

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

KEITH H. BAYNE,  
Plaintiff,  
  
v.  
  
SHERIFF G. AHERN, et al.,  
Defendants.

Case No. 18-01850 BLF (PR)  
**ORDER OF DISMISSAL WITH  
LEAVE TO AMEND**

Plaintiff, who is currently in custody at the Napa State Hospital, filed the instant *pro se* civil rights action pursuant to 42 U.S.C. § 1983.<sup>1</sup> Plaintiff’s motion for leave to proceed *in forma pauperis* will be addressed 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

<sup>1</sup> This matter was reassigned to this Court on April 6, 2018. (Docket Nos. 4 & 5.)

1 cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim  
2 upon which relief may be granted or seek monetary relief from a defendant who is immune  
3 from such relief. *See id.* § 1915A(b)(1),(2). Pro se pleadings must, however, be liberally  
4 construed. *See Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 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 The named Defendants in this action include the City of Berkeley’s Animal Control  
11 and its director, PG&E and its employees, the District Attorney for the City of San Ramon,  
12 the Berkeley Police Department (“BPD”), the Estate of deceased Seon O’niell, and an  
13 individual named “El-Vahy-Niya aka Chivako,” of Pinole, California. (Compl. at 2.)  
14 Plaintiff claims unlawful confiscation of his dog by Animal Control, injury to his brain-  
15 spinal cord by PG&E driver, false charges and wrongful imprisonment by the District  
16 Attorney of San Ramon, and wrongful eviction by the BPD and remaining two defendants.  
17 (*Id.* at 10-12.) Plaintiff seeks injunctive relief and damages. (*Id.* at 13-14.)

18 “A party asserting a claim, counterclaim, crossclaim, or third-party claim may join,  
19 as independent or alternative claims, as many claims as it has against an opposing party.”  
20 Fed. R. Civ. P. 18(a). Accordingly, “multiple claims against a single party are fine, but  
21 Claim A against Defendant 1 should not be joined with unrelated Claim B against  
22 Defendant 2.” *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007). “Unrelated claims  
23 against different defendants belong in different suits,” not only to prevent the sort of  
24 “morass” that a multi-claim, multi-defendant suit can produce, “but also to ensure that  
25 prisoners pay the required filing fees – for the Prison Litigation Reform Act limits to 3 the  
26 number of frivolous suits or appeals that any prisoner may file without prepayment of  
27 required fees.” *Id.* (citing 28 U.S.C. § 1915(g)).

1 Here, none of the claims are related to each other and do not arise out of the same  
2 transaction, occurrence, or series of transactions or occurrences. Fed. R. Civ. P. 20(a)(2).  
3 For example, there is no allegation that the confiscation of his dog by Animal Control has  
4 anything to do with the injury caused by the PG&E driver. Nor are there any allegations  
5 connecting the wrongful imprisonment by the District Attorney of San Ramon with the  
6 eviction claims against the BPD and other defendants. “A buckshot complaint that would  
7 be rejected if filed by a free person – say, a suit complaining that A defrauded plaintiff, B  
8 defamed him, C punched him, D failed to pay a debt, and E infringed his copyright, all in  
9 different transactions – should be rejected if filed by a prisoner.” *George v. Smith*, 507  
10 F.3d 605, 607 (7th Cir. 2007) (noting that, in prisoner complaint seeking to join 24  
11 defendants and approximately 50 distinct claims, prisoner made no effort to show that 24  
12 defendants he named had participated in the same transaction or series of transactions or  
13 that a question of fact is common to all defendants). Accordingly, the Court finds that the  
14 claims against the named Defendants are improperly joined in this single action. In the  
15 interest of justice, Plaintiff shall be granted leave to file an amended complaint containing  
16 only related claims against the appropriate Defendants.

