

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MELVIN JOSEPH SIMMONS,
Plaintiff,
v.
SCOTT KERNAN, et al.,
Defendants.

Case No. 16-CV-07319 LHK (PR)
ORDER OF DISMISSAL

Plaintiff, a California state prisoner proceeding *pro se*, filed an amended civil rights complaint under 42 U.S.C. § 1983 after the court advised him to correct deficiencies in his original complaint. For the reasons stated below, the court dismisses the amended 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

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1 monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b)(1),
2 (2). *Pro se* pleadings must, however, be liberally construed. *See Balistreri v. Pacifica Police*
3 *Dep’t.*, 901 F.2d 696, 699 (9th Cir. 1988).

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

8 B. Legal claims

9 In plaintiff’s original complaint, the court could not determine what plaintiff’s claims were
10 against which defendant. Plaintiff appeared to allege that his constitutional rights were being
11 violated after a conviction from Del Norte County Superior Court. He also referred to his personal
12 and real property being improperly taken from him. He also mentioned an assault and battery
13 against him that occurred within the prison. The court noted that plaintiff’s complaint was filled
14 with legal terminology and a recitation of elements for different causes of action, but plaintiff
15 failed to include sufficient facts to support any of his claims. The court directed plaintiff to file an
16 amended complaint to cure these deficiencies.

17 In the amended complaint, plaintiff names as defendants: Scott Kernan, Secretary of the
18 California Department of Corrections and Rehabilitation (“CDCR”); Kathleen Allison, Director of
19 CDCR; David Baughman, Acting Warden of California State Prison - Sacramento; Dale P. Trigg,
20 District Attorney of Del Norte County; Clark E. Ducart, Warden of Pelican Bay State Prison; and
21 Judge William H. Falloit, Superior Court Judge of Del Norte County.

22 As the amended complaint reads, the court again cannot determine what plaintiff’s claims
23 are. Plaintiff again failed to include sufficient facts to support any of claim. For example, plaintiff
24 states:

25 When Defendant, Dale P. Trigg, is the District Attorney. (18c) A public official appointed

1 or elected to represent the state in criminal cases in the Judicial District of Del Norte
2 County. Coconspired with the Defendant, Clark E. Ducart to IMPOUND (2). To take and
3 retain possession of <plaintiff, MELVIN JOSEPH SIMMONS with the usage> of
4 (something, such as a forged document <intrinsic fraud> to be produced as evidence) in
5 preparation of a criminal prosecution. Case number CR-PB-16-5022. Reckless
6 knowledge. In unconstitutionally Depriving Plaintiff, MELVIN JOSEPH SIMMONS of
7 plaintiff's Personal Liberty and Incorporeal Property. To maintain forced labor and
8 services under false pretenses while holding plaintiff MELVIN JOSEPH SIMMONS under
9 duress of goods. For performance of an unlawful obligation between the Defendants
10 unfavorably affecting the rights of Plaintiff, MELVIN JOSEPH SIMMONS a person who
11 is not a party to the contract.

12 Am. Compl. ¶ 9. In addition, plaintiff makes the following conclusory allegations with no
13 supporting facts. He alleges that Acting Warden Baughman is holding plaintiff in involuntary
14 servitude. Plaintiff also states that District Attorney Trigg and Warden Ducart held plaintiff under
15 false pretenses. Plaintiff further claims that Judge Falloit imposed a wrongful levy fine and tax
16 sanction, and ordered the seizure and sale of plaintiff's personal and private property. Plaintiff
17 alleges that District Attorney Trigg is liable for perpetuating an unlawful injury to plaintiff, who
18 was a victim of human trafficking, and that Warden Ducart punished plaintiff for exercising
19 plaintiff's "protective activities" and allowing plaintiff to be displaced in solitary confinement.

20 The court previously advised plaintiff that in his amended complaint, plaintiff must "set
21 forth specific facts as to each individual defendant's" actions which violated his or her rights.
22 *Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988). Plaintiff was told that he must name each
23 individual defendant, and clearly state what each defendant did that made him or her liable for
24 violating plaintiff's constitutional rights by specifically stating what happened, when it happened,
25 what each defendant did, and how those actions or inactions rise to the level of a federal
26 constitutional violation. Plaintiff has not done so.

27 Plaintiff has not provided sufficient facts in his amended complaint to plausibly suggest an
28 entitlement to relief. Accordingly, plaintiff's amended complaint is dismissed for failure to state a
claim. Because plaintiff has already had an opportunity to amend his complaint, the court finds
that further leave to amend would be futile.

1 **CONCLUSION**

2 The court DISMISSES plaintiff’s amended complaint for failure to state a cognizable
3 claim for relief. The dismissal is without leave to amend. The court previously explained to
4 plaintiff why the original complaint was deficient, and plaintiff has failed to correct those
5 deficiencies. Also, the court warned plaintiff that the failure to file an amended complaint in
6 accordance with the March 23, 2017 order would result in the court’s finding that further leave to
7 amend would be futile.

8 The clerk shall terminate all pending motions and close the file.

9 **IT IS SO ORDERED.**

10 DATED: 7/25/17

Lucy H. Koh

LUCY H. KOH
UNITED STATES DISTRICT JUDGE

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Northern District of California

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