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

CLAYTON SULLIVAN,

Plaintiff,

No. CIV S-09-0354 EFB P

vs.

RIO COSUMNES CORRECTIONAL
CENTER, et al.,

Defendants.

ORDER

_____/

Plaintiff is a former inmate at Rio Cosumnes Correctional Center proceeding without counsel in an action brought under 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1) and is before the undersigned pursuant to plaintiff's consent. *See* 28 U.S.C. § 636; *see also* E.D. Cal. Local Rules, Appx. A, at (k)(4).

Plaintiff has requested leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. Plaintiff's declaration makes the showing required by 28 U.S.C. § 1915(a)(1) and (2), and thus, the court will grant plaintiff's request.

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion

1 of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which
2 relief may be granted,” or “seeks monetary relief from a defendant who is immune from such
3 relief.” *Id.* § 1915A(b).

4 A district court must construe a pro se pleading “liberally” to determine if it states a
5 claim and, prior to dismissal, tell a plaintiff of deficiencies in his complaint and give plaintiff an
6 opportunity to cure them. *See Lopez v. Smith*, 203 F.3d 1122, 1130-31 (9th Cir. 2000). While
7 detailed factual allegations are not required, “[t]hreadbare recitals of the elements of a cause of
8 action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 129 S.Ct.
9 1937, 1949 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff
10 must set forth “sufficient factual matter, accepted as true, to ‘state a claim to relief that is
11 plausible on its face.’” *Id.* (quoting *Twombly*, 550 U.S. at 570).

12 A claim has facial plausibility when the plaintiff pleads factual content that allows
13 the court to draw the reasonable inference that the defendant is liable for the
14 misconduct alleged. The plausibility standard is not akin to a “probability
15 requirement,” but it asks for more than a sheer possibility that a defendant has
acted unlawfully. Where a complaint pleads facts that are merely consistent with a
defendant’s liability, it stops short of the line between possibility and plausibility
of entitlement to relief.

16 *Id.* (citations and quotation marks omitted). Although legal conclusions can provide the
17 framework of a complaint, they must be supported by factual allegations, and are not entitled to
18 the assumption of truth. *Id.* at 1950.

19 The Civil Rights Act under which this action was filed provides:

20 Every person who, under color of [state law] . . . subjects, or causes to be
21 subjected, any citizen of the United States . . . to the deprivation of any rights,
22 privileges, or immunities secured by the Constitution . . . shall be liable to the
party injured in an action at law, suit in equity, or other proper proceeding for
redress

23 42 U.S.C. § 1983. An individual defendant is not liable on a civil rights claim unless the facts
24 establish the defendant’s personal involvement in the constitutional deprivation or a causal
25 connection between the defendant’s wrongful conduct and the alleged constitutional deprivation.
26 *See Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989); *Johnson v. Duffy*, 588 F.2d 740, 743-44

1 (9th Cir. 1978)

2 The court has reviewed plaintiff's complaint pursuant to 28 U.S.C. § 1915A. While it is
3 clear that plaintiff intends to pursue claims based on prison officials' alleged deliberate
4 indifference to his serious medical needs, in failing to properly treat his eye and nose injuries
5 sustained in an attack by another inmate, plaintiff fails to state a cognizable claim against any
6 defendant.

7 To state a claim that defendants provided constitutionally inadequate medical care,
8 plaintiff must allege acts or omissions showing that identified defendants knew of and
9 disregarded plaintiff's serious medical needs. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976);
10 *Farmer*, 511 U.S. at 835-37 ("the official must both be aware of facts from which the inference
11 could be drawn that a substantial risk of serious harm exists, and he must also draw the
12 inference"). Neither a defendant's negligence nor a plaintiff's general disagreement with the
13 treatment he received suffices to state a claim. *Estelle*, 429 U.S. at 106; *Hutchinson v. United*
14 *States*, 838 F.2d 390, 394 (9th Cir. 1988); *Jackson v. McIntosh*, 90 F.3d 330, 331 (9th Cir.
15 1996).

16 Additionally, a plaintiff may not sue any supervisor on a theory that the supervisor is
17 liable for the acts of his or her subordinates. See *Polk County v. Dodson*, 454 U.S. 312, 325
18 (1981). A supervisor may be held liable in his or her individual capacity "for his own culpable
19 action or inaction in the training, supervision or control of his subordinates." *Watkins v. City of*
20 *Oakland*, 145 F.3d 1087, 1093 (9th Cir. 1998) (quoting *Larez v. City of L.A.*, 946 F.2d 630, 646
21 (9th Cir. 1991)). "A supervisor is only liable for constitutional violations of his subordinates if
22 the supervisor participated in or directed the violations, or knew of the violations and failed to
23 act to prevent them." *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

24 Plaintiff does not allege facts showing how any defendant was personally involved in the
25 deprivation of his federal rights. Plaintiff names the following defendants: Lt. Marsh, Dr. B. Lin,
26 Rio Cosumnes Correctional Center, and Rio Cosumnes Correctional Center Medical Staff.

1 Compl. at 1, 2. Plaintiff's factual allegations, however, contain no mention of the named
2 defendants, alleging simply: "I signed with E.N.T. dr. to have nose fixed[.] [F]acility never took
3 me back" and "I feel I didn't receive proper medical care." Compl. at 3. These allegations fail
4 make out cognizable claims because they do not inform how each named defendant was
5 deliberately indifferent to plaintiff's serious medical needs. Plaintiff's claims against Rio
6 Cosumnes Correctional Center and its medical staff are also not cognizable, as plaintiff must
7 identify staff members by name and specifically state how each individual was deliberately
8 indifferent to his serious medical needs.

