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

TERRY RAY COLEMAN,)	No. C 13-0484 LHK (PR)
)	
Plaintiff,)	ORDER OF DISMISSAL
)	
vs.)	
)	
COUNTY OF SAN MATEO, et al.,)	
)	
Defendants.)	
_____)	

Plaintiff, a California state prisoner proceeding *pro se*, filed a civil rights complaint pursuant to 42 U.S.C. § 1983. Plaintiff’s motion for leave to proceed in forma pauperis is granted in a separate order. For the reasons stated below, the Court dismisses the complaint for failure to state a claim.

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 a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b)(1), (2). *Pro se* pleadings must, however, be liberally construed. *See Balistreri v.*

1 *Pacifica Police Dep't.*, 901 F.2d 696, 699 (9th Cir. 1988).

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

6 B. Legal Claims

7 Plaintiff names as Defendants the County of San Mateo, the San Mateo County Sheriff's
8 Department, the San Mateo County Coroner's Office, and Sergeant Linda Gibbons. In his
9 statement of claim, Plaintiff writes, "My wife Kimberly Renee Johnson was murdered by her
10 nephew Andre Combs Jan. 2005." [Sic.] As his request for relief, Plaintiff states that he wants
11 to be refunded for "what was taking out my wife bank account as well as safe deposit box all our
12 assets and for the lost of my wife body." [Sic.]

13 As presented, it is unclear what federal constitutional rights Plaintiff believes that
14 Defendants violated. Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain
15 statement of the claim showing that the pleader is entitled to relief." "Specific facts are not
16 necessary; the statement need only "give the defendant fair notice of what the . . . claim is and
17 the grounds upon which it rests.""*Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations
18 omitted). Although in order to state a claim, a complaint "does not need detailed factual
19 allegations, . . . a plaintiff's obligation to provide the 'grounds of his 'entitle[ment] to relief'
20 requires more than labels and conclusions, and a formulaic recitation of the elements of a cause
21 of action will not do. . . . Factual allegations must be enough to raise a right to relief above the
22 speculative level." *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations
23 omitted). A complaint must proffer "enough facts to state a claim for relief that is plausible on
24 its face." *Id.* at 1974. Plaintiff must state "enough facts to state a claim for relief that is
25 plausible on its face." *Twombly*, 127 S. Ct. at 1974. To state a claim arising under federal law, it
26 must be clear from the face of Plaintiff's complaint that there is a federal question. *See Easton v.*
27 *Crossland Mortgage Corp.*, 114 F.3d 979, 982 (9th Cir. 1997).

28 Further, Plaintiff has failed to link any named Defendant with his claim. Liability may be

1 imposed on an individual defendant under 42 U.S.C. § 1983 if a plaintiff can show that a
2 defendant proximately caused the deprivation of a federally protected right. *See Leer v. Murphy*,
3 844 F.2d 628, 634 (9th Cir. 1988). A person deprives another of a constitutional right within the
4 meaning of section 1983 if he does an affirmative act, participates in another's affirmative act or
5 omits to perform an act which he is legally required to do, that causes the deprivation of which
6 the plaintiff complains. *See id.* at 633.

7 The Court notes that Plaintiff has previously filed two similar civil rights complaints: (1)
8 *Coleman v. Ulshoeffter, et al.*, No. 11-6209 LHK (N.D. Cal. filed Dec. 14, 2011), and (2)
9 *Coleman v. County of San Mateo, et al.*, No. 11-5728 LHK (N.D. Cal. filed Nov. 30, 2011). The
10 Court takes judicial notice of the pleadings in both cases. In *Coleman v. Ulshoeffter, et al.*,
11 Plaintiff alleged that Andre Combs murdered Plaintiff's wife, and Erica Ulshoeffter committed
12 fraud, theft, and forgery by taking all of Plaintiff's deceased wife's property, money, and assets.
13 Upon initial review, the Court pointed out that Plaintiff could not sue private actors in a Section
14 1983 claim, and dismissed the complaint with leave to amend. Plaintiff did not file an amended
15 complaint, and the Court ultimately dismissed the action on May 23, 2012. In *Coleman v.*
16 *County of San Mateo, et al.*, Plaintiff complained that the County and Sergeant Linda Gibbons
17 mishandled procedures regarding his deceased wife's body. Upon initial review, the Court
18 pointed out that Plaintiff's complaint was deficient because it was unclear what federal right
19 Plaintiff was asserting, and dismissed the complaint with leave to amend. Plaintiff did not file an
20 amended complaint, and the Court ultimately dismissed the action on May 23, 2012. The
21 present complaint appears to combine portions of the previous two dismissed complaints,
22 without attempting to correct any deficiencies about which this Court already advised Plaintiff.

23 District courts must afford pro se prisoner litigants an opportunity to amend to correct
24 any deficiency in their complaints. *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000)
25 (en banc). However, leave need not be granted where the amendment of the complaint would
26 cause the opposing party undue prejudice, is sought in bad faith, constitutes an exercise in
27 futility, or creates undue delay. *See Janicki Logging Co. v. Mateer*, 42 F.3d 561, 566 (9th Cir.
28 1994); *see also Weilburg v. Shapiro*, 488 F.3d 1202, 1205 (9th Cir. 2007) (recognizing that leave

1 to amend is not necessary when plaintiff can provide no set of facts in support of his claim that
2 would entitle him to relief) (citations and internal quotation marks omitted). Here, the Court will
3 not grant leave to amend because, taking into consideration Plaintiff's previous complaints, it is
4 clear that such leave would be futile.

5 **CONCLUSION**

6 Plaintiff's complaint is DISMISSED with prejudice for failure to state a claim.

7 IT IS SO ORDERED.

8 DATED: 4/10/13


LUCY H. KOH
United States District Judge

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