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

LARRY LEE RUSSELL, JR.,

Plaintiff,

v.

CAROL A. JACOBY,

Defendant.

No. C 15-03678 HRL (PR)

**ORDER OF DISMISSAL WITH
LEAVE TO AMEND**

Plaintiff, a state prisoner at Pelican Bay State Prison, has filed a complaint pursuant to 42 U.S.C. § 1983. Plaintiff's motion for leave to proceed in forma pauperis will be granted in a separate order.

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

1 immune from such relief. See id. § 1915A(b)(1),(2). Pro se pleadings must, however, be
2 liberally construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.
3 1988).

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

8 **B. Plaintiff's Claim**

9 Plaintiff names as defendant Carol A. Jacoby (Rep.), located in Martinez
10 California. (Compl. at 2.) The entirety of his statement of claim is as follows: "False,
11 Malicious, frivolous [*sic*]. Isn't my seed. Ask for blood test. Refused now asking for
12 payment monthly. Need order for Medical Records [] place S.S. Card [*sic*]." (Id. at 3.)
13 Plaintiff's statement is insufficient for this Court to discern what federal right, if any, was
14 violated and how the named defendant specifically acted to violate his rights. He will be
15 granted leave to amend to address this deficiency.

16 In preparing an amended complaint, Plaintiff must allege sufficient facts indicating
17 what federal rights that were violated how specific defendant(s) under color of law acted
18 to deprive him of those rights. Liability may be imposed on an individual defendant
19 under 42 U.S.C. § 1983 if the plaintiff can show that the defendant proximately caused
20 the deprivation of a federally protected right. See Leer v. Murphy, 844 F.2d 628, 634 (9th
21 Cir. 1988); Harris v. City of Roseburg, 664 F.2d 1121, 1125 (9th Cir. 1981). A person
22 deprives another of a constitutional right within the meaning of section 1983 if he does an
23 affirmative act, participates in another's affirmative act or omits to perform an act which
24 he is legally required to do, that causes the deprivation of which the plaintiff complains.
25 See Leer, 844 F.2d at 633 (inquiry into causation must be individualized and focus on the
26 duties and responsibilities of each individual defendant whose acts or omissions are
27 alleged to have caused a constitutional deprivation). Even at the pleading stage, "[a]
28 plaintiff must allege facts, not simply conclusions, that show that an individual was

1 personally involved in the deprivation of his civil rights.” Barren v. Harrington, 152 F.3d
2 1193, 1194 (9th Cir. 1998).

3
4 **CONCLUSION**

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

6 The complaint is DISMISSED with leave to amend. Within **twenty-eight**
7 **(28) days** of the date this order is filed, Plaintiff shall file an amended complaint using
8 the court’s form complaint. The amended complaint must include the caption and civil
9 case number used in this order – Case No. C 15-03678 HRL (PR) – and the words
10 “AMENDED COMPLAINT” on the first page. Plaintiff must answer all the questions on
11 the form in order for the action to proceed. The amended complaint will completely
12 supersede the original complaint, and Plaintiff may not make references thereto.

13 **Failure to respond in accordance with this order by filing an amended**
14 **complaint in the time provided will result in the dismissal of this action without**
15 **prejudice and without further notice to Plaintiff.**

16 The Clerk shall include two copies of the court’s complaint with a copy of this
17 order to Plaintiff.

18 **IT IS SO ORDERED.**

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20 DATED: _____

10/13/15

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23 HOWARD R. LLOYD
24 United States Magistrate Judge
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LARRY LEE RUSSELL,
Plaintiff,
v.
CAROL A. JACOBY,
Defendant.

Case No. 15-cv-03678-HRL

CERTIFICATE OF SERVICE

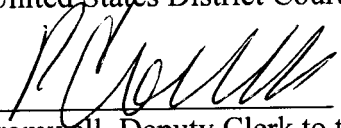
I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 14, 2015, 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.

Larry Lee Russell ID: AR8643
Pelican Bay State Prison
P.O. BOX 7500
Crescent Bay, CA 95532-7000

Dated: October 14, 2015

Susan Y. Soong
Clerk, United States District Court

By: 
Patty Cromwell, Deputy Clerk to the
Honorable HOWARD R. LLOYD