17 Furthermore, Plaintiff may not be able to pursue a claim for his wrongful  
18 imprisonment against the District Attorney for the City of San Ramon. In order to recover  
19 damages for an allegedly unconstitutional conviction or imprisonment, or for other harm  
20 caused by actions whose unlawfulness would render a conviction or sentence invalid, a 42  
21 U.S.C. § 1983 plaintiff must prove that the conviction or sentence has been reversed on  
22 direct appeal, expunged by executive order, declared invalid by a state tribunal authorized  
23 to make such determination, or called into question by a federal court’s issuance of a writ  
24 of habeas corpus. *Heck v. Humphrey*, 512 U.S. 477, 486-487 (1994). A claim for  
25 damages bearing that relationship to a conviction or sentence that has not been so  
26 invalidated is not cognizable under § 1983. *Id.* at 487. Accordingly, if Plaintiff is not able  
27 to make a showing that the unlawful imprisonment has been otherwise invalidated, any  
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1 claim related to that conviction or sentence will be barred by *Heck*.

2 In preparing an amended complaint, Plaintiff should be mindful of the following  
3 legal principles. He must allege the two essential elements under § 1983 to state a claim:  
4 (1) the constitutional or federal right that was violated, and (2) the person acting under the  
5 color of state law who committed the alleged violation. *See West v. Atkins*, 487 U.S. at 48.  
6 The Court notes that the allegations for several of his other claims fail to establish these  
7 two elements to state a § 1983 claim. For example, there are no allegations indicating  
8 what federal right was violated by the confiscation of his dog, and how PG&E, a private  
9 entity, was acting under the color of state law. Failure to show the two essential elements  
10 will result in the dismissal of the claim for failure to state a claim for which relief can be  
11 granted. *See* 28 U.S.C. § 1915A(b)(1),(2).

12 With respect to individual liability, a person deprives another of a constitutional  
13 right within the meaning of §1983 if he does an affirmative act, participates in another's  
14 affirmative act or omits to perform an act which he is legally required to do, that causes the  
15 deprivation of which the plaintiff complains. *See Leer v. Murphy*, 844 F.2d 628, 633 (9th  
16 Cir. 1988). The inquiry into causation must be individualized and focus on the duties and  
17 responsibilities of each individual defendant whose acts or omissions are alleged to have  
18 caused a constitutional deprivation. *Id.* (citations omitted). The element of causation  
19 requires a showing that the injury is "fairly traceable to the challenged action of the  
20 defendant, and not the result of the independent action of some third party not before the  
21 court." *Mendia v. Garcia*, 768 F.3d 1009, 1012 (9th Cir. 2014) (quoting *Bennett v. Spear*,  
22 520 U.S. 154, 167 (1997)).

23 Shortly after filing the original complaint, Plaintiff filed a letter indicating an  
24 "Intent to Amend Complaint." (Docket No. 4.) The amendment involves the same claims  
25 discussed above which are improperly joined in this action. Accordingly, the Court will  
26 disregard the pleading. Once Plaintiff decides which claim he wishes to pursue, he should  
27 incorporate all allegations and supporting documents for that claim into the amended  
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1 complaint to be filed with the Court.

2  
3 **CONCLUSION**

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

5 The complaint is **DISMISSED with leave to amend**. Within **twenty-eight**  
6 **(28) days** of the date this order is filed, Plaintiff shall file an amended complaint to comply  
7 with the pleading requirements described above. The amended complaint must include the  
8 caption and civil case number used in this order, Case No. C 18-01850 BLF (PR), and the  
9 words “AMENDED COMPLAINT” on the first page. If using the court form complaint,  
10 Plaintiff must answer all the questions on the form in order for the action to proceed.

11 The amended complaint supersedes the original, the latter being treated thereafter as  
12 non-existent. *Ramirez v. Cty. Of San Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015).  
13 Consequently, claims not included in an amended complaint are no longer claims and  
14 defendants not named in an amended complaint are no longer defendants. *See Ferdik v.*  
15 *Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.1992).

16 **Failure to respond in accordance with this order in the time provided will**  
17 **result in the dismissal of this action without prejudice and without further notice to**  
18 **Plaintiff.**

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

21 **IT IS SO ORDERED.**

22 **Dated:** September 18, 2018



23 BETH LABSON FREEMAN  
24 United States District Judge