9 Plaintiff must file an amended complaint to proceed. Plaintiff's amended complaint,
10 should he file one, must clearly identify the individuals he intends to name as defendants.
11 Plaintiff must also include sufficient factual allegations linking each defendant to an act or
12 omission that would indicate a deprivation of plaintiff's federal rights.

13 Any amended complaint must show that the federal court has jurisdiction and that
14 plaintiff's action is brought in the right place, that plaintiff is entitled to relief if plaintiff's
15 allegations are true, and must contain a request for particular relief. Plaintiff must identify as a
16 defendant only persons who personally participated in a substantial way in depriving plaintiff of
17 a federal constitutional right. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person
18 subjects another to the deprivation of a constitutional right if he does an act, participates in
19 another's act or omits to perform an act he is legally required to do that causes the alleged
20 deprivation). If plaintiff contends he was the victim of a conspiracy, he must identify the
21 participants and allege their agreement to deprive him of a specific federal constitutional right.

22 In an amended complaint, the allegations must be set forth in numbered paragraphs. Fed.
23 R. Civ. P. 10(b). Plaintiff may join multiple claims if they are all against a single defendant.
24 Fed. R. Civ. P. 18(a). If plaintiff has more than one claim based upon separate transactions or
25 occurrences, the claims must be set forth in separate paragraphs. Fed. R. Civ. P. 10(b).
26 Unrelated claims against different defendants must be pursued in multiple lawsuits.

1 The controlling principle appears in Fed. R. Civ. P. 18(a): ‘A party asserting a
2 claim . . . may join, [] as independent or as alternate claims, as many claims . . . as
3 the party has against an opposing party.’ Thus multiple claims against a single
party are fine, but Claim A against Defendant 1 should not be joined with
unrelated Claim B against Defendant 2.

4 *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007); *see also* Fed. R. Civ. P. 20(a)(2) (joinder of
5 defendants not permitted unless both commonality and same transaction requirements are
6 satisfied).

7 The federal rules contemplate brevity. *See Galbraith v. County of Santa Clara*, 307 F.3d
8 1119, 1125 (9th Cir. 2002) (noting that “nearly all of the circuits have now disapproved any
9 heightened pleading standard in cases other than those governed by Rule 9(b).”); Fed. R. Civ. P.
10 84; cf. Rule 9(b) (setting forth rare exceptions to simplified pleading). Plaintiff’s claims must be
11 set forth in short and plain terms, simply, concisely and directly. *See Swierkiewicz v. Sorema*
12 *N.A.*, 534 U.S. 506, 514 (2002) (“Rule 8(a) is the starting point of a simplified pleading system,
13 which was adopted to focus litigation on the merits of a claim.”); Fed. R. Civ. P. 8. Plaintiff
14 should eliminate from his pleading all preambles, introductions, argument, speeches,
15 explanations, stories, griping, vouching, evidence, attempts to negate possible defenses,
16 summaries, and the like. *McHenry v. Renne*, 84 F.3d 1172, 1180 (9th Cir. 1996) (affirming
17 dismissal of § 1983 complaint for violation of Rule 8 after warning); *see Crawford-El v. Britton*,
18 523 U.S. 574, 597 (1998) (reiterating that “firm application of the Federal Rules of Civil
19 Procedure is fully warranted” in prisoner cases). The court (and defendant) should be able to
20 read and understand plaintiff’s pleading within minutes. *McHenry*, 84 F.3d at 1177. A long,
21 rambling pleading, including many defendants with unexplained, tenuous or implausible
22 connection to the alleged constitutional injury or joining a series of unrelated claims against
23 many defendants very likely will result in delaying the review required by 28 U.S.C. § 1915A
24 and an order dismissing plaintiff’s action pursuant to Fed. R. Civ. P. 41 for violation of these
25 instructions.

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1 An amended complaint must be complete in itself without reference to any prior
2 pleading. Local Rule 220; *see Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff
3 files an amended complaint, the original pleading is superseded.

4 By signing an amended complaint he certifies he has made reasonable inquiry and has
5 evidentiary support for his allegations and that for violation of this rule the court may impose
6 sanctions sufficient to deter repetition by plaintiff or others. Fed. R. Civ. P. 11. Prison rules
7 require plaintiff to obey all laws, including this one, and plaintiff may be punished by prison
8 authorities for violation of the court's rules and orders. *See* Cal. Code Regs. tit. 15, § 3005.

9 A prisoner may bring no § 1983 action until he has exhausted such administrative
10 remedies as are available to him. 42 U.S.C. § 1997e(a). The requirement is mandatory. *Booth*
11 *v. Churner*, 532 U.S. 731, 741 (2001). By signing an amended complaint plaintiff certifies his
12 claims are warranted by existing law, including the law that he exhaust administrative remedies,
13 and that for violation of this rule plaintiff risks dismissal of his action.

14 Accordingly, the court hereby ORDERS that:

15 1. Plaintiff's request to proceed *in forma pauperis* is granted.

16 2. The complaint is dismissed with leave to amend within 30 days. The amended
17 complaint must bear the docket number assigned to this case and be titled "First Amended
18 Complaint." Failure to file an amended complaint will result in dismissal for failure to state a
19 claim. If plaintiff files an amended complaint stating a cognizable claim the court will proceed
20 with service of process by the United States Marshal.

21 Dated: August 16, 2010.

22 
23 EDMUND F. BRENNAN
24 UNITED STATES MAGISTRATE JUDGE
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