state

1 a claim upon which relief may be granted or seek monetary relief from a defendant who  
2 is immune from such relief. See id. § 1915A(b)(1),(2). Pro se pleadings must,  
3 however, be liberally construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696,  
4 699 (9th Cir. 1988).

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

9 **B. Plaintiff's Claims**

10 In the original complaint, Plaintiff claimed that his First Amendment right of  
11 freedom of religion had been violated and he sought an "unconditional injunction" to  
12 exempt him from "all marijuana related laws." (Docket No. 1 at 6.) In the instant  
13 amended complaint, Plaintiff states that he was illegally arrested due to his involvement  
14 with the Tree of Life Church and the Rastafarian Cannabis Ministry. Plaintiff states he  
15 was found not guilty but still sent to prison. Plaintiff seeks money damages from the  
16 Belmont Police Department due to the illegal prosecution. Plaintiff also includes a  
17 dozen inmate grievances from the county jail describing different complaints  
18 surrounding the conditions of his confinement.

19 Plaintiff is again advised that to state a claim under 42 U.S.C. § 1983, a plaintiff  
20 must allege that a person acting under the color of state law committed a violation of a  
21 right secured by the Constitution or laws of the United States. West v. Atkins, 487 U.S.  
22 42, 48 (1988). Plaintiff must identify defendants by name and state how each individual  
23 defendant violated a specific federal right. If Plaintiff wishes to challenge his  
24 conviction he must file a petition for a writ of habeas corpus pursuant to 28 U.S.C. §  
25 2254.

26 Moreover, in order to recover damages for an allegedly unconstitutional  
27 conviction or imprisonment, or for other harm caused by actions whose unlawfulness  
28 would render a conviction or sentence invalid, a 42 U.S.C. § 1983 plaintiff must prove

1 that the conviction or sentence has been reversed on direct appeal, expunged by  
2 executive order, declared invalid by a state tribunal authorized to make such  
3 determination, or called into question by a federal court's issuance of a writ of habeas  
4 corpus. Heck v. Humphrey, 512 U.S. 477, 486-487 (1994). A claim for damages  
5 bearing that relationship to a conviction or sentence that has not been so invalidated is  
6 not cognizable under § 1983. Id. at 487. Thus, Plaintiff must demonstrate his  
7 conviction was reversed, expunged or declared invalid before he can seek money  
8 damages.

### CONCLUSION

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


12 The amended complaint is DISMISSED with leave to amend. Within **twenty-**  
13 **eight (28) days** of the date this order is filed, Plaintiff shall file a second amended  
14 complaint using the court's form complaint. The amended complaint must include the  
15 caption and civil case number used in this order and the words "SECOND AMENDED  
16 COMPLAINT" on the first page and write in the case number for this action, Case No.  
17 C 12-01716 EJD (PR). Plaintiff must answer all the questions on the form in order for  
18 the action to proceed.

19 **Failure to respond in accordance with this order by filing an amended**  
20 **complaint will result in the dismissal of this action without prejudice and without**  
21 **further notice to Plaintiff.**

22 The Clerk shall include two copies of the court's complaint with a copy of this  
23 order to Plaintiff.

24  
25 DATED: \_\_\_\_\_

1/7/13

  
EDWARD J. DAVILA  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

ROB JOSEPH SIMMONS,  
Plaintiff,

Case Number CV 12-01716 EJD (PR)

**CERTIFICATE OF SERVICE**

v.

BELMONT POLICE DEPT., et al.,  
Defendants.

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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 1/08/13, 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) inter-office delivery receptacle located in the Clerk's office.

**Rob Joseph Simmons**  
11401 South Bloomfield Avenue  
Suite 405  
Norwalk, CA 90650

DATED: 1/08/13

Richard W. Wieling, Clerk  
By: Elizabeth Garcia, Deputy Clerk

